In the matter of :	)	
Expedited Consideration for Declaratory Rulings	)	
On the transfer of traffic only under AT&T	)	
Tariff Section 2.1.8., and Related Issues	)	
	)	
Primary Jurisdiction Referral	)	
From the NJ District Court	)	
	)	WC Docket No. 06-210
One Stop Financial, Inc.	)	
Group Discounts, Inc.	)	
Winback & Conserve Program, Inc.	)	
800 Discounts, Inc.	)	
	)	
Petitioners	)	
and	)	
	)	
AT&T Corp.	)	
Respondent	)	

AT&T'S RESPONSE TO PETITIONERS' MOTION
TO TEMPORARILY SUSPEND THE PROCEEDING

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February 1, 2016

AT&T submits this response to the January 20, 2016 submission by Petitioners One Stop Financial, Inc., Winback & Conserve Program, Inc., Group Discounts, Inc., 800 Discounts, Inc. ("petitioners"). Petitioners' January 20 Submission consists primarily of a letter from their latest counsel, Mr. Raymond Grimes, to AT&T's counsel announcing petitioners' intention to move to lift the stay of the district court proceeding, and a string of emails written by their president, Al Inga, to various individuals, including Commission staff. To the extent this aggregation of documents constitutes a proper request for a temporary suspension, AT&T opposes that request.

In 2006, the federal court in the District of New Jersey directed petitioners to institute this proceeding to obtain an interpretation of an AT&T tariff provision. Just last March, the Court affirmed that directive. None of the arguments in petitioners' rambling January 20, 2016 submission provides any conceivable basis for suspending a proceeding that, less than a year ago, petitioners complained was taking too long. Their request for sanctions—the latest in an endless litany of groundless accusations against AT&T and its counsel—is equally frivolous.

I. There Is No Basis For Temporarily Suspending The Declaratory Ruling Proceeding.

As the Commission is aware, petitioners sued AT&T in federal district court after AT&T refused to process a proposed transfer of telephone traffic. The Judge then presiding over the case, Judge Politan, eventually referred to the Commission the question of whether Section 2.1.8 of AT&T Tariff No. 2 required AT&T to process requests to transfer virtually all traffic on certain term plans from Combined Companies, Inc. ("CCI") to Public Service Enterprises of Pennsylvania ("PSE"), despite PSE's failure to assume all obligations under the plans, including obligations for potential shortfall and termination charges. The district court case was stayed pending resolution of that issue. When that issue remained unresolved after a 2003 Commission ruling and subsequent appeal to the D.C. Circuit, Judge Bassler (who had succeeded Judge

Politan) denied petitioners' motion to lift the stay in 2006 and directed them to reinstitute proceedings to obtain a ruling from the Commission on the Section 2.1.8 issue.

In December 2014, petitioners filed a new motion to lift the stay. In addition to complaining about agency delay, they claimed that the question of what obligations had to be assumed under Section 2.1.8 was a "red herring." Br. in Supp. of Pls. Mot. to Lift Stay and for Partial Summ. J. at 13 (Dec. 15, 2014).[1] After briefing and argument, Judge Wigenton (who had succeeded Judge Bassler) denied petitioners' motion. She found it appropriate to continue the stay to obtain a ruling from the Commission on the referred issue.

Petitioners now ask the Commission to suspend its efforts to resolve that very issue. The basis for this request is difficult to discern, to say the least. Apparently convinced that the hodgepodge of arguments set forth in their counsel's January 18 letter[2] will induce the Court to lift the stay, petitioners claim that there is no need for the Commission to act unless "the [Court] still does not understand that the Judge Bassler 2006 referral on obligation allocation is totally moot by both the FCC Orders as well as the merits." January 20 Submission at 1. The short answer to this contention is that the current proceeding was instituted at the direction of the Court, and should not be suspended unless and until the Court changes that directive. Petitioners have sought and failed to obtain such a ruling from the Court on multiple prior occasions. Their belief that this time will be different is not a basis for the extraordinary relief they request.

That belief, moreover, is completely misplaced. As AT&T explained in its recent response to Mr. Grimes, the central arguments set forth in his letter rest on premises that are

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[1] AT&T explained that petitioners were largely responsible for the delay, having inundated the Commission with nearly 100 formal submissions (and countless additional emails) comprising thousands of pages of repetitive arguments, including many that improperly sought to expand the scope of the proceeding. Br. of AT&T Corp. in Opp. to Pls. Mot. to Lift Stay and for Partial Summ. J. at 10-19 (Jan. 16, 2015) ("AT&T Opp. to Mot. to Lift Stay").

[2] Letter from Raymond Grimes to Richard Brown, Jan. 18, 2016 ("Grimes Letter").

demonstrably false and/or baseless. *See* Exh. A. The centerpiece of the Grimes Letter is the claim that the Court's referral is limited to what petitioners' repeatedly (and erroneously) describe as AT&T's "sole defense" prior to the Commission's ruling in 2003—namely, that AT&T could refuse to process the transfer under the tariff's "fraudulent use" provision, Section 2.2.4. *See* Grimes Letter at 1-3. Petitioners argue that Judge Wigenton never saw the Commission's January 12, 2007 Order, which (they claim) declined to expand the referral beyond AT&T's "sole defense of fraudulent use." *Id.* at 5. Petitioners thus imply that, once the Judge sees that Order, she will lift the stay. Petitioners also claim that a 1995 Commission order effectively foreclosed AT&T's "fraudulent use" defense. *Id.* at 2-3. As AT&T explained in its response to Mr. Grimes, these assertions are frivolous.

There is no merit to petitioners' claim that AT&T's "sole defense" was "fraudulent use." As AT&T explained in its response to the Grimes Letter, AT&T defended its refusal to process the proposed CCI-to-PSE transfer based not only on its fraudulent use claim, but also because the proposed transfer was invalid under ***section 2.1.8***. *See* Exh. B, AT&T's March 30, 1995 Post-Hearing Br. at 7-8 (AT&T "refused to permit the transfer precisely because PSE, the 'new' customer in the transfer, did not assume '***all*** of the obligations' of the 'old' customer, CCI. *See* AT&T FCC Tariff No. 2, ***§ 2.1.8***") (second emphasis added). The Commission itself stated that the "question referred by the Third Circuit is 'whether ***section 2.1.8*** [of AT&T's Tariff FCC No. 2] permits an aggregator to transfer traffic under a [tariffed] plan without transferring the plan itself in the same transaction.'" October 17, 2003 Order at ¶ 1 ("2003 Order") (emphasis added). That Order also quotes AT&T's filing before the agency, which confirms that AT&T raised two defenses, not just a fraudulent use defense. *Id.* ¶ 4 n.26 ("'AT&T objected on the grounds that ***Section 2.1.8*** did not authorize the transfer of a plan unless the transferee … assumes the original

customer's liability ***and that*** the location-only transfer violated the "fraudulent use" provisions of Section 2.2.4'") (emphases added).

Petitioners' "sole defense" theory rests on the fact that, after the Commission rejected AT&T's fraudulent use argument in the 2003 Order, it stated that "'AT&T does not rely upon any other provisions of its tariff to justify its conduct.'" Exh. C (quoting 2003 Order at ¶ 13); *see also* Grimes Letter at 1 ("the FCC 2003 decision states AT&T's sole defense in 1995 was under section 2.2.4"). But it was only after rejecting *both* the Section 2.2.4 *and* the Section 2.1.8 defenses, 2003 Order at ¶¶ 8-9, that the Commission stated that AT&T did not "rely upon any other provisions of its tariff." No reasonable reader could possibly understand that statement to mean that AT&T never even raised the Section 2.1.8 argument *that the Commission had just rejected a few paragraphs earlier*.

Petitioners also claim that AT&T could not have made its Section 2.1.8 argument because that argument would have been fatally inconsistent with its fraudulent use defense. *See* Grimes Letter at 3, 4 ¶¶ (5) & (6). But this is one of the many claims petitioners raise that simply "rehash issues that have been the subject of extensive prior briefing." Exh. A at 2. As AT&T has explained, a traffic transfer would *not* have divested a transferor such as CCI of obligations existing at the time of the transfer. Comments of AT&T in Opposition to Request for Declaratory Rulings (Dec. 20, 2006) ("AT&T 2006 Comments") at 17-18 (discussing Section 2.1.8's "joint and several liability" provision). Thus, CCI had obligations PSE was obligated to assume.[3]

[3] Petitioners also claim that, before the 2003 Order, AT&T made a *different* Section 2.1.8 argument—*i.e.*, that the requirement that "all obligations" be assumed applied only on plan transfers. Exh. C. This very claim shows that AT&T did not rely "solely" on a fraudulent use defense. The D.C. Circuit, moreover, rejected this reading of AT&T's Section 2.1.8 argument. *See AT&T Corp. v. FCC*, 394 F.3d 933, 937 (D.C. Cir. 2005) ("AT&T did not concede the inapplicability of Section 2.1.8 to transfers of traffic only. Indeed, had AT&T been willing to make such a concession, it presumably would not have contested the meaning of this provision").

In short, the referral from the Court was not limited to AT&T's fraudulent use defense. Petitioners' assertion that the 2007 Order "did not expand the scope of the Third Circuit Referral concerning AT&T's *sole defense* of fraudulent use," Grimes Letter at 5 (emphasis added), is thus wrong. Indeed, the 2007 Order itself states that the Commission had been asked to resolve "the scope of section 2.1.8." January 12, 2007 Order ¶ 3. Thus, the Commission did not "den[y]," but instead recognized, "Judge Bassler's referral regarding which obligations transfer." Grimes Letter at 8. Instead, the 2007 Order rebuffed petitioners' efforts to raise *other* issues (pertaining to alleged discrimination and the infliction of shortfall charges, *see* Grimes Letter at 6-7), by making clear that the Commission would not address these issues, either in this proceeding or another one initiated by Tips Marketing ("Tips"), an entity owned by Mr. Inga.[4]

Petitioners' assertion that Judge Wigenton "has never seen the FCC's January 12, 2007 Order," Grimes Letter at 5, is patently false. AT&T included a block quote of that Order in its opposition to petitioners' 2014 motion to lift the stay and attached the Order as an exhibit. AT&T Opp. to Mot. to Lift Stay at 11 & Exh. N. At the hearing on petitioners' motion, Judge Wigenton expressly stated that she had "read *all of the submissions*. In addition to that, I have

[4] Recognizing this, petitioners filed a motion asking whether they should seek a Court order to expand the referral, or to issue a new referral that would "receive its own FCC case ID and additional public comments." Request for Reconsideration or FCC Guidance for District Court Re: Issues Already Commented On, But Not Before FCC (Feb. 8, 2007) at 2 (referring to shortfall infliction claim). Tips later claimed that the shortfall infliction claim was reintroduced into this proceeding by the fabricated "referral" from the Internal Revenue Service (IRS). *See* Ex-Parte Comments of Tips Marketing (March 16, 2007). Later still, petitioners asked the Commission whether it would address the shortfall infliction claim, noting that "there has been no Public Notice issued" in the Tips proceeding, and threatening to file a "writ of mandamus to the DC Circuit to obtain the referral order that the FCC seems to require." Motion for FCC to Announce Whether or Not it Will Address Shortfall/and or Discrimination Claims (Sept. 12, 2007) at 2. AT&T strenuously objected to petitioners' efforts to raise these extraneous issues. *See, e.g.*, Reply to Ptrs. Request for Combining Declaratory Rulings (Jan. 10, 2007) at 1 (Tips' request was an improper "ploy by Mr. Inga to have the Commission consider issues that petitioners deliberately chose to litigate by filing a complaint with the District Court"). *See also* 47 U.S.C. § 207 (election of remedies). As a consequence of the various procedural filings, there was no joining of the issue on the merits of the shortfall infliction claim, and the Commission ultimately terminated the Tips proceeding in 2014. *See In the Matter of Termination of Certain Proceedings as Dormant*, 29 FCC Rcd 11017, 11068 (Sept 15, 2014).

read the opinions that have been issued in this matter, not only from Judge Politan . . . but *also the opinions from the FCC*." March 18, 2015 Transcript at 4:2-5 (emphases added).

Petitioners' reliance on the Commission's 1995 Order is also misplaced. They claim that this Order undermined AT&T's fraudulent use defense. Grimes Letter at 2-3. This is irrelevant: the issue pending before the Commission is the scope of Section 2.1.8, not Section 2.2.4. Nor does the 1995 Order have any other bearing on this proceeding. In the Order's "grandfathering" provision, AT&T promised that, for a 12-month period, it would provide 5 days notice before it made "any *change* to an existing term plan," and 14-days notice for "*changes* to discontinuance with or without liability … or transfer or assignment of service." 1995 Order ¶ 134 (emphases added). In refusing to process the proposed CCI-to-PSE transfer, AT&T was not *changing* the plans; it was enforcing them in accordance with their pre-October 1995 terms. As AT&T has explained, those pre-October 1995 terms did not enjoy "immunity" from shortfall obligations. AT&T 2006 Comments at 31-34.[5]

Petitioners also claim that the D.C. Circuit did not remand the case to the Commission, "so there were no open issues." Grimes Letter at 7. But Judge Bassler's 2006 decision makes clear that, while he did not believe the D.C. Circuit had "expressly remand[ed] the case back to the FCC," Opinion, *Combined Companies, Inc. and Winback & Conserve Program et al.* v. *AT&T Corp.*, Civil Action No. 95-908 (filed June 1, 2006) at 12, the parties had to return to the Commission for the resolution of issues under section 2.1.8 that remained unresolved, *id.* at 13-18. Those issues remain unresolved.

[5] Petitioners also assert that Judge Bassler never saw the 1995 Order. Grimes Letter at 8. In fact, petitioners' prior counsel cited that Order and attached it as an exhibit to a letter to Judge Bassler in which he argued that the stay should be lifted. *See* Exh. D.

Finally, petitioners assert that "[t]he FCC staff stated that even if Judge Bassler's referral was within the scope of the case, it is still a moot issue." Grimes Letter at 5. Petitioners cite no support for this claim, and AT&T is not aware of any.[6] In all events, it is clear that the issue is not moot. Petitioners have sued for damages on the grounds that AT&T improperly refused to process the CCI-to-PSE transfer. AT&T contends its refusal was proper because PSE did not agree to assume in writing "all obligations," as Section 2.1.8 required. A Commission ruling that Section 2.1.8 required such a written assumption of "all obligations" would thus not be a matter of purely academic interest, nor would it be "a change in the terms and conditions of section 2.1.8." Grimes Letter at 5. It would be a determination of what section 2.1.8 meant at the time of the proposed CCI-to-PSE transfer, and thus directly relevant to the resolution of petitioners' still-pending claims in federal court.[7]

II. Petitioners' Request For Sanctions Is Utterly Frivolous.

As the Commission is aware, AT&T sought sanctions against petitioners based on their submission of a fabricated document, purportedly from the IRS, in an effort to expand the issues before the Commission, and their never-ending stream of baseless and intemperate submissions accusing virtually every AT&T in-house and outside lawyer involved in this case of attempting to defraud the Commission, the D.C. Circuit and the District Court. *See* AT&T's Motion for Sanctions Against Mr. Alfonse Inga and Petitioners (June 12, 2007). AT&T presciently warned that, because petitioners and their president were incapable of restraint or responsible advocacy, they would continue their abusive tactics unless sanctioned. *See* AT&T's Reply in Support of its

[6] In a December 10, 2014 email, Mr. Inga asserted that Commission Staff had "confirmed petitioner's realization that the FCC decision in regards to the traffic only transfer issue is a moot issue." Exh. E. In the attached email chain, however, Commission Staff had explicitly stated: "to be clear, I am not answering a question specific to the facts of your case or providing legal advice, nor am I providing a statement on behalf of the Commission."

[7] Petitioners raise a number of other issues that have been the subject of prior briefing. Accordingly, none provides a basis for suspending the proceeding.

Motion for Sanctions at 26 (July 18, 2007). Petitioners' latest motion, as well as numerous submissions and countless emails from Mr. Inga over the last eight and a half years, have confirmed the accuracy of that prediction.

In their submissions, petitioners repeatedly claim that legal arguments with which they disagree are "misrepresentations," "scams" and "frauds." When respected jurists, including the current Chief Justice of the United States, accept these arguments, petitioners insist that the outcomes demonstrate that the courts have been misled, "scammed," or defrauded by AT&T. In petitioners' view, only fraud—not valid arguments—can explain an adverse ruling.

In just one of many examples, petitioners claim that AT&T "scammed" Judge Bassler by drawing his attention to "just the two words 'all obligations' and not the full sentence" in Section 2.1.8. Nov. 12, 2015 Comments at 25. According to petitioners, "AT&T's short quote of the full sentence and *focus* on only the 2 words '**all obligations**' scam worked on Judge Bassler and thus the moot 2006 Referral was sent to the FCC." *Id.* at 26. *See also* Grimes Letter at 4 (referring to "AT&T's 'all obligations' misrepresentation" and its "'all obligations' fraud").[8] To suggest that when a party asks a tribunal to focus on the relevant portion of a legal document it is engaging in a "fraud," "scam," or "misrepresentation" is to strip these words of any recognized meaning.

Yet at the same time that they recklessly impugn the integrity of AT&T's lawyers and denigrate the intelligence of federal judges, petitioners repeatedly make unfounded and in some cases completely false statements. In their latest motion, they claim that Judge Wigenton never

[8] Petitioners also claim that AT&T "pull[ed] off the fraud on Judge Bassler" by "intentionally misquot[ing]" the language of section 2.1.8. *Id.* at 25. In the passages petitioners quote—which are taken from AT&T's opening comments to the Commission—AT&T did not misquote but paraphrased the tariff, using the words "transferee" and "transferor" for the phrases "former customer" and "new customer"—something the Commission itself did in its brief to the D.C. Circuit. *See* Brief for Respondent, *AT&T Corp. v. Federal Communications Commission*, No. 03-1431 (filed May 17, 2004) at 19-20 n.10.

saw the Commission's 2007 Order (when the record shows that she did), and that Judge Bassler never saw the Commission's 1995 Order (when petitioners' prior counsel provided it to him). *Supra* at 5-6 & n.4. They further claim that there "was never an argument that petitioners did not adhere to section 2.1.8," Grimes Letter at 6, when the record shows that AT&T objected to the proposed CCI-to-PSE transfer 21 years ago "precisely because PSE, the 'new' customer in the transfer, did not agree to assume '***all*** of the obligations' of the 'old' customer, CCI. *See* AT&T FCC Tariff No. 2, ***§ 2.1.8***." AT&T's March 30, 1995 Post-Hearing Br. at 7-8 (second emphasis added). And they claim that AT&T did not deny the CCI-to-PSE transfer within 15 days, Grimes Letter at 3, when AT&T demonstrated the falsity of this claim years ago, in response to yet another of petitioners' allegations that AT&T lawyers had made false statements to the courts. *See* AT&T's Response to Petition to Expedite at 1-2 (May 14, 2008).

There can be no doubt about how petitioners will respond to AT&T's opposition. They will file yet another pleading (and likely multiple pleadings) repeating yet again their groundless accusations, and bombard the Commission with multiple, intemperate emails that repeat their groundless arguments and accusations. To end this cycle, and the burdens that petitioners' conduct places on the Commission as well as AT&T, the Commission should resolve the pending 2.1.8 issue in AT&T's favor as promptly as possible.

Respectfully submitted,

/s/ Christi Shewman

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EXHIBIT A

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January 22, 2016

VIA EMAIL

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Re: *Combined Companies, Inc., et al. v. AT&T Corp.*
Civil Action No. 95-908 (SDW/SCM)

Dear Mr. Grimes:

On behalf of Defendant AT&T Corp. ("AT&T"), I respond to your January 18, 2016 letter sent on behalf of Plaintiffs Winback & Conserve Program, Inc., One Stop Financial, Inc., Group Discounts, Inc. and 800 Discounts, Inc. (collectively, "the Inga Companies"). Your letter states that the Inga Companies will move yet again to lift the stay in the District of New Jersey matter even though Judge Wigenton denied such a motion in March 2015, and the Federal Communications Commission ("FCC") has not yet ruled on the issue referred by the District Court to the agency on primary jurisdiction grounds. Your letter offers no new grounds for seeking a stay, and another motion to lift the stay at this juncture would be frivolous.

The proceedings in the District Court case were stayed pending resolution of an issue that Judge Politan referred to the FCC on primary jurisdiction grounds. That referred issue is whether Section 2.1.8 of Tariff No. 2 required AT&T to process requests to transfer virtually all traffic on certain term plans from Combined Companies, Inc. ("CCI") to Public Service Enterprises of Pennsylvania ("PSE"), even though PSE had refused to assume all obligations, including for potential shortfall and termination charges. With that issue still unresolved after an initial FCC ruling and appeal to the D.C. Circuit, Judge Bassler rejected Plaintiffs' motion to lift the stay in 2006. The Inga Companies thereafter filed a petition for Declaratory Ruling at the FCC.

In December 2014, the Inga Companies moved to lift the stay even though the FCC had not yet issued a ruling on the referred issue. They argued, among other things, that the question of what obligations had to be assumed under Section 2.1.8 of Tariff No. 2 was a "red herring" because, in their view, it was clear that a transferee did not have to assume any obligation to pay potential shortfall charges. (See Ptfs. Dec. 15, 2014 Brief at 18-25). After full briefing and oral

argument, Judge Wigenton denied Plaintiffs' motion. She found that given the law of the case, it was appropriate to continue the stay to obtain a ruling from the FCC on the referred issue. (March 18, 2015 Transcript at 30:10-11). Judge Wigenton also suggested that Plaintiffs file a mandamus petition with a D.C. Circuit if they were unhappy that the FCC had not yet decided the referred issue. To our knowledge, Plaintiffs have never filed such a petition.

Your January 18 letter essentially ignores Judge Wigenton's March 2015 ruling and does not explain why Plaintiffs have not filed a mandamus petition.[1] Instead, you raise a series of claims for why Plaintiffs are entitled to file what amounts to a fifth motion to lift the stay. Because many of these claims simply rehash issues that have been the subject of extensive prior briefing, this letter is not a point-by-point rejoinder. Instead, I focus on the principal claims raised by your letter.

Much of your letter is based on the assertion that "AT&T's sole defense in 1995 was under section 2.2.4 which was 'fraudulent use.'" Letter at 1. From this, you appear to argue that an FCC order issued in October 1995 effectively foreclosed any "fraudulent use" claim. You also argue that a January 12, 2007 FCC Order refused to expand the referral beyond AT&T's "sole defense of fraudulent use," and that Judge Wigenton "has never seen" that Order. All of these assertions are demonstrably incorrect.

To begin with, there is no merit to the claim that "fraudulent use" as AT&T's "sole defense." AT&T defended its refusal to process the transfer at issue in this case based not only on its fraudulent use claim, but also because the proposed transfer was invalid under ***section 2.1.8***. *See* AT&T's March 30, 1995 Post-Hearing Br. at 7-8 (AT&T "refused to permit the transfer precisely because PSE, the 'new' customer in the transfer, did not assume '***all*** of the obligations' of the 'old' customer, CCI. *See* AT&T FCC Tariff No. 2, ***§ 2.1.8***") (second emphasis added). Indeed, the Third Circuit clearly recognized that AT&T was defending its refusal to process the CCI-to-PSE transfer on this ground. *See* May 31, 1996 Opinion at 2 ("AT&T objected to the proposal because the plaintiffs did not intend to transfer their potential liability for shortfall and termination charges, which form part of their contracts with AT&T"). Further, the FCC description of the Third Circuit's referral likewise confirms this reality: the "question the Third Circuit referred is '"whether ***section 2.1.8*** [of AT&T's Tariff FCC No. 2] permits an aggregator to transfer traffic under a [tariffed] plan without transferring the plan itself in the same transaction."'" FCC October 17, 2003 Order at ¶ 1 (emphasis added). The FCC's 2003 Order also quotes AT&T's filing before the agency, which similarly makes clear that AT&T was raising two defenses, not just a fraudulent use defense. *Id.* ¶ 4 n.26 ("'AT&T objected on the grounds that ***Section 2.1.8*** did not authorize the transfer of a plan unless the transferee, in this case PSE, assumes the original customer's liability ***and that*** the location-only

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[1] Rather than file such a petition, on January 20, 2016, the Inga Companies inexplicably filed a "motion" with the FCC to suspend the proceedings. The apparent basis for such a motion is Plaintiffs' view that the District Court stay should be lifted without a decision on the referred issue. As discussed herein, that view has been repeatedly rejected by the District Court.

transfer violated the "fraudulent use" provisions of Section 2.2.4'") (emphasis added). Accordingly, there is no basis for your repeated assertion that AT&T's "sole defense" was a claim of fraudulent use under section 2.2.4.[2]

The fact that the original referral included the question whether the proposed CCI-to-PSE transfer violated section 2.1.8 also completely undermines your argument regarding the significance of the FCC's January 12, 2007 Order. Because the referral included that issue, the FCC's statement in its 2007 Order that it would not expand the scope of the referral cannot possibly be read to limit the issue before it to the question of fraudulent use. In fact, in the very next sentence, the FCC explained that the issue it had been asked to resolve was "the scope of section 2.1.8." January 12, 2007 Order ¶ 3.[3] Thus, the agency did not "den[y]," but instead affirmatively recognized, "Judge Bassler's referral regarding which obligations transfer." Letter at 8. In refusing to expand the referral, the FCC was simply making clear that it would not address the host of extraneous issues that Plaintiffs sought to inject, both in the referral proceeding and in a second proceeding initiated by another of Mr. Inga's companies, Tips Marketing. Your claim that "Judge Wigenton has never seen the FCC's January 12, 2007 Order," also is false. AT&T included a block quote of the order on page 11 of its opposition to Plaintiffs' (last) motion to lift the stay and attached the order as an exhibit to that submission.

Your letter also argues that an October 23, 1995 FCC Order supports Plaintiffs' argument that AT&T does not have a viable fraudulent use defense because there was no possibility that the plans would be subject to shortfall charges. As an initial matter, that argument is irrelevant: the question before the FCC is whether the proposed CCI-to-PSE transfer was valid under section 2.1.8. It is also frivolous. The October 23, 1995 Order was issued as part of the FCC's decision to reclassify AT&T as a non-dominant carrier in certain markets; it was not issued in connection with this case. It thus has nothing to do with the issue referred on primary jurisdiction grounds by the District Court in this case, and has no impact on any of the liability issues between AT&T and the Inga Companies. Contrary to your contention, the October 1995 Order does not affect whether the CSTP plans at issue in this case could be subject to potential shortfall charges. The portion of the Order cited by you (¶ 34) merely reflects that in October 1995, AT&T agreed generally to "grandfather" existing customers if AT&T made certain changes to term plans under various tariffs, and also that for certain changes, AT&T would

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[2] It is also worth noting that Plaintiffs raised this same claim in connection with their last motion to lift the stay. Pls. Feb. 17, 2015 Rep. Br. at 4 ("[t]he sole defense raised by AT&T to justify denying the transfer was that plaintiffs violated the fraudulent use provision of Section 2.2.4"). There is no basis for raising this groundless contention a second time.

[3] Your letter also appears to argue that Judge Bassler referred this issue to the FCC because he mistakenly believed that the D.C. Circuit had remanded the issue to the agency. Judge Bassler's, 2006 order makes clear, however, that he believed that the D.C. Circuit "did not expressly remand the case back to the FCC," *id.* at 12, but that the parties had to return to the agency for resolution of issues under section 2.1.8 that had not been resolved, *id.* at 13-18.

provide certain notice, depending on whether the affected customers objected to the proposed changes. Nothing in that Order suggests that AT&T was required to "grandfather" pre-June 1994 plans, or that such plans were "immune" from shortfall or termination liability.[4]

Your letter concludes by arguing that the stay should be lifted because "liability is clearly established," and all that remain are "fact issues." Judge Wigenton has already squarely rejected those arguments. If Plaintiffs move at this juncture to lift the stay, AT&T reserves its rights to seek sanctions under Rule 11 and 28 U.S.C. §1927, and any other appropriate relief.

Very truly yours,

Richard H. Brown

RHB/
cc: Joseph R. Guerra, Esq. (via email)

[4] AT&T disputes that there has been adjudication of whether the plans are pre or post-June 17, 1994. The FCC's October 17, 2003 Order did not resolve the dispute, labeling it a fact issue. (See October 17, 2003 Order at ¶20 n.94).

EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

COMBINED COMPANIES, INC., a Florida corporation, AND WINBACK & CONSERVE PROGRAM, INC., ONE STOP FINANCIAL, INC., GROUP DISCOUNTS, INC., 800 DISCOUNTS, INC. and New Jersey corporations, AND PUBLIC SERVICE ENTERPRISES OF PENNSYLVANIA, INC., a Pennsylvania corporation, Plaintiffs, v. AT&T CORP., a New York corporation, Defendant.	:	CIVIL ACTION NO. 95-908 (NHP)

AT&T'S POST-HEARING MEMORANDUM IN FURTHER OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION AND IN FURTHER SUPPORT OF ITS MOTION TO DISMISS THE COMPLAINT ON THE GROUNDS OF PRIMARY JURISDICTION

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ARGUMENT

I. THE EVIDENCE DEMONSTRATES THAT PLAINTIFFS' PROPOSED TRANSFERS WOULD GREATLY INCREASE AT&T'S FINANCIAL EXPOSURE TO SHORTFALL AND TERMINATION LIABILITIES.

Despite plaintiffs' characterization of this action as a denial of "service," the evidence demonstrated that this case really concerns plaintiffs' failures to request subscription to Contract Tariff 516 within the subscription period and their elaborate efforts to separate themselves from the financial risk inherent in Winback's eight existing CSTP-II plans. Although Winback had the opportunity to subscribe to Contract Tariff 516 within the 90-day ordering window, as PSE did in fact subscribe, Winback did not. Winback chose voluntarily to subscribe to CSTP-II plans, accepted their promotional credits, committed to a minimum traffic volume of $54 million, and accepted accompanying shortfall and termination penalties.[1]

Plaintiffs' proposed two-step transaction was designed to transfer the end-user locations generating the revenue to satisfy the commitments to PSE, thereby isolating liabilities for usage commitments and their accompanying shortfall and termination charges in the empty shells of Winback and CCI. AT&T frustrated

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[1]As Mr. Williams explained to the Court, shortfall and termination charges protect against discrimination in rates by assuring that a subscriber does not obtain a low rate for service by promising a substantial usage commitment that is subsequently not achieved. Shortfall and termination charges thus further a central regulatory purpose: the prevention of discriminatory practices.

plaintiffs' efforts to carry out this plan by enforcing rights contained in filed tariffs.

In response, plaintiffs have tried from the outset of this action to convince this Court that their tariffed shortfall and termination liabilities to AT&T are illusory, thereby hoping to persuade the Court to order AT&T to permit the two-step transfer without either requiring CCI to furnish a security deposit or requiring PSE to accept the plans (and all of their liabilities) in addition to the traffic.[2] Plaintiffs' own pre-litigation agreements, however, refute their arguments and justify AT&T's reliance on its tariffed rights.

Specifically, the agreement between Winback and CCI itself attempts to apportion shortfall and termination liability. In no less than three paragraphs of their eight paragraph agreement (Exh. D-3), Winback and CCI deal with the allocation of risk for

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[2]Plaintiffs have made this "illusory risk" contention often, both in argument and testimony:

"[n]o shortfalls exist under the plans and the possibility of future shortfalls is non-existent" (Plaintiffs' Initial Brief at 13);

"[m]oreover, AT&T totally ignores the fact that there will be no shortfall and termination liability for the Winback plans." (Second Certification of Larry G. Shipp, ¶ 44.);

". . . AT&T's expectant penalties for a shortfall and termination charges are but a farce." (Second Certification of Alfonse G. Inga at 6.)

And during the hearing, Mr. Inga said that "there are never shortfall termination possibilities." (Transcript, p. 112, l. 21-22.)

these liabilities --- liabilities that they now want this Court to believe are "illusory." For example, paragraph two provides:

> 2. CCI agrees to discontinue the plans upon successful conclusion of its planned negotiations with AT&T, and warrants to Winback that when discontinued, the plans will be consolidate [sic] into a Contract Tariff without any liability to Winback associated with Winback's previous commitments for the plans to AT&T.

This provision is complemented and reinforced in the agreement by CCI's full indemnity to Winback for those shortfall and termination charges. CCI has also agreed that if it were required to "park" the traffic pending the successful negotiation of a contract tariff, it would negotiate the right to move the traffic back to "CCI's control . . . to meet *any and all* commitments associated with the plans prior to their discontinuance." (Exh. D-3, ¶5) (emphasis supplied). Indeed, even apart from the fact that the whole structure of Winback and CCI's plans rests on CCI's ability to reach a voluntary agreement with AT&T for a contract tariff, CCI's allocation of risk for shortfall and termination charges is the central, substantive concern of the agreement.[3]

Plaintiffs' recognition about shortfall and termination charges is mirrored in the CCI/PSE agreement. In that agreement (Exh. D-2), CCI and PSE make plain (1) that CCI retains shortfall

[3]If Mr. Shipp's testimony about the interest of MCI and Sprint in reaching a deal with CCI is to be credited, there is even more reason for concern about shortfall and termination. Moving the traffic to either of those carriers would eliminate *any* chance of discontinuing these plans without liability.

and termination liability, (2) that PSE will not assume that liability and (3) that PSE will cooperate in moving traffic *back* to help CCI avoid these liabilities. What better proof that these liabilities are real than that plaintiffs, in arranging their business affairs, recognized the real potential of significant financial payments for shortfall and termination and allocated that risk among themselves by contract.

Plaintiffs' application thus amounts an effort to enjoin AT&T's enforcement of tariffed rights that protect AT&T against the exact same loss for which plaintiffs have, by private agreement, protected themselves.

The Winback/CCI agreement also demonstrates that Winback and CCI cannot guarantee that sufficient traffic will stay on these plans to avoid shortfall charges. CCI, apparently concerned about traffic migration once it got the plans, made Winback agree to use "its best efforts to keep the monthly volume of all usage with the plans at not less than $3,500,000.00 monthly." (¶ 3.) This provision undermines plaintiffs' litigation position that traffic remains on the plans regardless of the identity of the reseller.[4]

As AT&T has experienced in other reseller contexts, business often deteriorates. One of Mr. Shipp's other companies, Global Long Distance Marketing, has had its billing revenues drop

[4]The possibility that the reseller could choose to bill its endusers directly and itself then be billed directly by AT&T aggravates the risk of AT&T's loss.

by $30,000 a month over the last six months. (Tr., p. 192, 1. 22-24.). Against this backdrop, plaintiffs' claims that AT&T bears *no* risk from these transfers are shown to be the litigation-inspired arguments they are, not a reflection of the reality of the marketplace. That reality is better demonstrated by the agreements plaintiffs entered into among themselves.

The evidence thus shows that AT&T faces genuine financial risk from uncollectible debts of resellers, including CSTP aggregators, and such risk increases as plans are moved from an experienced reseller to an inexperienced one, as contemplated in plaintiffs' transactions. Plaintiffs' elaborate provisions addressing the risk among the resellers of shortfall and termination liabilities, as well as the possibility of declining traffic, demonstrate convincingly the reality of the risk AT&T seeks to protect against through enforcement of rights provided to AT&T in the tariff. Plaintiffs' effort to thwart AT&T's rights through this Court's Order should be denied.

II. THE TARIFF GIVES AT&T THE CLEAR RIGHT TO DEMAND SECURITY AND TO PREVENT TRANSFERS WITHOUT ASSUMPTIONS OF OBLIGATIONS

In demanding a security deposit from CCI before permitting the first transfer plaintiffs attempted, AT&T was doing no more than what Mr. Shipp said he wanted, for AT&T to follow the "tariff language letter by letter." (Tr. 165, 1. 23-24.) There can be no dispute that AT&T FCC Tariff No. 2 empowers AT&T to receive security deposits from customers "whose financial

responsibility is not a matter of record." (Tariff No. 2, § 2.5.8.) AT&T's request for a security deposit from CCI, whose financial responsibility was *not* a matter of record and who had no payment history with AT&T, reflects both a sensible business decision and the exercise of a tariffed right.

AT&T's demand for a security deposit from CCI in accordance with the tariff is especially necessary here, where the proposed transaction contemplates transfer of commitments totalling $54 million to a company with no track record and whose owner steadfastly refused to disclose the identity of his "partner" companies. (Tr., p. 163, l. 1-19.) Plaintiffs concede that CCI was created for the purpose of receiving these plans; that it has no Dun & Bradstreet profile; that it lacks substantial assets; and, that it has no previous track record with AT&T or any other company. If AT&T is unable to enforce its tariff rights to demand security here, it is hard to see where, if anywhere, it could exercise those rights. There is simply no legitimate basis to deny AT&T the exercise of this simple, common sense right.

After sustaining losses and experiencing a reseller delinquency rate considerably higher than its 1.5-2% general average, AT&T has asserted its tariffed rights to require security deposits and determined that it needed more security to guard against shortfall and termination liabilities as well as against

end-user bad debt.[5] As plaintiffs have argued, the telecommunications business is dynamic, volatile and competitive. That volatility exposes AT&T to increased financial risk and has caused AT&T to be more prudent in seeking security deposits. AT&T has that right under the tariff.[6]

Indeed, plaintiffs did not immediately contest AT&T's demand for security. Instead they carried out a plan they had conceived in October, to "park" traffic with PSE, by attempting a transfer of *traffic*, but not the plans, to PSE. That proposed two-step transfer increased the likelihood that the plans would incur shortfall and termination liabilities by divorcing the revenue that satisfies commitments from the plans in which those commitments were made.

AT&T refused to permit that transfer precisely because PSE, the "new" customer in the transfer, did not assume "*all* the obligations" of the "old" customer, CCI. *See* AT&T FCC Tariff No.

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[5]While AT&T has, in the past, not always required security deposits for start-up companies as permitted under the tariff, such other companies had commitments much smaller than for $54 million. Moreover, given AT&T's recent experience, it would likely demand a security deposit as a condition of subscription from start-up companies regardless of the size of the initial commitment.

[6]Indeed, AT&T recently demanded (and thought it had collected) $562,500 in security on each of twenty start-up CSTP-II plans submitted by entities controlled by one individual. AT&T demanded this $11,240,000 as security because these twenty new companies had no payment history or credit record. (Williams Certification, ¶¶ 31-32.)

2, § 2.1.8 (emphasis supplied.)[7] Plaintiffs' effort to make the clear tariff language, "*all* the obligations," mean something less than "all" is pure sophistry. Plaintiffs want to enforce the language of the tariff as they wish it to be read, not as it in fact reads. That is reason enough to deny relief.

III. PLAINTIFFS HAVE NOT SATISFIED ANY STANDARD FOR RELIEF, EITHER FOR A PRELIMINARY INJUNCTION UNDER TRADITIONAL RULES OR UNDER SECTION 406 OF THE COMMUNICATIONS ACT.

A. Section 406 Offers No Justification For Plaintiffs' Relief.

Plaintiffs are entitled to no relief under § 406 of the Communications Act because they have not demonstrated a "clear and unequivocal right" to the extraordinary, indeed unprecedented relief they seek.[8] *See Mical Communications, Inc. v. Sprint Telemedia, Inc.*, 1 F.3d 1031, 1039 (10th Cir. 1993). Plaintiffs have not cited even one case in which a court has ordered relief under § 406 because in *no* case has this provision been used ultimately to compel "service". Indeed, in the only case in which a district court apparently granted relief under § 406, our Court of Appeals later reversed because the common carrier did not have

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[7]The Tariff also permits AT&T to take measures to prevent fraud. It was also under the authority of this provision that AT&T refused to permit the two-step transfer.

[8]AT&T disagrees that the proposed transfer of plans constitutes "services" for the purpose of § 406. But even if the Court were to deem such a transfer, "services," under § 406, plaintiffs simply fail to show the requisite clear and convincing entitlement to such "services."

"clear and unequivocal duties" to provide the services at issue. *MCI Telecommunications Corp. v. American Telephone and Telegraph Co.*, 496 F.2d 214, 220 (3d. Cir. 1974), *rev'g* 396 F. Supp. 1004 (E.D. Pa.).

So too here, plaintiffs have established no "clear and unequivocal duty" on the part of AT&T to furnish "services." To the contrary, the tariffs under which AT&T offers service specifically empower AT&T to demand security under § 2.5.8 of Tariff No. 2 and to permit transfer of service only where "all" obligations of the old customer are assumed by the new. AT&T has therefore not denied plaintiffs "service" because AT&T has breached no duty to plaintiffs.

The "duty" plaintiffs urge this Court to enforce, to allow an entity to take substantially all of the traffic in a plan but not all the obligations for the shortfall and termination liabilities, is far from "clear and unequivocal;" it is non-existent. The litigation in the FCC over the meaning, effect and enforcement of Tariff Transmittal 8179 is proof enough that plaintiffs have no "clear and unequivocal right."

B. Plaintiffs Have Not Satisfied Traditional Requirements For A Preliminary Injunction.

That plaintiffs have placed primary reliance on § 406, under which relief has never been successfully obtained, suggests strongly that the plaintiffs recognize that they cannot satisfy the traditional standards for a preliminary injunction. The fact is

that plaintiffs have not demonstrated a likelihood of success on the merits of their Complaint for either proposed transfer. AT&T's right to demand security is based on the tariff and reflects AT&T's experience with the resellers' unusually high delinquency rate against the specific concern about this transfer of $54 million of commitment.

Plaintiffs have themselves failed to satisfy the tariff in the second transfer when they attempted to transfer substantially all the service on the plans without having PSE obligate itself to take on *all* the obligations of the former customer, including shortfall. *See* AT&T FCC Tariff No. 2, § 2.1.8. Plaintiffs have therefore not shown the required likelihood of success to enjoin AT&T's actions. *See Opticians Ass'n of America v. Independent Opticians of America*, 920 F.2d 187 (3d Cir. 1990).

Plaintiffs have also demonstrated no irreparable harm because this case is, in Mr. Meanor's words, about money. (Transcript of March 8, 1995 Hearing, p. 69, l. 3-4). Any would-be injury to plaintiffs is thus an ascertainable economic loss. The litany of woes plaintiffs offer for their injury simply does not equate to irreparable harm.

The balance of the equities also favors AT&T. With a case "about money", the equities favor the party who would be more likely to incur an uncollectible loss if the Court were to rule against it. That party is AT&T, not the plaintiffs. AT&T is financially responsible to satisfy any damages claimed by

plaintiffs if the Court denies injunctive relief now in the event a later judgment is awarded plaintiffs. But whether these plaintiffs can satisfy the full amount of their tariffed liabilities to AT&T if the Court erroneously grants their relief is, stated generously, highly uncertain. The equities also favor AT&T because it is plaintiffs, not AT&T, who seek to evade the obligations of the tariff.

The public interest, moreover, is served by denying the plaintiffs' motion and referring this matter to the FCC on the grounds of primary jurisdiction. With the core issue regarding plaintiffs' second proposed transfer already before the FCC in the form of Tariff Transmittal No. 8179, and with AT&T's right to demand security plainly in the tariff, the risk of inconsistent judgments between this Court and the FCC is clear. The public interest favors clear, uniform enforcement of national telecommunications regulatory policy. The public interest thus favors denying plaintiffs' motion.

Plaintiffs' requested relief, moreover, if granted, would effectively end the case. As AT&T demonstrated in its earlier briefs, the sweeping relief of the sort plaintiffs seek --- radically altering, not preserving the status quo --- is granted in the interim only in rare instances in which the facts and law clearly favor the moving party, especially if the relief would be, in effect, the main relief sought. *Miami Beach Fed. Sav. & Loan Ass'n v. Callander*, 256 F.2d 410 (5th Cir. 1958). The plaintiffs

here fall woefully short of this exacting standard for the preliminary, mandatory relief they seek. The relief should be denied.

CONCLUSION

The long and short of this action is that plaintiffs are long on arguments, but short on facts and law to support them. The evidence demonstrates that, though plaintiffs acknowledge the genuine reality of the risk that tariff shortfall and termination charges pose to all parties, plaintiffs do not want to bear that risk and have demonstrated that fact, both in words and deeds. Their effort to hang that financial risk on AT&T while stripping AT&T of its tariffed rights to financial protection similar to that crafted by the plaintiffs in their own dealings should be rejected.

For these reasons, as well as for all the reasons set forth in AT&T's earlier briefs and arguments, plaintiffs' application for preliminary injunctive relief should be denied.

PITNEY, HARDIN, KIPP & SZUCH
Attorneys for AT&T Corp.

By: _____
FREDERICK L. WHITMER
A Member of the Firm

Dated: March 30, 1995

Of Counsel:

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EXHIBIT C

Brown, Richard H.

From: Al Inga <ajdmm@optonline.net>
Sent: Tuesday, January 26, 2016 3:39 PM
To: Brown, Richard H.; 'Deena Shetler'
Cc: ray@grimes4law.com; 'Deena Shetler'; john.Ingle@fcc.gov; 'Ajit Pai'; 'Jessica Rosenworcel'; 'Robert McDowell'; 'Kay Richman'; 'Sharon Kelley'; 'Jane Halprin'; 'Julie Veach'; KJMWEB@fcc.gov; 'Sharon Gillett'; MeredithAttwell.Baker@fcc.gov; Michael.Copps@fcc.gov; Jonathan.Adelstein@fcc.gov; Eddie.Lazarus@fcc.gov; 'Zachary Katz'; thomas.wheeler@fcc.gov; 'Mike ORielly'; 'Mignon Clyburn'; 'Jessica Rosenworcel'; robert.ratcliffe@fcc.gov; eric.botker@fcc.gov; 'Jane Halprin'; 'Julie Veach'; Kay.Richman@fcc.gov; KJMWEB@fcc.gov; 'Matthew Berry'; robert.ratcliffe@fcc.gov; 'Sharon Kelley'; 'Tom Wheeler'; 'Suzanne Tetreault'; 'David Gossett'; 'Jennifer Tatel'; Karen.onyeue@fcc.gov; 'Stephanie Weiner'; Madelein.findley@fcc.gov; 'Jim Bird'; Jamilla.ferris@fcc.gov; 'John Williams'; 'Linda Oliver'; 'Richard Welch'; john.Ingle@fcc.gov; 'Randolph Smith'; 'Pamela Arluk'; 'Jay Keithley'; eric.botker@fcc.gov; ray@grimes4law.com
Subject: RE: Deena --

Mr Brown

In your letter you claim that AT&T had 2 defenses. In your 1.22.16 letter it now claims it had 2 defenses. However AT&T only had one defense:

The FCC 1995 Order that Wigenton did not see directly attacks sole defense of fraudulent use. AT&T's **only** defense as the FCC 2003 Decision states was AT&T's **2.2.4** fraudulent use defense.

FCC 2003 Pg.10 para 13. **EXH A**

> **"Because AT&T did not act in accordance with the "fraudulent use" provisions of its tariff, which did not explicitly restrict the movement of end-user locations from one tariff plan to another, AT&T cannot rely on them as authority for its refusal to move the traffic from CCI to PSE. AT&T does not rely upon "any other provisions of its tariff" to justify its conduct."**

In Mr. Brown's 1.22.16 letter he now revises history and claims AT&T had 2 defenses!!! His second one asserts that AT&T argued in 1995 that all obligations transfer. In actuality AT&T was asserting in 1995 that the CCI-PSE transaction was a **PLAN TRANSFER** not a traffic only

transfer and under THAT PLAN TARNSFER PREDICATE ---AT&T said “All Obligations” must transfer. AT&T first had to misrepresent the transaction was a plan transfer and not a traffic only transfer to assert “All obligations” must transfer. In effect Mr Brown’s second “all obligations” defense is evidence that AT&T recognized the difference between which obligations transfer between a traffic only vs a plan transfer and therefore need to misrepresent the CCI –PSE transfer was a plan transfer.

Very interesting why AT&T did not respond to the FCC with its 1.22.16 nonsense when plaintiff’s letter was CC’d to the FCC. What Mr Brown was attempting to do was have his letter written for use with the NJFDC to assert that AT&T responded to plaintiffs’ counsel. Mr Brown is aware that the FCC staff knows AT&T is engaged in a fraud on the FCC and he didn’t dare send his 1.22.16 nonsense to the FCC last week.

Al Inga
Group Discounts, Inc.

From: Al Inga [mailto:ajdmm@optonline.net]
Sent: Tuesday, January 26, 2016 2:22 PM
To: 'Brown, Richard H.'; 'Deena Shetler'
Cc: 'ray@grimes4law.com'; 'Deena Shetler'; 'john.Ingle@fcc.gov'; 'Ajit Pai'; 'Jessica Rosenworcel'; 'Robert McDowell'; 'Kay Richman'; 'Sharon Kelley'; 'Jane Halprin'; 'Julie Veach'; 'KJMWEB@fcc.gov'; 'Sharon Gillett'; 'MeredithAttwell.Baker@fcc.gov'; 'Michael.Copps@fcc.gov'; 'Jonathan.Adelstein@fcc.gov'; 'Eddie.Lazarus@fcc.gov'; 'Zachary Katz'; 'thomas.wheeler@fcc.gov'; 'Mike ORielly'; 'Mignon Clyburn'; 'Jessica Rosenworcel'; 'robert.ratcliffe@fcc.gov'; 'eric.botker@fcc.gov'; 'Jane Halprin'; 'Julie Veach'; 'Kay.Richman@fcc.gov'; 'KJMWEB@fcc.gov'; 'Matthew Berry'; 'robert.ratcliffe@fcc.gov'; 'Sharon Kelley'; 'Tom Wheeler'; 'Suzanne Tetreault'; 'David Gossett'; 'Jennifer Tatel'; 'Karen.onyeue@fcc.gov'; 'Stephanie Weiner'; 'Madelein.findley@fcc.gov'; 'Jim Bird'; 'Jamilla.ferris@fcc.gov'; 'John Williams'; 'Linda Oliver'; 'Richard Welch'; 'john.Ingle@fcc.gov'; 'Randolph Smith'; 'Pamela Arluk'; 'Jay Keithley'; 'eric.botker@fcc.gov'; 'ray@grimes4law.com'
Subject: RE: Deena --

Richard Brown

I read your letter and within a couple days plaintiffs will reply in depth and provide actual evidence from the case. Your letter states that you will not go point for point. That is because you simply can’t.

If AT&T’s position was reality it would have enormous amount of evidence as traffic only transfers are common transactions.

Your position that AT&T's concession within the FCC Oct 23rd 1995 Order to adhere to the Pre June 17th 1994 immunity provision made no difference because the FCC Oct 23rd 1995 Order was not within this case is absurd. The FCC in that Oct 23rd 1995 Order explicitly addressed the fact that resellers were being abused by AT&T and AT&T therefore the FCC obviously made AT&T concede that it would adhere to its pre June 17th 1994 discontinuance w/o liability provision! The whole point of those paragraphs in the FCC Oct 23rd 1995 Order was that the FCC wanted included was because AT&T was violating its tariffs!

Why didn't you address the Discrimination/Unreasonable Practices issue that the FCC 2003 Decision stated that the NJFDC must handle?

No mention of the 15 day statute of limitation that bars all defenses and AT&T's advising the DC Circuit that it met that date but never provided any evidence.

No mention of TR 9229 tariff page (security deposits against potential shortfall) because that is conclusive tariff evidence that obligations do not transfer!

No mention of the fact that AT&T counsel misrepresented to Judge Wigenton that AT&T addressed its lack of EVEIDENCE at the FCC but of course never did.

No mention why AT&T filed Tr8179 to try and retroactively change 2.1.8., because there was no AT&T defense in 1995 for not complying with 2.1.8.

No mention of the fact that the FCC and DC Circuit counsels stated the DC Circuit Decision was NOT A REMAND and all issues were decided.

No mention of the fact that even if the FCC were to decide which obligations transfer it would be moot as it would be a 15 day prospective change in the terms and conditions of the tariff and plaintiffs CCI-PSE transaction would be grandfathered.

No mention that plaintiff did previous traffic only transfers to the Jan 1995 transfer and therefore under AT&T's "all obligations" theory CCI had no obligations left to transfer in Jan 1995.

AT&T is now simply desperate and now threatening sanctions against plaintiffs' counsel as a last ditch effort to scare plaintiffs' counsel from exposing the AT&T intentional fraud to Judge Wigenton. The following shows how AT&T scammed her Court silly:
http://apps.fcc.gov/ecfs/comment/view?id=60001310889

Mr Brown you knew better than to upload your letter to the FCC Server as it will just further show the FCC that AT&T counsels are continuing to engage in a scam on the FCC. Your response further demonstrated how desperate AT&T has become.

AT&T counsels know that this time Judge Wigenton will be shown step by step the misrepresentations on her Court; so AT&T now tries to scare plaintiffs' counsel from filing in the NJFDC.

The AT&T letter further helps plaintiffs. Go ahead and upload your 1.22.16 letter that you sent to my counsel on Friday, but you did not provide the FCC. AT&T knew better than to send that 1.22.16 letter to the FCC.

Providing that letter to the FCC would have only served to increase the sanctions that FCC will probably issue for continuing the misrepresentations to the FCC.

Mr Brown please go ahead and upload your 1.22.16 letter. Plaintiffs will go through the letter and totally destroy it with the actual evidence and then the FCC can decide on plaintiff's motion to temporarily suspend proceedings and to address sanctions.

When Judge Wigenton sees the intentional fraud AT&T pulled on Judge Bassler and her Court that included the changing of the words of the tariff "former customer" in an obvious intentional attempt to deceive the Court she will understand why AT&T can't present any evidence.

You're like a 5 year old kid with chocolate cookie all over your face telling mommy that you did not have your hand in the cookie jar! Upload your letter to the FCC and see if they are buying your revisionist history.

Richard---You were better off not saying anything!!!! You made it even worse for yourself now with the FCC. Now the FCC has even more reason to issue enormous sanctions due to this continued attempt to scam the FCC.

Go ahead and upload your letter!!! PLEASE UPLOAD IT! Do you really think Deena Shetler is a total moron?

Thank you

AL Inga
Group Discounts, Inc.

From: Al Inga [mailto:ajdmm@optonline.net]
Sent: Tuesday, January 26, 2016 1:16 PM
To: 'Brown, Richard H.'; 'Deena Shetler'
Cc: 'ray@grimes4law.com'
Subject: RE: Deena --

I just got it and read it.

How come you didn't upload that letter to the FCC server?

Al Inga
Group Discounts, Inc.

From: Brown, Richard H. [mailto:rbrown@daypitney.com]
Sent: Tuesday, January 26, 2016 1:12 PM
To: 'Al Inga'
Cc: ray@grimes4law.com
Subject: RE: Deena --

Mr. Inga, see my 1/22/16 email and attached letter to your counsel.

Richard Brown

Richard H. Brown | Attorney at Law | Attorney Bio

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From: Al Inga [mailto:ajdmm@optonline.net]
Sent: Tuesday, January 26, 2016 11:22 AM
To: Brown, Richard H.
Cc: 'Deena Shetler'; john.Ingle@fcc.gov; 'Ajit Pai'; 'Jessica Rosenworcel'; 'Robert McDowell'; 'Kay Richman'; 'Sharon Kelley'; 'Jane Halprin'; 'Julie Veach'; KJMWEB@fcc.gov; 'Sharon Gillett'; MeredithAttwell.Baker@fcc.gov; Michael.Copps@fcc.gov; Jonathan.Adelstein@fcc.gov; Eddie.Lazarus@fcc.gov; 'Zachary Katz'; thomas.wheeler@fcc.gov; 'Mike ORielly'; 'Mignon Clyburn'; 'Jessica Rosenworcel'; robert.ratcliffe@fcc.gov; eric.botker@fcc.gov; 'Jane Halprin'; 'Julie Veach'; Kay.Richman@fcc.gov; KJMWEB@fcc.gov; 'Matthew Berry'; robert.ratcliffe@fcc.gov; 'Sharon Kelley'; 'Tom Wheeler'; 'Suzanne Tetreault'; 'David Gossett'; 'Jennifer Tatel'; Karen.onyeue@fcc.gov; 'Stephanie Weiner'; Madelein.findley@fcc.gov; 'Jim Bird'; Jamilla.ferris@fcc.gov; 'John Williams'; 'Linda Oliver'; 'Richard Welch'; john.Ingle@fcc.gov; 'Randolph Smith'; 'Pamela Arluk'; 'Jay Keithley'; eric.botker@fcc.gov; ray@grimes4law.com
Subject: RE: Deena --

Deena

AT&T has not advised plaintiffs whether it intends to oppose plaintiff's motion to temporarily suspend the FCC proceedings and address sanctions.
Has AT&T advised the FCC it will respond?

Given the fact that AT&T has advised the FCC that the FCC can issue sanctions and AT&T has offered no defense to address the many misrepresentations it engaged in, the FCC has every reason to grant plaintiffs motion.

Thank you
Al Inga
Group Discounts, Inc.

From: Al Inga [mailto:ajdmm@optonline.net]
Sent: Friday, January 22, 2016 6:18 AM
To: Brown, Richard
Cc: 'Deena Shetler'; 'john.Ingle@fcc.gov'; 'Ajit Pai'; 'Jessica Rosenworcel'; 'Robert McDowell'; 'Kay Richman'; 'Sharon Kelley'; 'Jane Halprin'; 'Julie Veach'; 'KJMWEB@fcc.gov'; 'Sharon Gillett'; 'MeredithAttwell.Baker@fcc.gov'; 'Michael.Copps@fcc.gov'; 'Jonathan.Adelstein@fcc.gov'; 'Eddie.Lazarus@fcc.gov'; 'Zachary Katz'; 'thomas.wheeler@fcc.gov'; 'Mike ORielly'; 'Mignon Clyburn'; 'Jessica Rosenworcel'; 'robert.ratcliffe@fcc.gov'; 'eric.botker@fcc.gov'; 'Jane Halprin'; 'Julie Veach'; 'Kay.Richman@fcc.gov'; 'KJMWEB@fcc.gov'; 'Matthew Berry'; 'robert.ratcliffe@fcc.gov'; 'Sharon Kelley'; 'Tom Wheeler'; 'Suzanne Tetreault'; 'David Gossett'; 'Jennifer Tatel'; 'Karen.onyeue@fcc.gov'; 'Stephanie Weiner'; 'Madelein.findley@fcc.gov'; 'Jim Bird'; 'Jamilla.ferris@fcc.gov'; 'John Williams'; 'Linda Oliver'; 'Richard Welch'; 'john.Ingle@fcc.gov'; 'Randolph Smith'; 'Pamela Arluk'; 'Jay Keithley'; 'eric.botker@fcc.gov'; 'ray@grimes4law.com'
Subject: RE: Deena -- See this case...

Deena

Given the fact that AT&T conceded in the 1995 FCC Order that it had no merit to assert its sole defense of fraudulent use and in Oct 1995 effectively already received its FCC primary jurisdiction ruling, AT&T's subsequent appeal of the FCC 2003 Decision to the DC Circuit was an FCC cost that must be recovered by the FCC. FCC's Counsel Nick Bourne and John Ingle and other FCC counsel spent a tremendous amount of time on what everyone now recognizes was an intentional AT&T fraud on the FCC. The following case shows the FCC issued sanctions against counsel due to its frivolous appeal to the DC Circuit….

http://www.leagle.com/decision/19911399949F2d450_11313/SOUTH%20STAR%20COMMUNICATIONS,%20INC.%20v.%20F.C.C.#

SOUTH STAR COMMUNICATIONS, INC. v. F.C.C.

No. 91-1010.

949 F.2d 450 (1991)

SOUTH STAR COMMUNICATIONS, INC., Appellant, v. FEDERAL COMMUNICATIONS COMMISSION, Appellee.

United States Court of Appeals, District of Columbia Circuit.

So the FCC obviously can recover its costs. AT&T counsel has not indicated whether AT&T counsel will even offer a defense. Not only do we now know that there never should have been an FCC 2003 Decision, there shouldn't have been a DC Circuit Appeal. Furthermore, AT&T counsels intentionally fabricated to the DC Circuit that it denied the traffic transfer within the 15 day statute of limitation in order to further scam the DC Circuit Court. These AT&T frauds of course have led to the 2006-2016 era at the FCC that has wasted an incredible amount of FCC resources due to AT&T counsel's intentional fraud.

If there ever were a case to issue sanctions against counsels and at minimum recover FCC costs it is this case. So now that we see there is precedent for the FCC to recover its costs the question becomes will the FCC allow AT&T to get away with intentional fraud?

Al Inga Pres

Group Discounts, Inc.

From: Al Inga [mailto:ajdmm@optonline.net]
Sent: Thursday, January 21, 2016 3:48 PM
To: Brown, Richard
Cc: 'Deena Shetler'; 'john.Ingle@fcc.gov'; 'Ajit Pai'; 'Jessica Rosenworcel'; 'Robert McDowell'; 'Kay Richman'; 'Sharon Kelley'; 'Jane Halprin'; 'Julie Veach'; 'KJMWEB@fcc.gov'; 'Sharon Gillett'; 'MeredithAttwell.Baker@fcc.gov'; 'Michael.Copps@fcc.gov'; 'Jonathan.Adelstein@fcc.gov'; 'Eddie.Lazarus@fcc.gov'; 'Zachary Katz'; 'thomas.wheeler@fcc.gov'; 'Mike ORielly'; 'Mignon Clyburn'; 'Jessica Rosenworcel'; 'robert.ratcliffe@fcc.gov'; 'eric.botker@fcc.gov'; 'Jane Halprin'; 'Julie Veach'; 'Kay.Richman@fcc.gov'; 'KJMWEB@fcc.gov'; 'Matthew Berry'; 'robert.ratcliffe@fcc.gov'; 'Sharon Kelley'; 'Tom Wheeler'; 'Suzanne Tetreault'; 'David Gossett'; 'Jennifer Tatel'; 'Karen.onyeue@fcc.gov'; 'Stephanie Weiner'; 'Madelein.findley@fcc.gov'; 'Jim Bird'; 'Jamilla.ferris@fcc.gov'; 'John Williams'; 'Linda Oliver'; 'Richard Welch'; 'john.Ingle@fcc.gov'; 'Randolph Smith'; 'Pamela Arluk'; 'Jay Keithley'; 'eric.botker@fcc.gov'; 'ray@grimes4law.com'
Subject: RE: FURTHER SUPPORT of Motion to Temporarily suspend DR and Keep Case open to Consider Sanctions

Deena

Plaintiffs have uploaded its Further Support doc to FCC Server.

AT&T counsel hasn't advised whether or not AT&T will oppose plaintiffs motion.

If AT&T does not oppose plaintiffs see no reason why the FCC can't expeditiously grant the motion to temporarily suspend the FCC procedings and consider sanctions—as Mr Brown himself advised you in 2008 that untruths even within a declaratiry ruling are sanctionable.

Your submission has been accepted

ECFS Filing Receipt - Confirmation number: 20161213383 90

Proceeding

Name	Subject
06-210	Comment sought on request for Declaratory Rulings Pleading Cycle Established

Contact Info

Name of Filer: Group Discounts, Inc
Lawfirm Name (required if represented by counsel): Ray Grimes

Address

Address For: Law Firm
Address Line 1: 1367 U.S. 202 North
City: Branchburg
State: NEW JERSEY
Zip: 08853

Details

Type of Filing: MOTION

Document(s)

File Name	Custom Description	Size
FURTHER SUPPORT of Motion to Temporarily suspend DR and Keep Case open to Consider Sanctions.docx	Further Support Motion for Sanctions and Temporarily suspending proceedings	22 KB

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http://apps.fcc.gov/ecfs/comment/confirm?confirmation=20161213383 90
For any problems please contact the Help Desk at 202-418-0193.

From: Al Inga [mailto:ajdmm@optonline.net]
Sent: Thursday, January 21, 2016 11:22 AM
To: Brown, Richard
Cc: 'Deena Shetler'; 'john.Ingle@fcc.gov'; 'Ajit Pai'; 'Jessica Rosenworcel'; 'Robert McDowell'; 'Kay Richman'; 'Sharon Kelley'; 'Jane Halprin'; 'Julie Veach'; 'KJMWEB@fcc.gov'; 'Sharon Gillett'; 'MeredithAttwell.Baker@fcc.gov'; 'Michael.Copps@fcc.gov'; 'Jonathan.Adelstein@fcc.gov'; 'Eddie.Lazarus@fcc.gov'; 'Zachary Katz';

'thomas.wheeler@fcc.gov'; 'Mike ORielly'; 'Mignon Clyburn'; 'Jessica Rosenworcel'; 'robert.ratcliffe@fcc.gov'; 'eric.botker@fcc.gov'; 'Jane Halprin'; 'Julie Veach'; 'Kay.Richman@fcc.gov'; 'KJMWEB@fcc.gov'; 'Matthew Berry'; 'robert.ratcliffe@fcc.gov'; 'Sharon Kelley'; 'Tom Wheeler'; 'Suzanne Tetreault'; 'David Gossett'; 'Jennifer Tatel'; 'Karen.onyeue@fcc.gov'; 'Stephanie Weiner'; 'Madelein.findley@fcc.gov'; 'Jim Bird'; 'Jamilla.ferris@fcc.gov'; 'John Williams'; 'Linda Oliver'; 'Richard Welch'; 'john.Ingle@fcc.gov'; 'Randolph Smith'; 'Pamela Arluk'; 'Jay Keithley'; 'eric.botker@fcc.gov'; 'ray@grimes4law.com'
Subject: FW: FURTHER SUPPORT of Motion to Temporarily suspend DR and Keep Case open to Consider Sanctions

FCC Staff and AT&T Counsel Richard Brown

Mr. Brown can you please advise the FCC if you or other AT&T counsels will be responding?

If AT&T does not intend to respond it will allow the FCC to consider plaintiff's motion quicker.

However if AT&T counsels intend to respond please let the FCC know so it does not address these issues w/o first considering comments from AT&T.

Deena---Plaintiffs will upload the attached to the FCC server within our 06-210 case.

Thank you
Al Inga
Group Discounts, Inc.

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****

EXHIBIT D

ARLEO & DONOHUE, L.L.C.
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May 11, 2006

Via Electronic Case Filing

Honorable William G. Bassler, U.S.D.J.
United States District Court
M.L. King, Jr. Federal Bldg. & Courthouse
Room 5060
50 Walnut Street
Newark, New Jersey 07102

Re: Combined Companies, Inc., et al. v. AT&T
Civil Action No. 95-908

Dear Judge Bassler:

INTRODUCTION

On behalf of the Inga plaintiffs, we respectfully submit this letter brief in further support of plaintiff's motion to lift the stay asserted in this matter over ten years ago. Plaintiff's motion is returnable on May 25, 2006 at 10:00 a.m.

In their prior submissions, the Inga plaintiffs conclusively demonstrated that their motion to lift the stay should be granted because the narrow question of tariff interpretation posed by the Third Circuit in 1996 has been answered. Specifically, the D.C. Circuit Court of Appeals has clearly confirmed and as of 2005 AT&T has now admitted that AT&T Tariff section 2.1.8 permits traffic-only transfers.

In response, AT&T asserts that an issue of interpretation remains regarding precisely which obligations should have been transferred with the traffic.

In their prior submissions, the Inga plaintiffs set forth several arguments why AT&T's newly minted defense must fail. The additional information contained within conclusively ends the discussion. Thus, we requested and received permission to make this additional submission.

ARGUMENT

Preliminarily, it should be noted that AT&T's defense has been chameleon-like, constantly changing and morphing as this matter weaved its way through the FCC and the judicial system and AT&T's arguments were repeatedly shot down. Ten years ago, AT&T argued simply that 2.1.8 did not permit traffic-only transfers, just entire plan transfers as the FCC also erroneously believed. AT&T maintained this argument in its public comments to the FCC, leading to the FCC's October 17, 2003 Declaratory Ruling.

AT&T clearly understood that plaintiffs did its partial traffic transfer under 2.1.8. Therefore, when the FCC stated that it believed that partial traffic transfers were not governed by 2.1.8 but ruled in favor of the Inga plaintiffs anyway, AT&T was in a predicament. Appealing the FCC's decision, AT&T had to argue against the FCC's non-2.1.8 traffic transfer methodology but AT&T knew it would be arguing for plaintiffs because AT&T knew plaintiffs did its partial traffic transfer under 2.1.8.

Which obligations were transferred on partial traffic transfers was never an issue prior to the DC Circuit, but now AT&T needed to make it an issue as a bogus safety valve. Therefore, AT&T introduced its first bogus "no obligations" were transferred defense to the DC Circuit as a back-up plan if the D.C. Circuit correctly determined that 2.1.8 allowed traffic only transfers. AT&T's position regarding which obligations transferred changed again before this Court in

2005 as AT&T twisted and took out of context a statement in the Inga plaintiffs' 2005 D.C. Court post-oral argument brief and switched to a new "only one" obligation (indebtedness) was transferred defense. AT&T possibly believed the bogus "only one" obligation transferred defense, based upon a 2005 statement, would be more believable than the bogus "no obligations" transferred defense. In addition to changing its position regarding which obligations were transferred in 2005, AT&T also asserted to this Court for the first time that S&T obligations are actually part of 2.1.8's second obligation concerning the minimum payment period(s). However, as this Court will see, AT&T already lost this bogus argument in February 1995 when it made its substantial cause claim to the FCC and the FCC denied it.

The central issue at this juncture is AT&T's assertion that additional language added to Section 2.1.8 in November 1995, which required the transfer of shortfall and termination (S&T) obligations, was a mere "clarification" and not a prospective tariff change in hope that this Court would erroneously believe that AT&T could govern the January 1995 partial traffic transfer request. AT&T has made this assertion on at least two occasions. First, AT&T states that the Inga plaintiffs

> relied on the ground that AT&T had filed and withdrawn a tariff transmittal (No. 8179) that did no more than codify the existing requirements of AT&T's tariff" (emphasis in original).

AT&T June 2005 brief at p. 8.

Once again, in a March 27, 2006 reply letter, AT&T stated that

> A subsequent clarification that 'all obligations' [in 2.1.8] include shortfall and termination obligations does not alter the breadth of the earlier version, or demonstrate that the phrase 'all obligations' meant only some obligations" (emphasis added).

Id.

Based on its clarification defense, AT&T argues that when it submitted proposed tariff change Transmittal 9229, which became effective November 9, 1995 on a prospective basis, it was merely "clarifying" that the additional S&T obligations were part of 2.1.8, within the second obligation unexpired minimum payment period.

That argument can be soundly rejected. 47 C.F.R. § 61.54 mandates that tariffs contain certain codes and symbols. A copy of the code/symbol key is annexed at **Exhibit A**. As Exhibit K to plaintiff's May 31st 2005 submission clearly demonstrates, the proposed tariff contains the letter "C" as part of the tariff revision next to the addition of S&T obligations. As can be plainly seen, adding S&T obligations to Section 2.1.8 was undeniably a substantial change and, therefore, required a "C" designation. If the revision was a mere clarification as AT&T incorrectly asserts, the FCC would have permitted AT&T to use the letter "T" to signify a change in text but no change in the rate or regulation.

Moreover, 47 C.F.R. 61.54(j) clearly holds that S&T obligations are not permitted to be encompassed within unexpired minimum payment period(s):

> Any special rule, regulation, exception or condition affecting a particular item or rate must be specifically referred to in connection with such item or rate.

Id. (emphasis added). Clearly, 2.1.8 contains no such specific reference to S&T obligations. Also, as the FCC correctly noted Rule 61.2 at pg. 10 footnote 65:

> Pursuant to Rule 61.2, titled "Clear and explicit explanatory statements, as in effect in January 1995, in order to remove all doubt as to their proper application, all tariff publications must

> contain clear and explicit explanatory statements regarding the rates and regulations." 47 C.F.R. 61.2 (1994). It is well settled rule of tariff interpretation that "tariffs are to be interpreted according to the reasonable construction of their language; neither the intent of the framers nor the practice of the carrier controls, for the user can not be charged with knowledge of such intent or with the carriers canon of construction. Associated Press Request for a Declaratory Ruling, 72 FCC 2d at 764-765, para. 11 (quoting Commodity News Services, Inc. v. Western Union, 29 FCC at 1213, para. 2.)"

Ex. G. to plaintiffs' moving brief at p. 10, fn. 65.

Put simply, the FCC has already interpreted the tariff by mandating that if AT&T was to add the transfer of S&T obligations to 2.1.8, it would have to be submitted as a prospective change "C", not a clarification receiving the designation "T". Therefore, AT&T's argument that additional interpretation of the tariff is required must be rejected. The tariff change concerning S&T was clearly prospective only and did not apply to plaintiffs' January 1995 traffic transfer request.[1]

Moreover, information was obtained by plaintiffs pursuant to the Freedom of Information Act (FOIA). This information clearly demonstrates that in February of 1995 AT&T tried to convince the FCC, as it does this court today, that S&T obligations were already encompassed within the language of the second expressed obligation contained in 2.1.8, the unexpired minimum payment period. As the FCC notes, which were developed by the FCC in preparation for its argument with AT&T, annexed at **Exhibit B,** clearly demonstrate, the FCC rejected AT&T's existing language argument:

[1] In addition, the FCC's decision made it clear that no tariff change would affect plaintiffs' transaction: "We also do not understand AT&T to argue that any revisions to its tariff that became effective after January 1995 govern resolution of this matter." Ex. G to plaintiffs' moving brief at p. 11.

D. Lastly ATT says that existing TEA rules seem to cover it in that they say new customer must agree to assume all obligations of the former customer. If ATT is so certain of this, why not forget the new language as by itself, there may be nothing untoward in what is happening but the result would vary by situation and the new language is too arbitrary.

Secondly, the language now talks about assuming obligations and says these obs include (but does not say "but not limited to") out indebted of serv and unexpired portion of min pay period(s). It says nothing about tp or CT oble and Tariff 2 refs to min pay period talk about min payment period is 1 day for WATS (which includes cl 800) and for all other 800 services it would seem- 6.2.A. and 2.5.5. And charges applicable for min payment period includes recurring charge(s), nonrecurring charge(s) and/or special construction charge(s). Moreover, in proposed revisions, ATT seems to leave this out of the item 5 location whereas they have it in both 2 and 5 for Tariff 1 already giving some credence to the fact they see this as something new and additional.

Moreover, the unexpired portion of any applicable min pay period would not seemingly include unexpired portion of any term of service and usage or rev commit but has its own unique meaning and, therefore, the provision about the term plan and commitments being included as part of the min pay period in conflicting and we find in favor of customers in cases of conflicts. And in the case of Tariff 1 where the provs already exist, they would seemingly conflict too and would not be enforceable.

So the question of existing language in TorA already covering the situation here may well be questionable too given the above analysis although we agree our analysis is just one view and itself raises questions that might well leave the outcome to a particular complaint with a FCC judgment rather than having the arbitrary new language

E. The substantial cause showing[2] would seemingly have to be beefed up to pass muster as it never gets to any financial impact on

[2] Under the substantial cause test, the FCC measures the reasonableness of a tariff modification by weighing two principal considerations: the "carrier's explanation of the factors necessitating the desired changes at that particular time," and the "position of the relying customers." RCA American Communications, Inc., 86 FCC 2d 1197, 1201-02 (1981) (holding that a carrier's decision "to revise material provisions in the middle of a term" will be considered

> AT&T but simply talks about ATT's interpretation of what the current situation and provisions should mean. Moreover, existing customers might well take exception with the statement in SC that the revs do not affect rates applicable to exist to our CT customers and any non rate affecting change is minor.
>
> Finally, SC says ATT should not have to grandfather exist custs or get different admin rules based on only when entered into tps and that develop and implementing such rules would create needless regulatory complexities with attendant costs and delay. But this does not make sense. Would ATT not have to develop the same procedures for all customers now without grandfathering and do they not already have the existing procedures for existing customers. So what is the big deal. The new procedures have to be developed anyway. And they will have to be implemented in any event. (emphasis added)

Id.

AT&T knew in February 1995 that the FCC was not buying its assertion that S&T was included in 2.1.8. Therefore, in response, AT&T then proposed the addition of new S&T language to 2.1.8. AT&T's second strategy was to convince the FCC to retroactively apply the new language addition but the FCC also rejected that argument. Id. Therefore, the prospective November 1995 revision went in as a change, denoted by a "C", and not a clarification denoted by a "T".[3]

"reasonable" if the carrier can make a showing of "substantial cause" for so doing). The FCC also noted that it had previously applied the substantial cause test only to revisions of individually negotiated contract tariffs and to revisions of generic, long-term service tariffs filed by dominant carriers as was the case here. Id.

[3] Moreover, by FCC Order dated October 23, 1995, (5 months prior to this Courts March 1996 ruling) AT&T agreed to grandfather existing customers when it introduced a change to its tariff. AT&T however failed to convey its obligation to this Court. This included not only the November addition of S&T but the Pre 17th 1994 S&T immunity. Annexed at **Exhibit C**. The Order further required AT&T to give notice of the proposed change to customers, who were then given a chance to object. The proposed change would be subject to a "substantial cause" test before the FCC. This Order is additional evidence besides the tariff that any change would have prospective effect only.

Of course, under the Filed Tariff Doctrine, AT&T must strictly adhere to its tariff and the tariff states that it is a change "C" and not a clarification, "T". See generally Lowden v. Simonds-Shields-Lonsdale Grain Co., 306 U.S. 516, 520 (1939).

Moreover, the assertion that Section 2.1.8 even needed to be "clarified" is self-defeating as it constitutes an admission by AT&T that its tariff was ambiguous, and therefore by law, must be construed against it.[4]

Further, even if AT&T's position is somehow credited, there is no explanation why the transfer was not processed. After all, the TSA form (which was drafted by AT&T and is verbatim 2.1.8) does not say: "Do not transfer the S&T obligations." Therefore if AT&T's bogus theory that S&T obligations were actually encompassed within minimum payment period(s), which AT&T now claims it actually believed, there was absolutely no justification for AT&T in January of 1995 not to process the transfer. Incredibly, AT&T is using a comment AT&T took out of context made by the Inga Companies in the year 2005 to justify not transferring the traffic 10 years earlier in the year 1995! If AT&T had question regarding which obligations were being transferred, it could have simply asked, but it did not do so because which obligations transfer on traffic-only transfers was not an issue, and therefore not AT&T's defense at the time of the request. Ten years ago, it simply took the bogus position that 2.1.8 did not permit traffic-only transfers.[5] AT&T has no evidence to suggest otherwise.[6]

---

[4] The transfer of S&T obligations is a moot issue anyway because AT&T has clearly admitted on a related case that pre-June 17, 1994 issued plans were immune from S&T. Indeed, AT&T's March 27, 2006 reply letter failed to even address this admission entirely.

[5] In addition, 2.1.8 allows only 15 days to question a transfer. AT&T's latest bogus defense was not concocted for 10 years, after its other arguments were repeatedly rejected.

Also, if AT&T's bogus "clarification" theory is correct, why is AT&T unable to produce any pre-November 1995 evidence showing examples of other partial traffic transfers in which S&T obligations also transferred. After all, over the years, tens of thousands of businesses divested divisions which used toll-free service. The only partial traffic transfer that AT&T exhibits in its June 2005 brief is the 1993 traffic transfer from an Inga Company to another aggregator, Ameritel. Significantly, no S&T obligations were transferred at that time.

Furthermore, if AT&T's new position that S&T obligations are encompassed within the minimum period obligation is to be believed, that necessarily means that plaintiffs already transferred away all its S&T obligations to Ameritel in 1993, two years prior to the January 1995 traffic transfer. In short, under AT&T's bogus theory, there no longer were any S&T obligations in 1995 to be transferred. Stated in the converse, the fact that AT&T states there were S&T obligations remaining on the plans in January 1995 is a clear admission that AT&T knows that S&T obligations simply did not transfer in 1993 nor any time prior to November of 1995.

In sum, the evidence is overwhelming that the transaction was attempted under 2.1.8 and all necessary obligations were transferred in 1995. AT&T's is attempting to revive already defeated arguments. It's time to stop the charade.[7]

---

[6] AT&T has also taken the position, starting in the year 2005, that only one (indebtedness) of the only two obligations contained in 2.1.8 were transferred. However, that position is belied by the D.C. Circuit's opinion, which clearly confirms that both obligations were transferred. Ex. H to plaintiffs' moving brief at p. 11. The Shipp Certification, submitted previously, also confirms that both obligations were transferred. Several additional Inga plaintiffs' statements substantiating that all the necessary obligations were transferred can also be furnished.

[7] The FCC has already stated the DC Circuit decision is not a remand probably due to the fact that it already interpreted the obligations transferred issue in AT&T's February 1995 substantial cause claim. AT&T accepted the FCC's decision by making the tariff change prospective beginning in November of 1995. The FCC has now

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the Inga plaintiffs' motion to lift the stay should be granted.

Respectfully,

ARLEO & DONOHUE, LLC

By: */s/Frank P. Arleo*
Frank P. Arleo

FPA:hm
cc: Richard Brown, Esq. (via fax and regular mail)
Alfonse G. Inga (via e-mail)

---

confirmed that the Court should not be concerned that a conflicting decision may be handed down by the FCC as there are no pending administrative proceedings concerning other CSTPII/RVPP Plans. Annexed at **Exhibit D.**

EXHIBIT A

AT&T COMMUNICATIONS
Adm. Rates and Tariffs
Bridgewater, NJ 08807
Issued: March 17, 1995

TARIFF F.C.C. NO. 2
10th Revised Page 10
Cancels 9th Revised Page 10
Effective: April 1, 1995

EXPLANATION OF SYMBOLS - Coding of Tariff Revisions
Revisions to this tariff are coded through the use of symbols. These symbols appear in the right margin of the page. The symbols and their meanings are:

R - to signify reduction.
I - to signify increase.
C - to signify changed regulation.
T - to signify a change in text but no change in rate or regulation.
S - to signify reissued matter.
M - to signify matter relocated without change.
N - to signify new rate or regulation.
D - to signify discontinued rate or regulation.
Z - to signify a correction.

Other marginal codes are used to direct the tariff reader to a footnote for specific information. Codes used for this purpose are lower case letters of the alphabet, e.g., x, y and z. These codes may appear beside the page revision number in the page header or in the right margin opposite specific text.

EXHIBIT B

tariff language is inserted to specifically protect AT&T against its various customers.

ATT Substantial Cause Showing

A. First, the SC indicates that the filing is made in light of a reseller cust's improper attempt to effect transfers of locations or 800 nos to a third party after its initial effort to transfer the plan resulted in a deposit requirement that it choose not to honor. This raises the question of why two tariffs and various term plans that affect far more than this one reseller need to be changed if the problem only involves one isolated reseller, who of course, is mad at AT&T.

This is especially true in that AT&T itself argues that the revisions are mainly just a clarification of existing provisions. If that is really the case, why not rely on the existing provisions if they are clear enough to actually cover this case and forget about the new language which is far more obtrusive than necessary for the case in point.

B. Secondly ATT argues that three provisions already cover it enough to avoid the SC as the new language would only be a clarification. The first prov relied on is the Abuse and Fraudulant Use sections. Att refs the provision which says fraudulant use is using fraudulant means or devices, tricks, schemes, false or invalid numbers, false credit devices or electronic devices. This section goes with using or attempting to use sevice with intent to avoid payment either in whole or in part , of any of ATT tariffied charges. It could aslo have referenced the prov that this inlcudes also rearranging, tampering with, or making connections not authorized by this tariff to any service component although that one usually has been things such as black boxes and the like although one could consider this rearranging or tampering with.

Two things to keep in mind about this one. First it indicates intent to and that is a judgement call which would have to be decided in a complaint case if the matter came up. Secondly, the usual punishment for violating these provisions is to temporarily suspend service and/or not accept requests for additional service. THis would raise a question about what impact it would have on disconnecting service by the bad customer and adding new service by another customer who has nopart in any fraud scheme or even the end user who cannot be said to be culpable. &dspend service for the bad customer should not be allowed to force an end user to retainits suspension of service and should allow it to go to other ATT resellers or other IXCs/resellers or to a plan on its own with ATT or jsut take service separately from ATT nor restrict anotehr reseller of ATT service to pick up the suspended location if the end user wished to move. What ATT seems to propose in new provs might well go beyond this situation in that it does not even take intent into account but assumes it is there. And, ATT may intend to apply this in a manner that it will not let locations or 800 nos move and that could unjustly interfere with the rights of end users or anotehr customer.

Finally, the provisions noted by ATT here do not seemingly restrict TorA per se but the new regs do nor does it address TorA explicitly.

C. ATT says the deposit provs protect it as they require a deposit of customer whose financial responsibility isnot a matter of record. ATT says that a transfer of substantially all of custs accounts to a third party party constitutes a transfer of sub allof its assets to another and constitues a change in the customers' financial record. The application of this provision assumes that the transfer of all or a sub portionof a tp or CT would be a change in the financial responsibility and record but the application of the proposed revision may well cover cases in which this is not the case such as a customer who has a number of tps or CTs and who overall is not causing AT&T any risk by limited transfers or ongoing transfers that may simply show movement around the chess board but make ATT no worse off or at more risk.

Moreover the term financial responsibility is not a matter of record is certainly open to interpretation as to how it applies to the situation in hand and apparently ATT has not specifically defined it for the particular situation in question. Using the current deposit provision would allow judgement to be applied as to the exact situation involved and how it would fit in with the deposit. In any event, if the cust does not honor the deposit prov, it would seem the redress again would be to temp suspend serv and deny additional service to bad customer, but not to interfere with underlying rights of end users and other customers. The new language would prohibit transfers at all. Preferable to have this situation than the new langauge as it allows the FCC judgement in the matter of a complaint and does not prejudge it.

Finally, the provs ATT refers to here also do not explicityly prohibit TorA per se and do not directly address it.

D. Lastly ATT says that existing T&A rules seem to cover it in that they say new customer must agree to assume all obligations of the former customer. If ATT is so certain of this, why not forget the new language as by itself, there may be nothing untoward in what is happening but the result would vary by situation and the now langauge is too arbitrary.

Secondly, the language now talks about assuming obligations and says these obs include (but does not say "but not limited to") out indebtrd of serv and unexpired portion of min pay period(s). It says nothing about tp or CT obls and Tariff 2 refs to min pay period talk about min payment period is 1 day for WATS (which inlcudes cl 800) and for all other 800 services it would seem- 6.2.A. and 2.5.5. ANd charges applicable for min payment period include recurring charge(s), nonrecurring charges(s) and/or special construction charge(s). Moreover, in proposed revisions, ATT sems to leave this out of the item 5 location whereas they have it in both 2 and 5 for Tariff 1 already giving some credence to teh fact they see this as something new and additional.

Moreover, the unexpired portion of any applicable minpay period would not seemingly include unexpired portion of any term of service and usage or rev commit but has its own unique meaning and therefore, the provision about the term plan and commitments being included as par tof hte min pay period is conflicting y and we find in favor of customers in cases of conflicts. And in the case of Tariff 1 where the provs already exist, they would seemingly conflict too and would not be enforceable.

So the question of existing language in TorA already covering the situation here may well be questionable too given the above analysis although we agree our analysis is just one view and itself raises questions that might well leave the outcomd to a particular complaint with an FCC judgement rather than having the arbitrary new language.

E. The substantial Cause showing would seemingly have to be beffed up to pass muster as it never gets to any financial imapct on AT&T but simply talks about ATT's interpretation of what the current situation and provisions should mean. Moreover, existing customers might well take exception with the statement in SC taht the revs do not affect rates oapplicable to exist tp or CT customers and any non rate affecting change is minor.

Finally, SC says ATT should not have to grandfather exist custs as get different admin rules based on only when entered into tps and that develop and implementing such rules would create needless regulatory complexities with attendant costs and delay. But this does not make sense. Would ATT not have to develop the same procedures for all customers now without grandfathering and do they not already have the exisitng procedures for existing customers. So what is the big deal. The new procedures have to be developed anyway. And they will have to be implemented in any event.

These are some things to think about before the meeting [redacted]

EXHIBIT C

Before the
FEDERAL COMMUNICATIONS COMMISSION FCC 95-427
Washington, D.C. 20554

In the Matter of:
Motion of AT&T Corp. to be
Reclassified as a Non-Dominant Carrier

ORDER

Adopted: October 12, 1995 Released: October 23, 1995

134. Finally, we note that AT&T has voluntarily committed to implement certain measures that are designed to address criticisms of its business practices that resellers have raised in this proceeding and elsewhere. AT&T represents that the following reflects an agreement with the Telecommunications Resellers Association, and AT&T has committed to comply with this agreement: As a general practice, AT&T grandfathers both existing customers and subscribed customers (i.e., customers who have submitted a signed order for service) when it introduces a change to a term plan (including Contract Tariffs, term plans under Tariffs 1, **2,** 9, and 11, Tariff 12 Options and Tariff 15 CPPs), **and it commits to continue that process**.

- where AT&T makes any change to an existing term plan, AT&T will afford the affected customers 5 days meaningful advance notice of the tariff filing to give the customer the opportunity to object; provided, however, that for changes to **discontinuance with or without liability,** deposits and advanced payments, or **transfer or assignment of service**, AT&T will file on 14-days' notice.(AT&T would have the unaffected right to change underlying tariff rates -- such as a general change to SDN rates -- unless the term plan protected the customer from such changes.) Where the affected customer(s) agrees to the revision, AT&T will note that agreement in its transmittal letter and file the change on 1 day's notice. **Where the affected customer objects to the change**, AT&T will file the change with the Commission on 6 days' notice. With respect to the 14 or 6 days notice filings, **the substantial cause test will be applicable to the same extent as it is today.**

EXHIBIT D

Dear Ms Nitsche

You were designated as my contact during the public comments phase of the Declaratory Ruling and I hope the FCC can now provide verification that there are no similar cases as the Inga Companies vs. AT&T before it. The Inga Companies and AT&T will be before the NJ Federal District Court on April 12th 2006 regarding lifting of the stay of a case that the FCC issued a Declaratory Ruling on Oct 17th 2003.

The Court will be deciding whether to lift the stay and continue with resolving the case in NJ--- OR once again issuing a primary jurisdiction referral to the FCC regarding any remaining issues the Court needs telecom interpretation on.

Can the Inga Companies obtain a statement from the FCC verifying the fact that there are no present cases before the FCC regarding transfers of traffic without the plan under CSTPII/RVPP plans.

As you recall the AT&T CSTPII/RVPP plans were detariffed out of existence in 2001. As you also recall the prospective tariff changes made to the AT&T Transfer of Service Agreement section 2.1.8 started in November of 1995 and addressed issues that the Inga Companies case vs. AT&T related to. Therefore a new case on this same traffic only transfer issue seems impossible at this point. The Inga Companies can advise the NJ District Court of this CSTPII/RVPP extinction history but it would easier just to get a statement from the FCC that there are no cases before it that deal with any issues regarding the transfers of traffic under the AT&T tariff laws of 2.1.8 at the time of Jan 1995.

Last year the FCC provided the Inga Companies with a statement regarding its position that the DC Circuit decision was not being treated as a remand. A similar informal email reply to this email to verify that there are no similar cases may aid the NJ District Court.

The District Court of course is always concerned that there may be similar cases that if it ruled upon may possibly lead to conflicting decisions on the same issue. The Inga Companies are seeking to address the Courts standard concern in these type of matters. Can such a request be made of the FCC, and if it can be to whom can such a request be made?
Thank you,
AL Inga
973 618 9906

Dear Mr. Inga:

The Office of General Counsel just became aware of your request this week. We have been informally advised by the staffs of the FCC's Wireline Competition Bureau and Enforcement Bureau that they are unaware of any pending administrative proceedings responsive to your inquiry.

Nick Bourne

EXHIBIT E

Brown, Richard H.

From: Al <ajdmm@optonline.net>
Sent: Wednesday, December 10, 2014 4:10 PM
To: 'Deena Shetler'; Frank Arleo; 'JoAnn Dobransky'; Brown, Richard H.
Subject: FW: Richard Brown---Petitioners Exparte disclosure.....Please confirm receipt.
Attachments: MOOT FCC Decision 12.10.14.pdf; AT&T Counsel R. Meade certification.pdf; Bassler Oral Argument.pdf

Richard

Deena—Do I also need to upload these emails to the server or is confirmation from Mr Brown sufficient?

Below are emails confirmed petitioner's realization that the FCC decision in regards to the traffic only transfer issue is a moot issue---as petitioners would win the case even if the FCC were to fall on their head and state that plan obligations transfer on traffic only transfers.

Petitioners had already surmised that this was the case and what threw us off was that the FCC was being asked to evaluate existing language and change the terms and conditions as opposed to a language change which also results in prospective notice.

It is petitioners understanding that this is a permit but disclose proceeding so we are providing you with emails that led to the ultimate confirmation that under the 1934 Act that the issue is moot. It probably also is under the 1996 Act.

Initially I was looking online for the info and I only had access to the 1996 Act and kept digging to determine the prospective nature of changing the status quo on the terms and conditions of existing language ---which of course Mr Meade describes in his letter to FCC's David Nall.

Of course you knew all this all the time and maybe thought that we would never realize this. LOL

Anyway I wanted to make sure you got these emails to make sure petitioners were compliant with exparte rules.

Please confirm receipt.

I again provide you with today's filings as I have not received confirmation that you have received the filings.

Thank you

Petitioners

From: Deena Shetler [mailto:Deena.Shetler@fcc.gov]
Sent: Friday, December 05, 2014 11:47 AM
To: 'Al'; Randolph Smith
Cc: Frank Arleo; 'JoAnn Dobransky'
Subject: RE: Deena & RL -- General procedural question....

I am not sure I understand what you mean by after an FCC decision. If a tariff goes into effect that comports with the statutory filing requirements for deemed lawful status and the Commission does not reject or suspend and investigate the tariff prior to its effective date then it will have deemed lawful status.

From: Al [mailto:ajdmm@optonline.net]
Sent: Friday, December 05, 2014 11:41 AM
To: Deena Shetler; Randolph Smith
Cc: Frank Arleo; 'JoAnn Dobransky'
Subject: RE: Deena & RL -- General procedural question....

Deena—Do we understand this deemed status language to mean that a Carrier can –after an FCC decision --correct as per the FCC the way that it handled transactions going forward and not be subjected to retroactive damages for any claims that came after it achieved deemed lawful status? Thus the rush by carriers to achieve deemed lawful status? It protects the carriers against damages retroactively even if a customer finds out after deemed lawful status has been achieved? Therefore the carrier rush to be deemed lawful.

From: Deena Shetler [mailto:Deena.Shetler@fcc.gov]
Sent: Thursday, December 04, 2014 9:13 AM
To: 'Al'; Randolph Smith
Subject: RE: Deena-When the FCC uses the word practice does that refer to a change in the way the tariff operates based upon the same language?

This is a very general summary of how "practice" fits in to the language you quoted to help your understanding, it is not intended as legal advice or an evaluation of a particular set of facts.

The reference to 15 days in the excerpted language below has to do with practices that are enumerated in a tariff and when they go into effect and are "deemed lawful" if not suspended or investigated. In the course of a proceeding the Commission may interpret what the description of a tariffed practice means. That is not a change in what the practice is, rather it is a determination of what the practice has meant so long as the tariffed language has been in effect. The Commission could separately find in the course of a proceeding that a certain tariffed practice is unreasonable and thus unlawful. How the deemed lawful issue impacts this is that if the Commission finds a practice that was "deemed lawful" by operation of the statute to be unlawful, the "deemed lawful" status precludes retroactive damages.

From: Al [mailto:ajdmm@optonline.net]
Sent: Friday, December 05, 2014 10:40 AM
To: 'Deena Shetler'; 'Randolph Smith'
Cc: Frank Arleo; 'JoAnn Dobransky' (joann.dobransky@adblawfirm.com)
Subject: RE: Deena & RL -- General procedural question....

Deena & R.L

No Comment needed! We now fully understand the FCC procedure and we will happily apply it to our case ourselves.

Nothing that you gave me was substantive and was only procedural questions that I brought up that are not subjected to exparte rules. I just had to keep digging to make sure I asked you questions that were not substantive and would enable me to understand the FCC timing implementation and rules on AT&T not having the ability to achieve deemed lawful status.

The FCC procedure analysis alone is where we should have focused on from day one.

In doing research on this deemed lawful language under the 1996 Act there were stories how carriers were RUSHING TO ACHIEVE DEEMED LAWFUL STATUS to preclude retroactive damages. If a case were under the 1996 Act instead of the 1934 Act and the FCC were to determine that not transferring plan obligations was UNREASONABLE and thus UNLAWFUL the carrier would not face retroactive damages if it **achieved deemed lawful status.**

However our case is under the 1934 Act and thus AT&T ability to achieve "deemed lawful" status is **not within AT&T's grasp** and thus any future FCC decision would be prospective --- even if the FCC were to ridiculously decide that the plan obligations (revenue and time commitments and their associated liabilities for shortfall and termination liabilities) must be transferred.

Thus the FCC decision in this case is moot! We win whether or not the FCC decides in the future that the customer plan obligations on CCI's non transferred customers plan must also transfer.

I know you can't comment nor do we need you to comment as the clarifications of the FCC's timing implementation of a future decision der 1934 Act is the key. This really isn't new news! The FCC 2003 decision that was based upon the 1934 act stated the same thing.

The FCC 2003 decision already took this into consideration when it stated:

BACKGROUND

AT&T is a telecommunications carrier regulated under Title II of the **Communications Act of 1934, as amended (the Act). At the time these events occurred,** AT&T was a dominant provider of interstate telecommunications services and, as such, offered the services at issue under tariffs, which it filed with the Commission pursuant to section 203 of the Act

The FCC 2003 Ruling also noted on page 11 para 14**:**

> We also do not understand AT&T to argue that <u>any revisions to its tariff that became effective after January 1995</u> govern resolution of this matter.

We will contact AT&T very soon anyway so whether this procedural question is deemed exparte or not we will let AT&T know what we believe ends the traffic transfer issue. The 1996 shortfall charges issues still has to be decided but the old Judge Politan has already stated that the plans were pre June 17th 1994 grandfathered. Additionally the illegal remedy in applying the shortfall and termination charges in excess of the discount is an easy fact for the current Judge Wigenton to evaluate.

We know we are correct anyway but this just makes the Courts decision very easy as the future FCC decision would not be determinative of our 1995 transaction anyway.

We will advise the FCC what Judge Wigenton decides.

Thank you for your valuable time.
Al Inga President
Petitioners
06-210

From: Deena Shetler [mailto:Deena.Shetler@fcc.gov]
Sent: Friday, December 05, 2014 9:40 AM
To: 'Al'; Randolph Smith
Subject: RE: Deena & RL -- General procedural question....

Generally speaking, a new tariff filing or a tariff filing that that changes the terms of an existing tariff is effective prospectively. Each such filing will have an effective date.

Also, to be clear, I am not answering a question specific to the facts of your case or providing legal advice, nor am I providing a statement on behalf of the Commission.

From: Al [mailto:ajdmm@optonline.net]
Sent: Friday, December 05, 2014 9:31 AM
To: Deena Shetler; Randolph Smith
Subject: RE: Deena & RL -- General procedural question....

The 1934 Act handles a change on a prospective basis as well in the same type manner?

From: Deena Shetler [mailto:Deena.Shetler@fcc.gov]
Sent: Friday, December 05, 2014 9:26 AM
To: 'Al'; Randolph Smith
Subject: RE: Deena & RL -- General procedural question....

I cannot weigh in on this. That summary is my summary intended to be helpful to understand the deemed lawful rule. I am not weighing in on how these rules work on the facts of your case.

From: Al [mailto:ajdmm@optonline.net]
Sent: Friday, December 05, 2014 9:12 AM
To: Randolph Smith; Deena Shetler
Subject: RE: Deena & RL -- General procedural question....

I had a cup of coffee and woke my brain up and read the following again. The answer is there. Even if the FCC determined that a carrier was not following the tariff (status quo) –the FCC states what the correct way to follow the tariff is and it is not retroactive to all transactions in the past! Thus any FCC order in the future regarding the way our transaction should be handled is not retroactive. There our realization that the future FCC decision is moot is absolutely correct!

From: Deena Shetler [mailto:Deena.Shetler@fcc.gov]
Sent: Thursday, December 04, 2014 9:13 AM
To: 'Al'; Randolph Smith
Subject: RE: Deena-When the FCC uses the word practice does that refer to a change in the way the tariff operates based upon the same language?

This is a very general summary of how "practice" fits in to the language you quoted to help your understanding, it is not intended as legal advice or an evaluation of a particular set of facts.

The reference to 15 days in the excerpted language below has to do with practices that are enumerated in a tariff and when they go into effect and are "deemed lawful" if not suspended or investigated. In the course of a proceeding the Commission may interpret what the description of a tariffed practice means. That is not a change in what the practice is, rather it is a determination of what the practice has meant so long as the tariffed language has been in effect. The Commission could separately find in the course of a proceeding that a certain tariffed practice is unreasonable and thus unlawful. How the deemed lawful issue impacts this is that if the Commission finds a practice that was "deemed lawful" by operation of the statute to be unlawful, the "deemed lawful" status precludes retroactive damages.

From: Al [mailto:ajdmm@optonline.net]
Sent: Friday, December 05, 2014 8:53 AM
To: randolph.smith@fcc.gov; 'Deena Shetler'
Subject: RE: Deena & RL -- General procedural question....

I noticed your emails after I sent you my email.

OK--Let's NOT talk about the rule as it would pertain to OUR CASE FACTS—That is substantive and you can't answer that. Let's try this….

We just want to know the FCC rules under the 1934 Act on how the FCC would implement a change in the way a carrier practices transactions (adheres to its tariff) in the marketplace if there is a **future change in the status quo**. The language is the same but the FCC says to the carrier ---the way that you are interpreting that language is wrong and you need to now do it in a different manner.

The above question is not addressing facts of our case so I assume this can be answered?

From: Deena Shetler [mailto:Deena.Shetler@fcc.gov]
Sent: Friday, December 05, 2014 8:40 AM

To: 'Al'; Randolph Smith
Subject: RE: Deena & RL -- General procedural question....

It is a substantive question when you ask how a particular rule would apply to a particular set of facts.

From: Deena Shetler [mailto:Deena.Shetler@fcc.gov]
Sent: Friday, December 05, 2014 8:34 AM
To: 'Al'; Randolph Smith
Subject: RE: Deena & RL -- General procedural question....

This is going beyond a question about procedures and discussing how those procedures would apply in this particular case.

From: Al [mailto:ajdmm@optonline.net]
Sent: Friday, December 05, 2014 8:39 AM
To: randolph.smith@fcc.gov; 'Deena Shetler'
Subject: RE: Deena & RL -- General procedural question....

This is a strictly a procedural question.

We are going to the District Court and advising Judge Wigenton that the FCC procedures for implementing a change in practice on the existing 2.1.8 1995 traffic transfer language make the FCC decision on this issue a MOOT issue as to our Jan 1995 transaction and we win either way. If the FCC decides plan obligations don't transfer we win and if the FCC decides plan obligations must transfer it would be prospective to our Jan 1995 transaction.

Because under the same language---even if the FCC in the future reversed its 2003 decision and stated that the non transferred customers plan obligations revenue and time commitments and associated liabilities for (Shortfall and termination) were decided by the FCC as having to transfer ----that would constitute a change in the 1995 status quo and only prospective transfers after ours would be determined as having engaged in an unlawful tariff violation.

On a procedural implementation basis based upon the 1934 Act does the FCC refute that our transaction would **not** be subjected to a future FCC interpretation even if the FCC were to decide plan obligations transfer?

From: Al [mailto:ajdmm@optonline.net]
Sent: Friday, December 05, 2014 8:11 AM
To: randolph.smith@fcc.gov; 'Deena Shetler'
Subject: RE: Deena & RL -- General procedural question....

Straight to the point:

History:

1) AT&T's TR8179 fails to convince FCC that when a large traffic transfer is done that the PLAN must transfer. Status quo was traffic only transfers do not require plan obligations to transfer.
2) AT&T asserts sole remaining defense of Fraudulent Use and loses due to illegal remedy and of course further confirms that under 2.1.8 for traffic only transfers the status quo was not to require plan obligations to transfer.
3) 2006 new Judge issues DR asking to interpret obligations allocation where the question of obligations allocation had never been an issue before and was NOT the reason for the traffic only transfer denial.

These are the of the case. Under these non disputed facts let's assume that in the future when Deena is a grandmother or great grandmother that the FCC reverses its 2003 decision and says that plan obligations (Shortfall and termination) also must transfer on traffic only transfers.

Does the FCC take the procedure of implementing the change retroactively back to when? 2006 since the obligations issue was new question because prior the parties agreed? Does the implementation go back to 1996 referral from Third Circuit?

Bottom-line: The FCC can't go back to January 1995 and state that 2.1.8 demanded plan obligations to transfer for ALL AT&T CUSTOMERS and have anyway to stop my Jan 1995 transaction and all others AT&T customers would not have been stopped.

Point blank—Even if the FCC in the very unlikely scenario were to rule that plan obligations going forward must now transfer on traffic only transfers it would have to be prospective to our case because the parties in 1995 AGREED that plan obligations don't transfer on traffic only transfers.

Thus---Why isn't the traffic only transfer at issue here a MOOT point as to our case? If AT&T wants the FCC to interpret it for how it treats future traffic only transfers that is up to them.

This is a procedural question regarding the FCC's implementation of when it would demand that AT&T followed a decision to transfer plan obligations on traffic only transfers. Our point is that procedurally under the FCC's rules a decision would only be prospective as the FCC already stated in its 2003 decision.

Please comment on the timing procedure for a future implementation.

Al Inga
Petitioners

From: Al [mailto:ajdmm@optonline.net]
Sent: Thursday, December 04, 2014 4:28 PM
To: randolph.smith@fcc.gov; 'Deena Shetler'
Subject: RE: Deena & RL -- General procedural question....

I have looked through the 1934 Act and I just can't find the answer. Yes changes in tariff language are prospective. Would not changes in the in status quo practice (how the tariff operates in the marketplace) under the same exact tariff language also be prospective? What is the procedure?

From: Al [mailto:ajdmm@optonline.net]
Sent: Thursday, December 04, 2014 9:35 AM
To: 'Deena Shetler'; randolph.smith@fcc.gov
Subject: RE: Deena & RL -- General procedural question....

The following I believe is a also procedural question. Just comment where possible. Your below comments were based upon the 1996 Acts deemed lawful phrase not under the 1934 Act.

For 1934 ACT is it accurate that if the FCC determines there should be a change in practice (how the tariff operates in the marketplace) under the same exact tariff language that according to FCC procedures it would still be prospective 15 days' notice from the FCC Decision?

In other words: All AT&T customers are operating their businesses under what is believed to be the correct interpretation of how the tariff operates. Then there is a change in practice ordered by the FCC based upon the existing language—not a language change---what does the FCC do in these circumstances?

The FCC can't make the carrier go back to tens of thousands of businesses and that operated under what later the FCC determined was the wrong practice and undo the transactions.

Explain the FCC timing of implementing an FCC order to change practice under the same language but under the 1934 Act not the 1996 Act as it relates my circumstance. The issue here is AT&T conceded that in 1995 what we did conformed to 2.1.8 but its only defense was the 2.1.4 fraudulent use defense. So all AT&T customers did traffic only transfers under 2.1.8 but ours was permanently stopped on AT&T's fraudulent use assertion.

If there were a ridiculous FCC decision under 2.1.8 in 1995 that customer plan obligations really do transfer on traffic only transfers what is the FCC's stance on all the traffic only transfers that were done in 1995 under 2.1.8 that would have been determined as having engaged in an unlawful practice? The FCC can't change all that.

Given the fact that the obligations question is a new DR as of 2006 how could the FCC procedurally retroactively go back anyway to 1995 to prohibit a transaction.

If you are changing the status quo on how all customers are handled under a tariff that has to be prospective? Thus my MOOT point even if the FCC were to change its 2003 obligation allocation position.

The implementation of the tariff practice under existing language to affect the status quo of all customers has to be prospective only otherwise all customers would have done an unlawful transaction.

From: Deena Shetler [mailto:Deena.Shetler@fcc.gov]
Sent: Thursday, December 04, 2014 9:13 AM
To: 'Al'; Randolph Smith
Subject: RE: Deena-When the FCC uses the word practice does that refer to a change in the way the tariff operates based upon the same language?

This is a very general summary of how "practice" fits in to the language you quoted to help your understanding, it is not intended as legal advice or an evaluation of a particular set of facts.

The reference to 15 days in the excerpted language below has to do with practices that are enumerated in a tariff and when they go into effect and are "deemed lawful" if not suspended or investigated. In the course of a proceeding the Commission may interpret what the description of a tariffed practice means. That is not a change in what the practice is, rather it is a determination of what the practice has meant so long as the tariffed language has been in effect. The Commission could separately find in the course of a proceeding that a certain tariffed practice is unreasonable and thus unlawful. How the deemed lawful issue impacts this is that if the Commission finds a practice that was "deemed lawful" by operation of the statute to be unlawful, the "deemed lawful" status precludes retroactive damages.

From: Al [mailto:ajdmm@optonline.net]
Sent: Wednesday, December 10, 2014 11:22 AM
To: Brown, Richard
Cc: 'Deena Shetler'; Frank Arleo; 'JoAnn Dobransky' (joann.dobransky@adblawfirm.com)
Subject: FW: MOOT FCC Decision 12.10.14

Richard

Petitioners have finally realized that the traffic only transfer issue is a moot issue as no matter what the FCC decides petitioners win.

If the FCC decided that plan obligations DON'T transfer that maintains the status quo as per the terms and conditions of 2.1.8

However even if the FCC were to decide that plan obligations transfer such a change would only be prospective as a change in the terms and conditions on existing language is also prospective and petitioners transaction would be grandfathered along with all others.

Please comment to FCC if you refute this.

Al Inga President
Petitioners

CERTIFICATION OF SERVICE

I hereby certify that, on this first day of February, 2016, I served the foregoing "AT&T's Response to Petitioners' Motion to Temporarily Suspend the Proceeding," by email on

Mr. Al Inga, President
One Stop Financial, Inc.
Winback & Conserve Program, Inc.
Group Discounts, Inc.
800 Discounts, Inc.

Raymond A. Grimes, Esq.
Law Offices of Raymond A. Grimes, P.C.

/s/Kyle J. Fiet
Kyle J. Fiet