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Richard Brown

On behalf of Plaintiff's (Group Discounts, Inc., One Stop Financial, Inc., Winback & Conserve, Inc., and 800 Discounts, Inc.) referred herein further referred to as "Plaintiffs," the following responds in part to AT&T's comments of 1.22.16 and 2.1.16 which was AT&T's response to plaintiffs comments of 1.18.16 and 1.30.16. Plaintiffs herein evidence that the case is over due to the 15 day statute of limitations within 2.1.8. Additionally there is a real issue as to whether AT&T's sole defeated defense of fraudulent use had merit to begin with. Plaintiffs will be filing a motion with FCC to address the above.

AT&T's Failed to Meet Section 2.1.8's
15 Days Statute of Limitation Precludes AT&T from Raising Any Defense

1) Under section 2.1.8 AT&T had only 15 days to raise a defense in writing.

Statements from Judge Politan Decision recognizing the 15 days Statute of Limitations to deny transfers.

NJFDC Decision page 20 Line 4

> The parties properly executed the TSA's and did not receive any notification of disapproval within the **tariff-mandated fifteen day period**

Judge Politan Decision Page 7

> Neither the Inga companies nor CCI received any written notice of non-acceptance by AT&T of their TSA's **within fifteen days** of December 16th 1994, the date of the original submission of the TSA's. Larry C. Shipp affidavit

AT&T's first correspondence after the Jan 13th 1995 CCI-PSE order was the letter from AT&T counsel Frederick Whitmer on February 6th 1995. The letter addressing the traffic transfer was not only was outside the 15 days but it was only a fraudulent use warning letter, again asserting CCI keeps tariffed plan commitments.

2) AT&T knew it had to meet the 15 days so it intentionally fabricated to the DC Circuit that it denied the CCI-PSE transaction on Jan 27th 1995 but of course AT&T did not provide evidence.

AT&T's fabrication to DC Circuit shows it clearly understood it needed to meet the 15 days. (**Here as Exhibit** A is AT&T's brief to the D.C. Circuit which misrepresented AT&T denied the CCI-PSE transfer on Jan 27th 1995)

AT&T counsel Richard Brown was asked several times for the written evidence of the alleged Jan 27th 1995 CCI-PSE denial but did not produce this document. Here as **Exhibit B** is the correspondence with Mr. Brown and plaintiff's counsels and FCC staff Deena Shetler, Pam Arluk and Randolph Smith. Obviously you would believe with the FCC copied in the email AT&T counsel would have produced the misrepresented Jan 27th 1995 traffic transfer denial, instead of being exposed to the FCC---especially since AT&T used the misrepresentation in the case against the FCC before the DC Circuit.

3) AT&T simply could not produce the Jan 27th 1995 traffic only transfer denial because that evidence does not exist. It was yet another in a long line of misrepresentations to the FCC. **AT&T obviously did not first deny the CCI-PSE transfer on Jan 27th 1995 and then 10 days later on February 6th 1995 only issue a fraudulent use warning.**

AT&T counsel Frederick Whitmer's letter is a fraudulent use warning letter is dated February 6th 1995------which is outside the 15 day limit of Jan 28th 1995 for the Jan 13th 1995 CCI-PSE orders. Also note that AT&T counsel was asserting plan obligations do not transfer.

Here as Exhibit C

> "Mr. Inga's efforts to transfer these end users and **leave the plans intact with their commitments**, AT&T will seek to enforce its rights **in the event shortfall and termination charges become due under the tariff** and will hold Mr. Inga personally liable for his conduct intended to deprive AT&T of its **tariff charges."**

4) All AT&T defenses are precluded 15 days after the Jan 13th 1995 orders were submitted. The 15 day statute of limitations is a clear fact issue not a tariff interpretation issue so Judge Wigenton can easily handle this conclusive fact.

5) In 2008 plaintiffs addressed the fact with FCC Comments that AT&T did not meet the 15 day limit. AT&T in 2008 misrepresented to the FCC that an AT&T letter dated Jan 23rd 1995 was AT&T's traffic only transfer denial. However, that Jan 23rd 1995 letter questioned security deposits on the initial Dec 16th 1994 Inga to CCI PLAN TRANSFER—not the traffic transfer.

The NJFDC May 1995 Decision Page 7 below shows the plan transfer date that AT&T failed to meet was Dec 16th 1994 and therefore AT&T's Jan 23rd 1995 letter to deny the Dec 1994 plan transfer based upon security deposits was certainly was way outside the 15 day limit as of Dec 31st 1994.

On December 16, 1994, the Inga companies executed certain TSA's transferring to CCI a number of CSTP II/RVPP plans, namely Plans No.s 1351, 1583, 2430, 2828, 2829, 3124, 3466, 3524, and 3663. In response to AT&T's request, CCI resubmitted these TSA's on December 22, 1994; and on receiving no response to the later submission, CCI again submitted several of the TSA's on December 30, 1994. On that day, December 30, 1994, CCI received written confirmation of two of the submitted TSA's, namely, those for Plans No.s 2829 and 3124. Thereafter, CCI received "welcoming calls" from AT&T. Neither the Inga companies nor CCI received any written notice of non-acceptance by AT&T of their TSA's within fifteen days of December 16, 1994, the date of the original submission of the TSA's. Larry C. Shipp's affidavit states that, on the contrary, AT&T's conduct led CCI to believe it was now the customer of record on all of the transferred Inga companies' plans. For instance, CCI obtained "credits" for

6) AT&T only had 15 days from December 16th 1994 (Dec 31st 1994) to deny the Inga Companies plan transfer to CCI. To buy time AT&T played like they didn't receive the December 16, 1994 plan transfer order because it was trying to come up with some reason to deny the proper transfer. CCI resubmitted the plan transfer orders again on December 22nd 1994 and even that date AT&T failed to meet.

7) AT&T tried to argue with Judge Politan that the 15 days clause was not a statute of limitations date. AT&T actually clarified in 1996 that its 1995 version of section 2.1.8 its tariff that it was a hard 15 days date in which AT&T had to provide in writing the reason for the denial. When a carrier makes language changes to its tariff it uses symbols along the right column to indicate whether the language modification is an actual change of the tariff or simply clarifying non-explicit language in previous sections, as the case here.

8) In any event by tariffs must be explicit and if AT&T wanted the 1995 version of section 2.1.8 conditioned upon other tariff sections to toll the 15 days the tariff must explicitly state so. The Commission Rules demand that if the tariff is not explicit it must be determined against the carrier (AT&T). FCC 2003 Decision FN65:

> Pursuant to Rule 61.2, titled "Clear and explicit explanatory statements," as in effect in January 1995, "[i]n order to remove all doubt as to their proper application, all tariff publications must contain clean [sic] and explicit explanatory statements regarding the rates and regulations." 47 C.F.R. § 61.2 (1994). It is a well settled rule of tariff interpretation that "'[t]ariffs 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 cannot be charged with knowledge of such intent or with the carrier's canon of construction.'" *Associated Press Request for a Declaratory Ruling*, 72 FCC 2d at 764-65, para. 11 (quoting *Commodity News Services, Inc. v. Western Union*, 29 FCC at 1213, para. 2).

9) Orders under 2.1.8 must be processed if not denied within 15 days. There was <u>no reference</u> or <u>cross reference</u> within 2.1.8 to any other tariff section that could be relied upon by AT&T to toll the 15 day statute of limitation within 2.1.8.

NJFDC Judge Politan's decided 2.1.8 did not have any **<u>references or cross references</u>** to other tariff provisions. May 1995 Decision Page 9 para 2

> AT&T has further violated the Act by failing to comply with the plain terms of its own tariff, namely section 2.1.8 which makes **<u>no reference</u>** to any to any deposit requirement and **<u>contains no cross-reference to that section of the tariff which allows deposit demands, namely section 2.5.8.</u>**

10) Section 2.1.8 also did not make reference to security deposits or 2.2.4 fraudulent use. Because 2.1.8 was not denied within 15 days AT&T **<u>could not rely upon any other provision of its tariff to toll the 15 days statute of limitation within 2.1.8.</u>**

11) AT&T could not use section 2.2.4 fraudulent use as a **<u>customer condition</u>** under 2.1.8 which would allow AT&T to toll the 15 days. In fact as AT&T counsel Meade certified to Judge Politan AT&T made many changes under Tr. 9229 to section 2.1.8 in 1996, which because these were substantive changes would be prospective and not determinative of the CCI-PSE transfer. AT&T understood Judge Politan's decision that the 1995 version of 2.1.8 version <u>did not include any customer tariff sections as conditions</u> to toll the 15 days, **<u>prospectively changed</u>** section 2.1.8 in May 1996. AT&T added other tariff sections as conditions before it agreed to process the order within 15 days. See conditions added within the new section 2.1.8 Effective May 10th 1996

<u>(Exhibit D)</u>

> The transfer **will not be effective if, within fifteen days** after AT&T receives a fully executed original of the Transfer of Service form, AT&T provides to the New Customer a written rejection of the requested transfer. AT&T may not unreasonably reject a transfer or assignment of service. AT&T may, for example, reject a transfer or assignment of service if the Current Customer or New Customer fails to supply the executed original(s) of the Transfer of Service form, fails to adequately identify the Current Customer or the service being transferred, **asks that the transfer or assignment be made subject to conditions**, **or fails to furnish a deposit required in connection with the intended transfer pursuant to Section 2.5.8, following. AT&T will provide a written statement of its reason(s) for rejecting a transfer or assignment of service.**

12) AT&T's own action of changing 2.1.8 to impose conditions within 2.1.8 is a concession that there were no conditions within the Jan 1995 version of section 2.1.8, to toll the 15 days limitation. Therefore AT&T not having met the 15 days limit had to process the CCI-PSE order. The FCC 2003 Decision Pg.10 para 13 correctly determined that AT&T's sole defense was 2.2.4 fraudulent use and there was no controversy as to 2.1.8.

> "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."**

13) The only way AT&T could have properly denied the CCI-PSE traffic only transfer orders of Jan 13th 1995 would have been to explicitly state in writing by Jan 28th 1995 that there was a defense **under 2.1.8-**but AT&T did not deny the CCI-PSE transfer within 15 days. Therefore the traffic only transfer by AT&T's tariff should have been processed and the case is over on the 15 days statute of limitations.

14) AT&T in 2008 in FCC comments changed its story again. The 2005 story to the DC Circuit was that AT&T denied the transfer on Jan 27th 1995 to be within the Jan 28th 1995 limit for the Jan 13th 1995 traffic only transfer order—but that was a misrepresentation. So in 2008 plaintiffs FCC comments stated AT&T did not deny the CCI-PSE transfer within 15 days. In 2008 AT&T's counsels engaged in yet another misrepresentation to the FCC.

AT&T misrepresented to the FCC that as letter dated Jan 23rd 1995 was the denial of the CCI-PSE traffic only transfer. However that Jan 23rd 1995 letter was a very late denial of the initial INGA TO CCI PLAN TRANSFER order submitted to AT&T back on December 16th 1994.

15) AT&T understood plaintiffs strictly adhered to 2.1.8 and therefore tried to retroactively change 2.1.8 by filing initially Tr. 8179 on **February 16th 1995.** May1995 Decision on page 10:

> On **February 16, 1995**, AT&T filed Tariff Transmittal 8179 with the FCC, instituting an administrative action wherein AT&T **seeks to make explicit the implicit right** AT&T believes it has under Tariff F.C.C. No. 2 to stop the transfers at issue here.

16) The Tr. 8179 filing date of February 16th 1995 is outside the 15 days statute of limitations date limit on plaintiffs Jan 13th 1995 Order. AT&T conceded that it lost its Tr. 8179 Substantive Cause Pleading as the FCC stated it was **not implicit** in 2.1.8 that AT&T had the right to force a plan transfer so as to force the plan obligations to transfer.

Third Circuit Oral Argument Pg. 43 AT&T's Counsel David Carpenter:

> The FCC asked us to withdraw the complaint because the FCC thought **we had done more in the tariff language than codify what the tariff already meant** because it went beyond prohibiting these sorts of transfers of **plans** that would affect transfers of individual locations.[1]

17) The FCC's denial of Tr8179 by the FCC confirmed there was no defense AT&T had under 2.1.8 regarding violating any obligation allocation no matter how much traffic was being transferred. It was understood that plaintiff's transaction **explicitly adhered to section 2.1.8.** AT&T counsel confirmed AT&T lost its February 16th 1995 FCC filed Substantive Cause Pleading under Tr. 8179 as the FCC would not allow AT&T to retroactively change 2.1.8. The FCC stated it was not implicit within 2.1.8 that AT&T could force a plan to transfer, so as to force the plan obligations to transfer, simply due to how many end-user locations are being transferred in a traffic only transfer.

18) The FCC 2003 Decision never considered that AT&T did not meet the 15 days statute of limitation and thus erroneously allowed AT&T to assert AT&T sole defense of fraudulent use. The FCC 2007 Order also determined that there was no controversy or uncertainty under 2.1.8 as to the allocation of obligations in 1995:

> The district court's June 2006 order **does not expand the scope of the issue previously presented. Rather,** we have been asked to interpret the scope of section **2.1.8** of AT&T's Tariff No.2, a matter **already extensively briefed by the parties**."

19) The Jan 23rd 1995 AT&T to PSE counsel letter advised that CCI had to put a security deposit to obtain the Inga plans---but obviously by Jan 23rd 1995 AT&T had no authority to demand a **security deposit** under the tariff as the 15 days limit to deny the December 16th 1994 plan transfer was Dec 31st 1994 not Jan 23 1995. In 2008 AT&T was trying to pass off to the FCC the late Inga-CCI plan denial as a valid CCI-PSE traffic only transfer denial.

[1] After AT&T lost its Tr8179 pleading that there was nothing implicit within 2.1.8 to force the plan to transfer on a traffic only transfer so counsel Carpenter therefore misrepresented that what is being transferred is the PLANS and not a traffic only transfer -----as AT&T needed to mischaracterize the CCI-PSE transfer as a plan transfer.

20) AT&T's Jan 23rd 1995 is nothing more than a very late Inga to CCI plan denial letter and obviously there is no statement in the letter –that is required by 2.1.8-- that AT&T was denying the traffic transfer at all and certainly not to what became to its sole defense of **fraudulent use under 2.2.4** of the tariff. **See Exhibit E**

> This will confirm our conversation Friday regarding the proposed traffic transfer between CCI and PSE. You will recall that my CPNI obligations prevented me discussion of Mr Inga's plans and CCI. I did inform you, however, that before the CCI-to-PSE transfer could be renewed, CCI must first establish service with AT&T, including satisfying AT&T's credit guidelines. After that point, the CCI-to-PSE transfer, ***if*** consistent with tariff obligations, could be effectuated.

21) At this point on Jan 23rd 1995 AT&T counsel Meric Bloch is still asserting that it has the right to deny the Inga–CCI plan transfer plan transfer due to credit guidelines (i.e. AT&T's $13+ million dollar security deposit request). But that ship sailed on Dec 31st 1994 as that was the statute of limitations date. AT&T counsel then raises AT&T's Tr. 8179 "tariff obligations" position in which at that time AT&T claimed it had an implicit right to force a plan transfer.

22) **There is absolutely no mention that the CCI-PSE transfer is violating section 2.2.4 fraudulent use—which the FCC 2003 and 2007 Orders determined was AT&T's only defense.** This letter is dated Jan 23rd 1995.

23) AT&T counsels statement: "After that point, the CCI-to-PSE transfer, ***if*** consistent with **tariff obligations**, could be effectuated." That obviously is not a denial of anything. AT&T counsel Meric Bloch uses the word **"if"** because AT&T's argument at that time was CCI should be forced to transfer the plan (Tr8179).

24) Look at these dates: On **Jan 23 1995** AT&T still had not filed Tr. 8179 until **February 16 1995**. AT&T violated its tariff by incredibly tolling the 15 day statute of limitation based upon its **"future"** –yes future---FCC filing of Tr. 8179 in AT&T's Substantive Cause Pleading on **February 16th 1995.** Incredible.

25) Not only was ATT counsel Meric Bloch's letter not a denial but when the FCC denied AT&T's Tr. 8179 Substantive Cause Pleading AT&T counsel Mr Bloch **had no excuses left** under the tariff to justify not processing the CCI-PSE Order. When AT&T replaced Tr. 8179 with Tr. 9229 AT&T's own Counsel Richard Meade certified to Judge Politan that it was a substantive change and therefore 15 day prospective under the 1934 Communications Act.

26) Here as **Exhibit I** is a June 21 1994 letter to plaintiffs that included six AT&T senior executives -----and included AT&T's counsel Meric Bloch **who wrote the Jan 23 1995 letter** in which AT&T claimed satisfied the 15 day requirement. The letter was in reference to whether a

restructured plan was considered a new plan. Only new plans would be able to enroll without liability end-users that were under their own LSTP contracts.

> In April 1994 you requested to **restructure** CSTPII #1583 for May usage. According to Ms. Lisa Hockert and Ms. Joyce Suek, from the MFEC, they advised you on May 2 or 3, 1994 that Location Specific Term plan (LSTP) end-users moving to your restructured plan would incur termination liability charges.

27) AT&T's position was that if the plan was **restructured** (discontinuation with or without liability in tariff speak) it would not would not be able to absorb into plaintiffs CSTPII/RVPP plans end-users that were under LSTP contracts w/o liability. It was also a question at this time whether additional new plans that were ordered to absorb LSTP's w/o liability were pre or post "June 17 1994" ordered. AT&T confirmed its position: **A restructured plan (discontinuation w/o liability)** is **not a new plan** to absorb end users w/o liability; however these restructured plans would be pre June 17 1994 grandfathered and thus the plans would maintained the original terms and conditions under the tariff from when the plans were initially ordered as new plans.

28) The **June 21 1994** is obviously prior to the **Jan 13 1995** traffic transfer order so obviously AT&T counsel Meric Bloch knew as of his Jan 23 1995 letter that plaintiffs plans at issue in this case could be restructured and thus would be grandfathered as to shortfall and termination charges. So Meric Bloch's Jan 23 1995 letter **could not have possibly been asserting a fraudulent use defense (suspecting shortfall).**

29) The Meric Bloch Jan 23 1995 letter was not a denial of the CCI-PSE transfer. If anything on Jan 23 1995 he is questioning **"obligations"** as per AT&T's denied Tr8179 position of forcing a plan to transfer so as to force the plan "**obligations"** to transfer, prior to AT&T filing it Tr. 8179 Substantive Cause Pleading on February 16 1995. AT&T's counsel Meric Bloch obviously did not assert **within 15 days** what became AT&T's sole defense of fraudulent use. AT&T failed the 15 days statute of limitation and thus the CCI-PSE transfer was unlawfully denied.

30) Furthermore AT&T's counsel Richard Brown would have to agree that AT&T's Jan 23 1995 letter couldn't possibly have been questioning fraudulent use. AT&T's sole defense of fraudulent as per Mr Brown would not be a concern because Mr Brown has asserted to the FCC that even under his self-serving interpretation of "1 free post June 17th 1994 restructure" that would

concede that the plans could be restructured from June 1995 through June 1996, as June 1996 was when AT&T applied the shortfall and termination charges. [2]

31) AT&T counsel Charles Fash July 3, 1996 wrote co-plaintiff CCI after AT&T had unlawfully inflicted the plans with shortfall and termination charges in June of 1996. Mr. Fash stated that the new penalty infliction/collection dispute that arose in June 1996 has nothing to do with the pending traffic only transfer lawsuit:

Here as **Exhibit F.**

> You claim that AT&T, by placing tariffed shortfall charges on bills sent to CCI's end-users locations, was somehow stepping outside the established forum for resolution of the collection dispute (supposedly, the **pending lawsuit between the parties**). In fact, however, **this is a new dispute that has nothing to do with the pending suit.** Indeed, the relevant period for calculation of the shortfall charges in issue did not expire until **March 31st 1996**, and the charges were then billed on the June 1, 1996 bills

32) In AT&T's Fash point of view AT&T's Jan 23, 1995 letter could not possibly be based upon suspecting fraudulent use 18 months before there would be shortfall and termination charges. If anything the Jan 23rd 1995 letter was asserting a Tr8179 defense which AT&T hadn't even filed until February 16th 1995.

33) The Jan 23rd 1995 letter was simply a very late Inga to CCI plan denial letter that AT&T tried to pass off to the FCC as a denial of the traffic only transfer. In order for AT&T to deny the initial Inga to CCI plan transfer ordered Dec 16th 1994 AT&T had to deny that plan transfer by Dec 31st 1994—Not Jan 23rd 1995. AT&T's unlawful failure to meet the 15 day requirement as to the INGA-CCI plan transfer should have not given AT&T the benefit of tolling the 15 day requirement of the CCI-PSE traffic only transfer.

34) AT&T's letter between AT&T counsel and PSE counsel was dated Jan 23rd 1995. The next day **Jan 24th 1995** CCI was notified by AT&T that it's Dec 16th 1994 Inga to CCI plan transfer required $13,540,000 deposit. Judge Politan Decision page 7 -8 here notes the Jan 24th 1995 denial:

[2] In actuality the tariff is conclusive that plaintiff's plans were grandfathered much longer than June 1996 as per the August 1996 tariff page submitted by plaintiffs. Additionally the FCC 1995 Order indicates the plans would always be immune. But for this particular argument even considering using AT&T's self-serving tariff interpretation, AT&T's Jan 23rd 1995 letter couldn't possibly be asserting it had the right in Jan 1995 to deny the transaction based upon 2.2.4 fraudulent use—when the plans didn't go into shortfall until June 1996 using AT&T's discontinuation with or without liability restructuring formula.

On January 24, 1995, AT&T notified CCI that none of the TSA's -- including those for Plans No.s 2829 and 3124 -- would be approved by AT&T until CCI submitted a security deposit of $13,540,000.00. This demand for a deposit was made in light of the fact that CCI was a "new" company without any credit rating

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Continued on Page 8 Politan May 1995 Decision

by which AT&T could consider its service plans secure.[6] Indeed, CCI was an inoperative company prior to the transfer of the Inga companies' plans. In demanding this deposit, AT&T was exercising its right under Tariff F.C.C. No. 2, § 2.5.8,[7] allowing AT&T to require a deposit of up to three months of the transferee's expected revenue commitment.[8] It is AT&T's practice to

35) AT&T incredibly asserted to the FCC in 2008 that its very late **plan denial** also served as a denial of the **traffic only** transfer. AT&T actually believed that somewhere in 2.1.8 it gave AT&T the right under to toll the 15 days as AT&T prepared for a future February 16th 1995 FCC filing—which AT&T ended up losing and **still did not process the order.**

36) Even though AT&T was asked to withdraw Tr 8179 and did on **June 2nd 1995** (Politan March 1996 Decision page 4) AT&T totally disregarded the FCC. AT&T continued to violate section 2.1.8 by totally shutting down "traffic only" transfers as AT&T's order processing manger Joyce Suek on **June 20th 1995** advised plaintiffs**, EXHIBIT G**

> Al --Per our Conversation, 6/19; an original TSA is now required for transfer activity. Additionally **we "no longer" process partial TSA's, the TSA must be for the whole plan.**

TSA is the 2.1.8 **T**ransfer **S**ervice **A**greement form and "partial TSA" is a traffic only transfer not a whole plan transfer.

37) AT&T counsel Charles Fash on July 7th 1995 also confirmed AT&T was still disregarding the FCC's denial of Tr8179 by no longer allowing traffic only transfers. **EXHIBIT H**

> "I will address the "partial TSA" issue first in general and then with your clients express and announced intentions. The Transfer of Service provision of the tariff addresses the issue of **transfer of service, not transfer of traffic** by moving individual locations from one plan to another. The proper way to move traffic (i.e. a subset of locations on a plan) between plans is to submit service orders **to delete the locations from one plan and add the locations to another**."

Plaintiffs traffic only transfer was Jan 13th 1995 and AT&T had no right on Jan 23, 1995 to toll the 15 day statute of limitations under 2.1.8, on its expected future filing of Tr. 8179 on February 16, 1995. AT&T on Jan 23 1995 did not deny the CCI-PSE transfer under any specific tariff clause.

THE FCC DOES NOT CONSIDER MARCH 1996 INJUNCTIVE RELEIEF

38) Ordering a traffic only transfer under 2.1.8 as the D.C Circuit decided was permissible under the tariff.[3] AT&T didn't assert in writing within the 15 days that it was denying the CCI-PSE transfer on fraudulent use ---which is what the FCC Orders of both 2003 and 2007 determined was AT&T's sole defense. However the FCC erroneously allowed AT&T to address its fraudulent use defense after the NJFDC took the extraordinary remedy of injunctive relief by ordering in March 1996 the traffic transferred as Judge Politan understood the plans were pre June 17th 1994 grandfathered and refused AT&T's demand for security deposit. March 1996 Decision page 11:

> In ruling on a motion for preliminary injunction, the Court must consider: (1) the likelihood of success on the merits; (2) the extent to which the plaintiff is being irreparably harmed; (3) the extent to which the defendant or other interested persons will suffer irreparable harm if the injunction is issued; and (4) the extent to which the public interest favors the granting of the requested relief. See Merchant & Evans, Inc. v. Roosevelt

[3] D.C. Circuit Decision stated on stated on pg.8:

> Absent such reliance, the commission provides us with little reason why the plain language of Section 2.1.8 fails to encompass transfers of traffic alone.

D.C. Circuit Decision stated on pg.10:

> As the foregoing discussion indicates, we find the Commission's interpretation implausible on its face. First, the plain language of Section 2.1.8 encompasses all transfers of WATS, and not just transfers of entire plans.

NJFDC Decision page 11: Judge Politan had no reason to suspect fraudulent use.

1990) (citations omitted). "[T]he grant of injunctive relief is an extraordinary remedy . . . which should be granted only in limited circumstances." Frank's GMC Truck Center, Inc. v. General Motors Corp., 847 F.2d 100, 102 (3d Cir. 1988) (citations omitted). "There is no power the exercise of which is more delicate, which requires greater caution, deliberation, and sound discretion, or more dangerous,in a doubtful case, than the issuing [of] an injunction." Falter v. Veterans Administration,

Below the NJFDC Court states "the onus is on AT&T"…..March 1995 Decision page 15:

warranted, but is mandated by the evidence proffered. Firstly, the Court finds that the scales of probability are tipped in favor of plaintiffs vis-a-vis likelihood of success on the merits. The onus is on defendant to convince the FCC that its Tariff FCC No. 2 prohibits the type of transfer attempted by plaintiffs. AT&T was the drafter of the tariff language at issue and, as such, must withstand the effects of any inadequacies or ambiguities therein, especially since there remains a vital question whether the FCC's construction of Tariff FCC No. 2 shall be accorded retroactive application. Plaintiffs' submissions suggest that a similar request from some other of AT&T's carriers has been granted by AT&T based upon its own construction of its Tariff language.[6]

The central issue in this controversy is whether plaintiffs may fractionalize "plans" as contracted between AT&T and its aggregators and as governed by Tariff F.C.C. No. 2. Specifically, the question is whether plaintiffs may transfer traffic under a plan without transferring the plan itself in order to obtain more attractive discounts for end users. The issue of whether Tariff F.C.C. No. 2 permits fractionalization

See below Judge Politan understood CCI remained with the commitments and still issued the injunction as there was no concern for fraudulent use……Page 17 footnote 7 & 8…..

[7] As previously referenced, AT&T's counsel represented that AT&T has initiated suit against PSE for shortfalls. In analyzing the instant motion, however, and in light of the fact that that suit was for the first time referenced orally at the hearing on this motion, the Court is not deterred by such litigation. Indeed, AT&T's own counsel focused the issue by indicating that the tariffed obligations involved herein "are all tariffed obligations, for which CCI, not PSE . . . would be obligated. See AT&T's Brief, filed with the Clerk of the Court on November 28, 1995, page 5. Therefore, it would appear that AT&T itself has acknowledged the irrelevance of its unrelated litigation against PSE.

[8] Apparently, per plaintiffs' representations, the likely threat of harm from recognizing another transfer -- identical to the transfer at issue herein -- was embraced by AT&T. See footnote 6, supra.

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Below we find Judge Politan denies AT&T's injunction request of $15 million dollars.

Politan March Decision page 19:

> "With regard to AT&T's projections as to shortfalls it anticipates will result from this injunction, the Court is unpersuaded that shortfalls are a real concern vis-à-vis the security issue."

Full page below….

With regard to AT&T's projections as to the shortfalls it anticipates will result from this injunction, the Court is unpersuaded that shortfalls are a real concern vis-a-vis the security issue. This is an industry which breeds aggregators and resellers who "commit" to certain service usage, and in which carriers both contract with and simultaneously compete against their own aggregators. Often these aggregators are little more than shell companies with no independent ability to cover their commitments -- even in the rare event that the carriers make a demand for the shortfall. This is the world in which AT&T operates. Aggregators/resellers are one of AT&T's vehicles for marketing its services. "Commitments" and "shortfalls" are little more than illusory concepts in the reseller industry -- concepts which constantly undergo renegotiation and restructuring. The only 'tangible' concern at this juncture is the service AT&T provides. The Court is satisfied that such services and their cost are protected. To the extent, however, that AT&T's demand for fifteen million dollars' security is premised on the danger of shortfalls, the Court finds that threat

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Below Judge Politan invites AT&T to prove AT&T should receive $15 million dollars.

March 1996 Decision page 20 and AT&T never did respond to Judge Politan's offer and decided to run to the Third Circuit to send the case to the FCC for further delay….

The Court shall permit the parties to revisit the issue of security at any time in the future upon the filing of appropriate papers supported by credible documentary or testimonial evidence.

An appropriate Order accompanies this Letter Opinion.

NICHOLAS H. POLITAN
U.S.D.J.

39) It is clear that the NJFDC had no issue regarding AT&T being deprived over shortfall. In any event Traffic only transfers are **not included** within the listed activities that constitute engaging in fraudulent use—yet alone "suspecting" fraudulent use, even if AT&T attempted to use it within 15 days—which it did not. The FCC 2003 Decision Page 5:

> Second, the Bureau asked the parties to "comment on the remedy that AT&T's Tariff FCC No. 2 specifies that AT&T may exercise if AT&T has **reason to believe** that its customer is **violating section 2.2.4.A.2** of that tariff by '[u]sing or attempting to use WATS with the **intent** to avoid the payment, either in whole or in part, of any of the Company's tariffed charges by … [u]sing fraudulent means or devices, tricks, [or] schemes.'"[4]

40) The questions of whether AT&T had a justifiable "reason to believe" and could serve as its own judge and jury to measure customer intent needs to be addressed first by the NJFDC. AT&T counsels Brown and Fash both conceded that in January 1995 AT&T could not have reasonably even suspected fraudulent use. The facts show:

A) The plans were pre June 17th 1994 grandfathered. The FCC noted Judge Politan did not even need to refer the June 17th 1994 issue to the FCC as his numerous statements that the plans were immune should have been taken into consideration by the FCC.[5]

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[4] *Second Public Notice*, 18 FCC Rcd at 1887-88.

[5] A) Judge Politan: **"**Suffice it to say that, with regard to **pre-June, 1994 plans**, methods exist for defraying or erasing liability on one plan by transferring or subsuming outstanding commitments into new and better plans pursuant to AT&T's own tariff." District Court Joint Appendix pg. 66

B) Judge Politan: "Commitments and shortfalls are little more than **illusionary concepts** in the reseller industry—concepts which constantly undergo renegotiation and restructuring. The only "tangible" concern at this juncture is the service AT&T provides. The Court is satisfied that such services and their costs are protected. To the extent however that **AT&T's demand for fifteen million dollars' security is premised on the danger of shortfalls,** the Court finds that threat neither

B) The FCC 1995 Order only further determines that the plans would continue to be immune and this Order was never considered within the FCC's 2003 and 2007 Orders.
C) The evidence shows the traffic could be taken back from PSE within 30 days' notice—thus no intent to suspect fraudulent use. [6]
D) The plans fiscal year commitments had already been met at the time of the Jan 1995 traffic only transfer.
E) The fact that plaintiffs understood it would continue to keep its tariffed revenue and time commitment is testimony that there was absolutely no reason to suspect violation of 2.2.4A.2.
F) The FCC denied Tr. 8179 based on the fact that AT&T should not be in a position where it can subjectively determine intent as certified by AT&T's counsel Richard Meade. [7]
G) AT&T's own counsel Charles Fash stated AT&T would have not have the right to suspect in Jan 1995 that there would be shortfall 18 months later in June 1996, on plans that AT&T counsel
H) Richard Brown conceded to the FCC that the plans were grandfathered from shortfall and termination charges in Jan 1995.
I) AT&T's June 21 1994 letter (Exhibit I) indicated that plans were grandfathered when restructured and thus no fraudulent use defense should have been acceptable in the first place.
J) In addition to AT&T's Main Billed Telephone Numbers order processing form plaintiffs also obtained from each end-user customer enrolled into the CSTPII/RVPP plan a signed **Letter of Agency** which gave plaintiffs total control over the end-users number to move the end-user locations between plaintiffs plans or to other AT&T resellers plans to insure commitments could be met and to do customer service etc. Plaintiffs did not have to notify the end user that their location was being moved from plan to plan and reseller to reseller because as long as they continued to utilize AT&T's underlying network and get the discounts they were happy. Plaintiffs did notify them anyway but the additional **Letter of Agency** gave plaintiffs additional control to avoid shortfalls w/o needing to restructure.
K) AT&T Account manager Joseph Fitzpatrick 23 years with AT&T: **See Exhibit J.**

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pivotal to the instant injunction **nor properly substantiated by AT&T**. March 1996 Politan Decision (page 19 para 1)

C) Judge Politan: "In answer to the court's questions at the hearing in this matter, Mr. Inga set forth certain methods for restructuring or refinancing by which resellers can and do **escape termination and also shortfall charges** through renegotiating their plans with AT&T."

[6] CCI and PSE did agree that the traffic could be returned to CCI upon 30 days written notice from CCI that AT&T required CCI to meet its commitments. *See* Exhibit G to Petition. Accordingly, at least theoretically, the traffic might have been returned to CCI at some point to enable it to meet any CSTP II obligations. *Cf.* Reply at 10 (arguing CCI would receive more net income, and thus have more money available to pay any charges, after the traffic was moved to PSE).
[7] The Deposit for Shortfall Charges included in Transmittal No. 9229 is a "new concept" that **meets AT&T's business concern** more directly, **without addressing the question of intent.** Because this is new, it will apply only to newly ordered term plans, and so would not be determinative of the issue presented on the CCI/PSE transfer. (Meade certification pg.7 para 16 **EXHIBIT W at** (**www.ATTFRAUD.info**)

> Joe Fitzpatrick: "If you keep the same VPP number only with a new start date it's not a new plan."
> Joe Fitzpatrick: The plan that you started prior, you know in **June of '94, prior to 6/17 as long as that VPP number doesn't change**, they can track back in the system and say that was a—they can show when it was originally started, **it was a pre 6/17 plan, its grandfathered.** True you may get a new TAS dated every time you restructure and as long as you do the restructure—if you time it right, if you screw up somehow and don't time it right that system is gonna kick in and hit you for shortfall. So you just need to, you know, keep your clock there to tell you when to restructure.

41) The 1995 FCC FOIA Notes indicate that that main issue with Tr8179 was AT&T's self-serving ability to judge intent. See FOIA Notes in plaintiffs initial brief Exhibit K (which is found at the 6th View (25) over from left)

See the FCC's AT&T tariff expert R.L Smith's notes that were made February 21 1995 to FCC's case manager Judith Nitche. See Para B. Joint Appendix (JA) page 116

R.L Smith commenting on AT&T's fraudulent Use claim:

> Two things to keep in mind about this one. First it indicates **intent** to and that is a **judgment call** which would have to be decided in a **complaint case** if the matter came up.

Further down in the same para….

> 'it does not even take **intent** into account but **assumes it is there"**

42) AT&T tied to retroactively change 2.1.8 because it was not already implicit in 2.1.8 that AT&T could prohibited the CCI-PSE transfer. AT&T lost the Tr8179 Substantive Cause Pleading as the FCC's R. L. Smith advised AT&T's SC pleading "does not make sense."

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.

8

43) The FCC should have simply taken into consideration that NJFDC Judge Politan in March 1996 ordered the traffic transferred and denied AT&T's security deposit request. He clearly understood plaintiff's plans were grandfathered. The FCC should have ended the fraudulent use defense on the fact that the NJFDC already decided there should not have been any speculation as to future fraudulent use. That's the issue of the FCC evaluating fraudulent use. It is a **disputed**

fact as to whether AT&T had the merit to **raise this defense in the first place**—not even considering that AT&T did not raise it within 15 days and loses the case on statute of limitations. Therefore AT&T has no reason to suspect fraudulent use. Therefore there was no reason to suspect being deprived of shortfall.

44) As the FCC's R.L Smith recognized AT&T incredibly was allowed before the FCC to get to 1st base by arguing fraudulent use when the NJFDC already denied that argument in March 1996. AT&T was allowed to rely upon the fraudulent use provision by merely SUSPECTING fraudulent use. The June 17th 1994 provision is before the Jan 1995 transfer. The FCC by entertaining the traffic transfer before the pre June 17th 1994 issue is resolved is putting the cart before the horse.

45) The FCC's Counsel Bourne flat out told the D.C Circuit that "there are other aspects to this that the Commission didn't rule on" and "so it could well be that there were little or no shortfall charges." D.C. Oral Argument (Pg. 27 Line 2):

> MR. BOURNE: Well, CCI still had the obligation to pay its shortfall charges, and there's, there are **other aspects to this** that the **Commission didn't rule on.** I mean, for instance --
> JUDGE GINSBURG: Whether they were **grandfathered?**
> MR. BOURNE: **Right.** So it could well be that there were little or **no shortfall charges**.

46) So the FCC evaluating a Fraudulent Use defense --- after the 15 days----without even taking into consideration that the plans were pre June 17 1994 grandfathered as indicated as per the tariff and additionally FCC Ordered Oct 23 1995, makes absolutely no sense. The FCC must simply end the case on the 15 days statute of limitations. It can also end the case on the fact that the fraudulent use defense should not have been permitted in the first place as the NJFDC Judge Politan clearly understood the plans were immune and thus issued his March 1996 order to transfer the traffic. Judge Politan's March 1996 Decision to transfer the accounts was not overturned on faulty logic. His March 1996 Decision was simply vacated on primary jurisdiction grounds. The FCC should have simply respected his overwhelming clear, non-referred June 17th 1994 position that plaintiffs CSTPII/RVPP plans were grandfathered.

47) Judge Wigenton can and must decide against AT&T as no tariff interpretation is necessary as AT&T clarified this was a statute of limitations date of 15 days, that if not met precluded the raising of any defenses. Under the Administrative Procedure Act the Commission can decide whether a declaratory ruling is necessary to "terminate a controversy or remove uncertainty."[8] AT&T's refusing to move the traffic was unlawful and violated subsection 203(c) of the Communications Act.

48) The FCC does not end the case on the 15 days statute of limitations it must temporarily suspend the declaratory ruling request as the above facts clearly indicate that the NJFDC should be able to resolve a clear statute of limitations fact issue.

Additionally, the FCC released its 2007 Order and stated:

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[8] 5 U.S.C. § 554(e); 47 C.F.R. § 1.2; *see also* 47 U.S.C. §§ 154(i), (j).

> When, as here, a petition for declaratory ruling derives from a primary jurisdiction referral, the Commission also **will seek to assist the referring court** by resolving issues arising under the Act. That is our goal here.

49) The FCC "goal" was not accomplished. The FCC's 2007 Order determined that the 2006 NJFDC referral on which obligations transfer did not expand the scope of the original controversy/uncertainty of fraudulent use and thus was a moot issue. That 2007 Order was written by the FCC in expectation that it would "resolve" the issue but it did the opposite.

50) The FCC 2007 Order was not explicit and as evidenced in plaintiffs February 4th 2016 filing (Plaintiffs response to AT&T 1.22.16 and 2.1.16 comments (38)) it enabled AT&T counsels to intentionally mislead the NJFDC. Plaintiffs requested that the FCC 2007 Order be clarified many months ago **prior to** plaintiffs recognizing how AT&T misled NJFDC Judge Wigenton. The FCC refused to even give a reason for denying the motion to clarify the 2007 Order. Now that the FCC has seen the manipulation of the FCC Order by AT&T's counsels, plaintiffs respectfully request that the FCC addresses plaintiff's motion.

51) In 1995, AT&T, as well as all common carriers of interstate and foreign telecommunications, was required, under section 203 of the Act, to file with the Commission one or more "schedules" of its charges and the classifications, practices, and regulations affecting such charges.[9] With respect to the services at issue in the instant proceeding, this "schedule" was AT&T's Tariff FCC No. 2. Once filed, a tariff is a public document.[10] It defines the terms and conditions upon which a carrier offers and provides services to its customers.[11] Tariffed charges, classifications, regulations or practices may be changed only after notice is given to the Commission and the public.[12] The Commission regulates the substance of tariff provisions and is authorized to suspend or reject the effectiveness of a proposed tariff provision when it believes such provision will violate the Act.[13] When, as here, service is provided pursuant to a filed tariff, the tariff controls the rights and responsibilities of the customer and the carrier, as a matter of law.[14] Thus, the "filed tariff doctrine" requires carriers, as well as their customers, to abide by the terms of the tariff and precludes carriers from acting outside it.[15] AT&T's tariff at section 2.1.8 did not allow AT&T to prohibit service if not denied in writing with 15 days. Assuming that AT&T reasonably suspected "fraudulent use" under section 2.2.4, it was mandatory that AT&T in writing within 15

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[9] 47 U.S.C. § 203.
[10] 47 U.S.C. § 203(a).
[11] *See, e.g., Brown v. MCI WorldCom Network Services, Inc.*, 277 F.3d 1166, 1170 (9th Cir. 2002); *AT&T v. City of New York*, 83 F.3d 549, 552 (2nd Cir. 1996)(citing 47 U.S.C. § 203(a)).
[12] 47 U.S.C. § 203(b)(1).
[13] 47 U.S.C. § 204.
[14] *Lowden v. Simonds-Shields-Lonsdale Grain Co.*, 306 U.S. 516, 520 (1939) (cited in *Brown*, 277 F.3d at 1170; *ICOM Holding Inc. v. MCI WorldCom*, 238 F.3d 219, 221 (2nd Cir. 2001)).
[15] *See AT&T v. Central Office Telephone*, 524 U.S. 214, 222-23 (1998); *MCI WorldCom v. FCC*, 209 F.3d 760, 762 (D.C. Cir. 2000). The "filed tariff doctrine" has been applied frequently to preclude customers from enforcing alleged carrier promises that are not specified in the tariff. *See, e.g., Central Office Telephone*, 524 U.S. 214; *ICOM*, 238 F.3d at 221-23; *Marco Supply Co. v. AT&T Communications, Inc.*, 875 F.2d 434, 436 (4th Cir. 1989).

days deny the transfer and explicitly state the reason. AT&T not only failed to meet the mandatory 15 days statute of limitation AT&T relied upon a section of the tariff 2.2.4 which does not include legitimate transfers of service.

52) Furthermore if the fraudulent use could be relied upon the remedy under its tariff for the type of fraud it claims it suspected was suspension of service, not refusal to move the traffic. Accordingly, when AT&T availed itself of a remedy not "specified" in its tariff, that action was unauthorized. Petitioners request for declaratory relief due to the fact that AT&T did not within 15 days providing in writing a denial of its sole defense of fraudulent use and thus AT&T had no legal basis to have not provided service within the 15 days by transferring the designated locations from Combined Companies Inc (CCI) to Public Services Enterprises (PSE).

53) This is a simple fact based 15 days statute of limitations issue that doesn't need a tariff interpretation. It is conclusive under the tariff that AT&T had to provide service for both the Inga –CCI plan transfer and the CCI-PSE traffic only transfer within 15 days. Therefore AT&T violated section 201(a) of the Communications Act of 1934 by refusing "service" to plaintiffs by inter alia, failing to acknowledge the CCI-PSE transfer within 15 days. The FCC should temporarily suspend the Declaratory Rulings and allow the NJFDC Judge to address:
1) 15 days statute of limitations was not met.

2) the pre June 17th 1994 grandfather issue that defeats AT&T's sole defense of fraudulent use on its merits is the law of the case as this issue was not referred by Judge Politan. Judge Politan denied AT&T security deposits premised on the dangers of shortfall. Judge Politan did not get vacated due to a faulty decision—it was vacated on primary jurisdiction grounds.

3) The FCC 2003 Decision states Discrimination and Unreasonable Practices must be handled by the NJFDC.

4) Allow plaintiffs to show Judge Wigenton how AT&T intentionally manipulated the interpretation of the 2007 FCC Order and advise her Court that Judge Bassler's referral on which obligations transfer did not expand the scope of the Third Circuit Referral that covered fraudulent use and thus is moot.

Very truly yours,
Raymond A. Grimes, Esquire

Exhibit A

AT&T Brief to D.C. Circuit

Transfer of Service Agreement and Notification forms, Exhibit H to Petition for Declaratory Ruling (JA ___). At the bottom of each of these transfer of service forms, a handwritten notation requested that AT&T move the "traffic only" on each plan from CCI to PSE and keep the plan itself, including all associated commitments and liabilities, with CCI. *Id.* CCI and PSE thereby sought to move all of the revenue producing telephone numbers in the nine CSTP II plans to PSE, but leave all of the obligations arising under those plans with CCI.

AT&T denied this second proposed transfer to PSE on January 27, 1995. AT&T objected to this requested transfer of telephone numbers to PSE without the associated CSTP II plans on two grounds.[8] First, the "Transfer or Assignment" provision in Section 2.1.8 of AT&T's tariff did not allow the transfer of WATS service to a new customer unless the new customer agreed to assume "all obligations" of the former customer, which PSE had not done. *See Declaratory Ruling* at n.26. Second, AT&T objected that the proposed "traffic only" transfer violated the "Fraudulent Use" provision in Section 2.2.4 of the tariff. In particular, because CCI would have transferred all the revenue producing telephone numbers to PSE without any of the accompanying obligations of the customer under the CSTP II plans, and because CCI would have had no revenue or other means of meeting its obligations under those plans, the proposed transfer had the purpose and effect of avoiding, in whole or in part, liability for tariffed shortfall and/or early termination charges under the plans. *Id.*

4. The Proceedings Below. In February 1995, the Inga Companies and CCI brought suit against AT&T in the United States District Court for the District of New Jersey and challenged AT&T's refusal to effect either of the proposed transfers. *See Declaratory Ruling* ¶

"after that date, [Winback & Conserve] ceased to provide interstate communications services").

[8] AT&T also initially objected to this transfer on the ground that CCI was not the customer of record for the plans, and hence was not authorized to transfer the traffic. *Declaratory Ruling* ¶ 4. That objection was mooted when the plans were transferred from the Inga Companies to CCI.

EXHIBIT B

All AT&T Defenses are thus Barred
AT&T failed the 15 day statute of limitations in 2.1.8

READ FROM BOTTOM UP

From: Al [mailto:ajdmm@optonline.net]
Sent: Tuesday, March 31, 2015 2:28 PM
To: Brown, Richard
Cc: 'Deena Shetler'; 'Pamela Arluk'; randolph.smith@fcc.gov; Frank Arleo (Frank.Arleo@arleodonohue.com); 'JoAnn Dobransky' (joann.dobransky@adblawfirm.com)
Subject: RE: Richard -- Please provide this information...

Richard

I have received confirmation of your receipt of my email. We will just assume you have no such Jan 27th 1995 denial of the CCI-PSE traffic only transfer under 2.1.8 as your brief to the DC Circuit stated.

Enjoy the holiday.

Thank you
Al

From: Brown, Richard H. [mailto:rbrown@daypitney.com]
Sent: Monday, March 30, 2015 6:32 PM
To: ajdmm@optonline.net
Subject: Read: Richard -- Please provide this information...

Your message

To: Brown, Richard H.
Subject: Richard -- Please provide this information...
Sent: Monday, March 30, 2015 6:31:21 PM (UTC-05:00) Eastern Time (US & Canada)

was read on Monday, March 30, 2015 6:31:32 PM (UTC-05:00) Eastern Time (US & Canada).

****
This message contains PRIVILEGED AND CONFIDENTIAL INFORMATION intended solely for
the use of the addressee(s) named above. Any disclosure, distribution, copying or use of the information by others is strictly prohibited. If you have received this message in error, please

notify the sender by immediate reply and delete the original message. Thank you.
****
****

From: Al [mailto:ajdmm@optonline.net]
Sent: Monday, March 30, 2015 6:31 PM
To: Brown, Richard
Cc: 'Deena Shetler'; 'Pamela Arluk'; randolph.smith@fcc.gov
Subject: Richard -- Please provide this information...

Richard

AT&T claimed to the DC Circuit that it denied the CCI-PSE order of Jan 13th 1995 on Jan 27th 1995 in order to comply with the 15 day statute of limitations clause within tariff section 2.1.8.

It appears AT&T simply fabricated that Jan 27th 1995 date. I have a letter from AT&T Counsel Fred Whitmer dated 2.6.95 that is only a fraudulent use warning letter. Obviously AT&T did not first deny the transaction and then a week later only issued a warning letter! The 2.6.95 letter is clearly the first correspondence received from AT&T after the transaction.

Plaintiffs understand that AT&T will not be opposing writ of mandamus with the DC Circuit. I do want to give AT&T the opportunity to address why it intentionally scammed the DC Circuit on this case concluding critical issue?

Please send me the denial document.

Thank you
Al Inga

EXHIBIT C

PITNEY, HARDIN, KIPP & SZUCH

MAIL TO:
P. O. BOX 1945
MORRISTOWN, NEW JERSEY 07962-1945

DELIVERY TO:
200 CAMPUS DRIVE
FLORHAM PARK, NEW JERSEY 07932-0950

FLORHAM PARK (201) 966-6300
NEW YORK (212) 826-0331

FREDERICK L. WHITMER

DIRECT DIAL NUMBER
(201) 966-6040

TELEX 642214
FACSIMILE (201) 966-1561

February 6, 1995

VIA TELECOPIER FACSIMILE
AND REGULAR MAIL

H. Curtis Meanor, Esq.
Podvey, Sachs, Meanor, Catenacci,
Hildner & Cocoziello
One Riverfront Plaza
Newark, NJ 07102-5497

Re: Alfonse G. Inga

Dear Mr. Meanor:

Two matters respecting your client, Alfonse Inga, require immediate attention. The first relates to Mr. Inga's widespread and frequent phone calls to various AT&T personnel with the intention of asking questions and audiotaping their answers. It is clear to AT&T that Mr. Inga's questions are intended to set up position-paper letters that he writes AT&T and are not intended to be genuine questions that he has concerning his business. We regard Mr. Inga's conduct as improper and merely an attempt at subterfuge for discovery. You should tell Mr. Inga to discontinue this practice immediately; otherwise we will have to take up this matter with the Court.

The second matter is of equally serious concern. We have reason to believe that Mr. Inga is attempting to transfer end users from existing plans that have over $50 million on commitments. Mr. Inga's efforts to transfer these end users and leave the plans intact with their commitments, but without the ability to satisfy those commitments, appears to us to be an attempt to defraud AT&T by obtaining the benefits of a transfer of service and at the same time deprive AT&T of the commitments made to obtain that service. AT&T will not tolerate that conduct. AT&T will seek to enforce its rights in the event shortfall and termination charges become due under the tariff and will hold Mr. Inga personally liable for his

conduct intended to deprive AT&T of its tariff charges. If this strategy is intended by Mr. Inga to culminate in the bankruptcy of his affiliated companies, AT&T intends to object to these transfers as fraudulent under §523(a)(2) of the Bankruptcy Code and to pursue any available rights AT&T has.

Please bring these matters to your client's attention immediately and advise me of his response.

Very truly yours,

FREDERICK L. WHITMER

FLW/erc

cc: Edward R. Barillari, Esq.

EXHIBIT D

2.1.7. Limitations on the Provision of WATS (continued)

B. Restoration of Service - In the event of failure, WATS will be restored in compliance with Part 64, Subpart D, of the FCC's Rules and Regulations.

C. Hazardous Locations - An access line will not be furnished at a location the Company considers hazardous (e.g., explosive atmosphere environments). In such cases, the Company, if so requested, will terminate the access line at a mutually agreeable alternate location. The Customer will then be responsible for extension of the access line to the hazardous location.

2.1.8. Transfer or Assignment - WATS, including any associated telephone numbers, may be transferred or assigned to a New Customer, subject to each of the following provisions: Sx ..

A. The Customer of record (Current Customer) requests in writing (using a standard AT&T Transfer of Service form available from AT&T)* that AT&T transfer or assign the service to the New Customer. The standard AT&T Transfer of Service form shall not contain terms that are inconsistent with the terms of this Section, and shall not impose any obligations on the Current Customer or the New Customer other than as provided in this Section.

B. The New Customer notifies AT&T in writing (using the same Transfer of Service form signed by the Current Customer)* that it agrees to assume all obligations of the Current Customer as of the Effective Date of the transfer. These obligations include, for example: all outstanding indebtedness for the service, the unexpired portion of any applicable minimum payment period(s), the unexpired portion of any term of service and usage and/or revenue commitment(s), and any applicable shortfall or termination liability(ies).

C. The service is not interrupted at the time the transfer or assignment is made. Sx

Sx

D. The Current Customer will no longer be AT&T's Customer for the service as of the Effective Date of the transfer, which will be the earlier of the date on which AT&T provides to the New Customer a written acceptance of the transfer or assignment, **or the fifteenth day** after AT&T receives a fully executed original of the Transfer of Service form, **except:** Sx Sx Cy Sx Cy

1. The transfer **will not be effective if, within fifteen days** after AT&T receives a fully executed original of the Transfer of Service form, AT&T provides to the New Customer a written rejection of the requested transfer. AT&T may not unreasonably reject a transfer or assignment of service. AT&T may, for example, reject a transfer or assignment of service if the Current Customer or New Customer fails to supply the executed original(s) of the Transfer of Service form, fails to adequately identify the Current Customer or the service being transferred, **asks that the transfer or assignment be made subject to conditions, or fails to furnish a deposit required in connection with the intended transfer pursuant to Section 2.5.8, following. AT&T will provide a written statement of its reason(s) for rejecting a transfer or assignment of service.** Ny ..

*** The requirement that the transfer or assignment be made using the standard AT&T Transfer of Service form shall apply to transfer or assignment requests made on or after July 1, 1996.** ..

Certain material previously found on this page can now be found on Page 20.1. Ny

x Effective date of material filed under Transmittal No. 9229 is advanced to May 10, 1996 under authority of Special Permission No. 96-0468.

y Issued on not less than one day's notice under authority of Special Permission No. 96-0468.

Cy

** All material on this page is reissued except as otherwise noted. **

2.1.8.D. Transfer of Assignment (continued)

2. **If, within fifteen days** after AT&T receives a fully executed original of the Transfer of Service form, AT&T notifies the Current Customer or New Customer in writing that a deposit is required in connection with the intended transfer pursuant to Section 2.5.6., preceding, **and the requested transfer is not otherwise rejected as provided** in 1., preceding, then the Effective Date of the transfer will be the date on which the deposit is furnished, provided that the requested transfer or assignment will be deemed to be withdrawn if a required deposit is not furnished within thirty (30) days after the date the deposit request is made. Nx

E. The Current Customer remains jointly and severally liable with the New Customer for any obligations existing as of the Effective Date of the transfer, except as provided in 1., following. These obligations include, for example: all outstanding indebtedness for the service, the unexpired portion of any applicable minimum payment period(s), the unexpired portion of any term of service and usage and/or revenue commitment(s), and any applicable shortfall or termination liability(ies). Mx Nx Mx

1. If the service being transferred or assigned is subject to an AT&T term plan, flex plan, or other discount plan with revenue or volume commitments offered under this Tariff, or a Contract Tariff under which WATS is provided (a Pricing Plan), then, to the extent specified in (a) through (c) following, the Current Customer is relieved of liability for charges that may be incurred after the Effective Date of the transfer, either as a result of a failure to meet revenue or volume commitments or monitoring conditions associated with such Pricing Plan (Shortfall Charges) or as a result of the discontinuance with liability of such Pricing Plan (Termination Charges). For purposes of these provisions, a charge is incurred on the date that the events giving rise to the charge become fixed (i.e., on the last day of a commitment period or the day on which a Pricing Plan is discontinued), not on the date the charge is billed.

(a) For a Shortfall Charge incurred for a commitment period that includes the Effective Date of the transfer, the Current Customer remains jointly and severally liable with the New Customer only for a percentage of the total Shortfall Charge equal to the number of days in the commitment period prior to such Effective Date divided by the total number of days in the commitment period.

(b) For a Termination Charge incurred less than 180 days after the Effective Date of the transfer, the Former Customer remains jointly and severally liable with the New Customer only for a percentage of the total Termination Charge equal to the difference between 180 and the number of days between such Effective Date and the date on which the Termination Charge is incurred, divided by 180.

(c) For a Shortfall Charge incurred for a commitment period after the commitment period that includes the Effective Date of the transfer, or for a Termination Charge incurred at least 180 days after the Effective Date of the transfer, the Former Customer is fully relieved of liability

F. Nothing herein or elsewhere in this tariff shall give any Customer, assignee, or transferee any interest or proprietary right in any 800 Service telephone number.

Certain material on this page formerly appeared on Page 20.
Effective date of material filed under Transmittal No. 9229 is advanced to May 10, 1996 under authority of Special Permission No. 96-0468.
x Issued on not less than one day's notice under authority of Special Permission No. 96-0468.

Exhibit E

AT&T

Merle Craig Bloch
Attorney

Room 3232A3
295 North Maple Avenue
Basking Ridge, NJ 07920
908 221-6716
FAX 908 953-8360

January 23, 1995

Colleen Boothby, Esq.
Levine, Blaszak, Block & Boothby
1300 Connecticut Avenue, N.W.
Suite 500
Washington, DC 20036

Re: Combined Companies and Public Service Enterprises

Dear Colleen:

This will confirm our conversation Friday regarding the proposed traffic transfer between CCI and PSE. You will recall that my CPNI obligations prevented my discussion of Mr. Inga's plans and CCI. I did inform you, however, that before the CCI-to-PSE transfer could be renewed, CCI must first establish service with AT&T, including satisfying AT&T's credit guidelines. After that point, the CCI-to-PSE transfer, if consistent with tariff obligations, could be effectuated.

I inquired of my clients regarding PSE's statement that AT&T allegedly accepted the Inga-to-CCI TSA's. I am informed that no such acceptance ever occurred.

I trust this memorializes our conversation accurately.

Sincerely yours,

Merle

Merle Craig Bloch

EXHIBIT F

AT&T

Charles H. Fash
Senior Attorney

Room 3233B1
295 North Maple Avenue
Basking Ridge, NJ 07920-1001
908 221-8021
FAX 908 953-8360
ATTMAIL: lcfash

July 3, 1996

Via Facsimile and Certified Mail (Return Receipt Requested)

Larry G. Shipp
Combined Companies, Inc.
7061 West Commercial Boulevard, Suite 5K
Tamarac, Florida 33319

Dear Mr. Shipp:

This letter responds to your June 25 letter to me (Attachment A, enclosed) and also to your June 18 letter to Carl Williams (Attachment B, enclosed). I will not engage in the kind of self-serving rhetoric that characterizes your letter to me, and will instead address the substantive issues you have raised.

You claim that AT&T, by placing tariffed shortfall charges on bills sent to CCI's end-user locations, was somehow stepping outside the established forum for resolution of the collection dispute (supposedly, the pending lawsuit between the parties). In fact, however, this is a new dispute that has nothing to do with the pending suit. Indeed, the relevant period for calculation of the shortfall charges in issue did not expire until March 31, 1996, and the charges were then billed on the June 1, 1996 bills. AT&T's claim for payment of these charges obviously could not have been the subject of litigation until both of these events had occurred.

Although you also complain that we "did not have to do what [we have] done," (i.e., include the shortfall on bills to end-user locations) you recognize that billing is necessary under the tariff. That reduces your complaint to one about whether we should have apportioned the shortfall charges to the bills sent to the locations on your plans. This billing methodology is specified in AT&T Tariff F.C.C. No. 2 at Section 3.3.1.Q. (Attachment C, enclosed), which provides that shortfall charges "will be apportioned according to usage and billed to the individual locations designated by the Customer for inclusion under the plan." I should note that in spite of the methodology set forth in the tariff, AT&T offered, as an accommodation to CCI, to bill the shortfall charges to CCI's headquarters account rather than to the locations on the plan. You refused this offer, and thus have no cause for complaint. We understand from your subsequent correspondence, though, that you do not wish to have the end-user locations billed. AT&T will, therefore (as we offered to do previously), remove the outstanding shortfall charges from the end-

Exhibit G

One Stop Financial

55 Main Street, Little Falls, NJ 07424
Tel.: (800) 245-1826 Fax: (800) 338-0409

Date: 6/15/95

Page: 1 of 2

Facsimilie Cover Sheet

Attention: Joyce Sick

Phone #:

Fax#:

From: Al Biga

Comments: Please transfer all BTN's under Darren B. Swain Inc. to Al's plan, which only has a $1000/mo commitment, Al doesn't recall the plan and number

6/20/95 Al - Per our conversation yesterday Monday 6/19; an original TSA is now required for transfer activity. Additionally we no longer process partial TSA's, the TSA must be for the whole plan.

JSnek

EXHIBIT H

Charles H. Fash
Senior Attorney

Room 3232B1
295 North Maple Avenue
Basking Ridge, NJ 07920-1001
908 221-8021
FAX 908 953-8350
ATTMAIL lcfash

July 7, 1995

Charles H. Helein, Esquire
Helein & Waysdorf, P.C.
1850 M Street, N.W., Suite 550
Washington, D.C. 20036

Re: US Communications, Inc. and Darren B. Swain, Inc.

Dear Mr. Helein:

Your letter of June 27, 1995 to Meric Bloch regarding your above-referenced clients has been referred to me for response. I understand the two concerns raised in your letter to be that AT&T has refused to process a Transfer of Service Authorization ("TSA") transferring substantially all of the locations associated with a CSTP II plan in the name of Darren B. Swain, Inc., to another reseller, and that AT&T has refused to extend the term commitment for the same plan pursuant to AT&T Tariff F.C.C. No. 2, Section 2.5.7. I have spoken to Sharon De Mills, the AT&T Account Manager referenced in your letter, about both of these issues.

With respect to the requested transfer, it is my understanding that Mr. Swain informed Ms. De Mills that his intention was to move all but two locations from the plan in question to another reseller, thus leaving the plan structure technically in place in the name of Darren B. Swain, Inc., but effectively rendering it an empty shell. Mr. Swain did not advise Ms. De Mills that he intended to add new locations to the plan to replace the traffic thus removed. With that background in mind, I will address the "partial TSA" issue first in general, and then with respect to your client's express and announced intentions.

2.1.8 The Transfer of Service provision of the tariff addresses the issue of transfer of service, "not transfer of "traffic" by moving individual locations from one plan to another. The proper way to move "traffic" (i.e., a subset of locations on a plan) between plans is to submit service orders to delete the locations from one plan and add the locations to another. Your assertion that AT&T has somehow

EXHIBIT I

AT&T

Thomas Umholtz
Sales Manager
Specialized Markets Division

Room 2B55
5000 Hadley Road
South Plainfield, NJ 07080
908 668-3504
FAX: 908 668-6779

June 21, 1994

WINBACK & CONSERVE PROGRAM
55 Main Street
Little Falls. N.J. 07424

Dear Mr. Inga:

This letter is a collective response from Special Markets Division (SMD), Resale Product Management, and the Minneapolis Front End Center (MFEC) regarding your request to either restructure or retroactively start a CSTPII for May usage.

In April, 1994, you requested to restructure CSTPII #1583 for May usage. According to Ms. Lisa Hockert and Ms. Joyce Suek, from the MFEC, they advised you on May 2or3, 1994 that Location Specfic Term Plan (LSTP) end-users moving to your restructured plan would incur termination liability charges. Both Lisa and Joyce state that you were informed of this during your monthly "work plan" conference call and that you told them to move forward on the restructure.

As a courtesy to you and the LSTP end-users, Ms. Deb Kibby also from the MFEC, contacted you on May 31, 1994, to advise you again of the possible tariffed termination liability. After this second reminder, you submitted a new CSTPII instead of a restructured plan. Your request for a new CSTPII (dated May 31, 1994) is within the time frame required and has been accepted for June usage. However, your additional request for a new CSTPII (submitted on 6/6/94) back-dated to April 30, 1994, was rejected. Consistent with its tariff and established procedures, AT&T will not accept commitments that are retroactive to previous billing periods.

As previously mentioned, your request was reviewed collectively by the AT&T organizations that support your business. We are confident that this past issue can be considered closed and both companies can move forward on discussions regarding contract offerings.

Sincerely,

Tom Umholtz

Tom Umholtz

AT&T states restructured CSTP II PLANS ARE NOT new plans.

cc:G.Brown
M.Block esq
M.Nascimento
L.Hockert
J.Suek
D.Kibby

EXHIBIT J

Transcribed by Rizman, Rappaport, Dillon, & Rose
Certified Court Reporters
Tape 7 at 6-7:

Joe Fitzpatrick: If you get a new VPP number, you get a new plan. If you keep the same VPP number only with a new start date, **it's not a new plan.** So if they should give you a new plan VPP number….
Mr. Inga: Yeah
Joe Fitzpatrick You were given a new plan.
Mr. Inga: Alright but say the VPP stays the same.
Joe Fitzpatrick: Stays the same, all you have then is a new TASD --Term Assumption Starting Date, you have and original plan whatever TAS you wanna call that an ABC plan or whatever but its, its just a new TAS date. If you were grandfathered, you know how that game is played.
Mr. Inga: Now what I am saying is this, theoretically, there can never be a penalty assessed on a restructured plan because that plan—because AT&T has already interpreted that a restructure is not a new plan, that TAS date will start but the VPP ID, VPP dictates whether it's a new plan or not.
Joe Fitzpatrick: If you kept the same VPP number---
Mr.Inga Yes.
Joe Fitzpatrick: The plan that you started prior, you know in June of '94, prior to 6/17 **as long as that VPP number doesn't change**, they can track back in the system and say that was a –they can show when it was originally started, it was a pre 6/17 plan, it's **grandfathered.** True, you may get new TAS dates every time you restructure and as long as you do the restructure---if you time it right, if you screw up somehow and don't time it right, that system is gonna kick in and hit you for shortfall. So you just need to, you know, keep your clock there to tell you when to restructure.