UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHAMBERS OF
NICHOLAS H. POLITAN
JUDGE

MARTIN LUTHER KING JR.
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LETTER OPINION
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Re: Combined Companies, Inc., et al
v. AT&T Corp.
Civil Action No. 95-908 (NHP

Dear Counsel:

This matter comes before the Court on a motion for partial reconsideration of this Court's Letter-Opinion dated May 19, 1995 ("the Opinion"), brought by plaintiff Winback and Conserve Program, Inc. ("Winback").[1] In the Opinion, the Court referred certain of the issues at the heart of this litigation to the Federal Communications Commission ("FCC")[2] for adjudication pursuant to the doctrine of primary jurisdiction.

The events and facts giving rise to this controversy are set forth in the Opinion and need not be restated herein. However, further developments and certain conduct by the parties subsequent to the Opinion mandate that the Court now revisit the case and determine whether interim relief ought to be granted pending the outcome of the FCC's determination.

In the Opinion, the Court ordered that defendant AT&T Corporation ("AT&T") recognize and service Winback's transfer of certain 800 service aggregation plans to CCI. However, in light of the FCC's primary jurisdiction over such issues, the Court

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[1] Winback's application is joined by Combined Companies, Inc. ("CCI"), a fellow plaintiff in this action.

[2] Despite plaintiffs' contentions at the hearing on this motion, the Court cannot on the present record conclude the primary jurisdiction no longer vests with the FCC. As set forth at length in the Opinion, the Court must defer to the FCC on the interpretation of the Tariff provisions governing plaintiffs' proposed transaction. That fact notwithstanding, the Court is competent to reevaluate the parties' positions as they await -- interminably, it seems -- such an interpretation.

referred the question of whether the FCC tariffs governing the instant aggregators permit the fractionalization of plans such that the traffic under a plan may be transferred while the plan itself remains with the transferror. Specifically, the Court referred to the FCC the issue of "whether § 2.1.8 [of Tariff FCC No. 2] permits an aggregator to transfer traffic under a plan without transferring the plan itself in the same transaction." Opinion at 15.[3]

When the Court issued the Opinion and Order in this matter in May of 1995, there was pending before the FCC a request by AT&T that the Commission determine the very issue outlined above. AT&T had filed Tariff Transmittal 8179 with the FCC seeking guidance on whether Tariff FCC No. 2 contemplated the transfers at issue herein. The Opinion deferred to the FCC's primary jurisdiction on that matter. Specifically, the Court's Order of that date stated:

> ORDERED that the issue of the transfer of the aforesaid plans and/or their traffic as between Combined Companies, Inc. and Public Service Enterprises of Pennsylvania, Inc. and its compliance or not with the terms of the governing tariff be referred to the Federal Communications Commission for adjudication under the doctrine of primary jurisdiction . . . .

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[3] At the most recent hearing in this matter, defendants' counsel informed the Court that AT&T has recently instituted suit against Public Service Enterprises of Pennsylvania, Inc. ("PSE") -- the intended repository of traffic under the fractionalized plans -- to recover upwards of $80,000,000 in shortfall charges. That action, however, is not before this Court and does not directly affect the determination of the instant motion. The Court is not satisfied that the danger of shortfalls on the instant transaction are either tied to or contingent upon any action between AT&T and PSE. See footnote 7, infra.

May 19, 1995 Order of this Court.

Plaintiffs now ask the Court to reconsider its May 19, 1995 determination on the grounds that AT&T has thwarted the FCC's ability to determine the issue by use of dilatory tactics and by outright abuse of the process -- directly counter to the letter and intent of the Court's earlier ruling.

For the purposes of the instant determination, it is uncontested that AT&T withdrew Transmittal 8179 on June 2, 1995. As such, the FCC ruling which the Opinion anticipated (premised on the then-existing facts) could not issue. However, in August of 1995, AT&T represented to the Court that it had withdrawn Transmittal 8179 at the behest of the FCC, and was in the process of revising the transmittal in preparation for its resubmission. In its August 28, 1995 letter to the Court, AT&T stated:

> AT&T has since revised the Transmittal language that would clarify existing rights and obligations when a customer desires to transfer a large proportion of traffic of term plans available under Tariff No. 2. . . . AT&T has also planned to include other proposed tariff revisions in this new (and as yet unnumbered) Transmittal.

AT&T's correspondence of August 28, 1995, pp. 2-3.

AT&T professed to the Court that it had incurred delays due to its seeking comment from the Telecommunications Resellers Association, but that it intended to submit its revised tariff transmittal with the FCC in September of 1995. As such, at that time, the Court took the matter under advisement, believing that the urgency of plaintiffs' motion for reconsideration was diffused by AT&T's representation. However, in their October 10,

1995 correspondence to the Court, plaintiffs represented that AT&T had still not submitted its revised transmittal with the FCC. Moreover, plaintiffs reiterated their consistent contention that any FCC construction of the relevant tariff language could have prospective effect only. At that time, Charles Helein, counsel for one of the plaintiffs, predicted that:

> . . . if and when AT&T ever submits the issue framed by this Court, AT&T intends to saddle it with numerous unrelated tariff issues requiring notice and comment rulemaking.

Helein's letter brief of October 10, 1995, p. 2.

In response, on November 1, 1995, AT&T denied plaintiffs' allegations stating that no deliberate delay had been orchestrated by AT&T, and that such allegations were now moot since AT&T had filed Tariff Transmittal No. 9229 on October 26, 1995. Additionally, AT&T contested plaintiffs' allegation that any tariff transmittal determined by the FCC could only have prospective effect -- contending that the tariffs in question had never permitted fractionalization of plans and service and that the outcome of the Tariff Transmittal No. 9229 would establish that conclusion without question. In that correspondence, AT&T also argued that the Opinion and Order did not necessarily place upon AT&T the onus of ensuring an expedited FCC determination. Defendant observed that:

> [N]either Winback nor any other plaintiff filed a petition in the FCC contesting AT&T's tariff right to refuse to agree to the CCI-PSE transfer request.

AT&T's letter to the Court dated November 1, 1995, p. 3.

AT&T contends that such inaction by plaintiffs essentially estops Winback and CCI from now accusing AT&T of dilatory tactics. Id.

On November 8, 1995, plaintiffs' counsel responded to AT&T's November 1, 1995 volley. Referring to the Supplemental Certification of Richard R. Meade and its attached copy of Tariff Transmittal No. 9229, plaintiffs drew the Court's attention to the fact that the revised transmittal neither focuses the issue as previously expressed by the Court nor does it serve to clarify the areas of contention in this litigation. Whether it shall serve to better enlighten the FCC (whose expertise in this area is undoubtedly more refined than the Court's) is a matter for speculation -- an endeavor in which this Court shall not presently engage.

In its November 8, 1995 correspondence, Winback correctly acknowledged that the Court's May 19, 1995 Letter-Opinion and Order deferring the fractionalization issue to the FCC presumed a timely resolution of Transmittal 8179. At that time, the Court did not contemplate the withdrawal of Transmittal 8179 and, as such, saw no need to indicate on whom the burden of obtaining an FCC resolution fell. Plaintiffs strenuously assert that AT&T has purposely delayed such an FCC determination, although the Court need make no finding on that claim at this time. However, the Court does recognize that the continued delay in effectuating a resolution of the issue by the FCC has a negative financial and business impact upon plaintiffs. As such, regardless of the

intent, if any, of AT&T's post-May 19, 1995 conduct, the Court must now revisit its earlier determination and consider whether interim relief may be granted pending a resolution by the FCC of the question whether service and plans may be fractionalized by aggregators. In so doing, the Court is not assuming the role of the FCC in deciding these issues, but cannot shrink -- having retained jurisdiction over this controversy -- from its obligation to protect the rights of all parties and, where possible, to prevent undue prejudice to either side while the FCC considers the issues referred to it in the Opinion and Order.

DISCUSSION

As an initial matter, the Court recognizes that it has previously referred the issue of fractionalization to the FCC for appropriate adjudication in that forum. In the instant motion for reconsideration, the Court finds itself confronted with an application for interim relief pending the FCC's resolution of that issue. Having retained jurisdiction over the matter and in light of the circumstances presented in this case, the Court shall entertain that application and, if persuaded by plaintiffs' proofs, is satisfied that it may grant appropriate interim relief at this time.

The Court's independent research indicates that, while applications of this kind are not well documented in the case law, in appropriate circumstances interim relief may be granted on an issue simultaneously referred to an administrative body under the doctrine of primary jurisdiction. For instance, in the

case of National Communications v. AT&T, 813 F. Supp. 259 (S.D.N.Y. 1993), interim relief was granted even where the court referred the central issue in the case "to the FCC in the first instance[.]" Id. (citations omitted).

> However, [the parties have] not yet initiated proceedings before the FCC, and the passage of time without resolution of the parties' disputes poses an extreme threat to [plaintiff]. Accordingly, I turn to the standards of a preliminary injunction in order to maintain the status quo between the parties pending a determination by the FCC. Cf. MCI Communications Corp. v. American Tel. & Tel. Co., 496 F.2d 214 (3d Cir. 1974) (vacating preliminary injunction granted while issues remained pending before FCC).

Id. at 264.[4]

The National Communications court, although in a somewhat different posture, determined that pending an FCC resolution of certain matters in dispute, a preliminary injunction should issue. Analyzing the respective positions of the parties under the Second Circuit's criteria for the grant of a preliminary injunction, the National Communications court determined that the loss of goodwill to a reseller of telecommunications services

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[4] MCI Communications, from the Third Circuit, involved the granting of a preliminary injunction by the district court in a matter where the district court had failed to refer an issue to the FCC which was within the latter's specialized ken and over which the latter had primary jurisdiction. Id., 496 F.2d at 219-20. The appropriate course of conduct, the Third Circuit held, would have been for the district court to stay the action before it and to refer the issue (the provision of specific types of interconnection services) to the FCC for a preliminary determination. Id. at 220. The MCI Communications decision, therefore, revolves not around an anticipated administrative determination, but instead concerns the appropriateness of referral. As such, MCI Communications does not prevent this Court from now considering the applicability of injunctive relief pending the outcome of an FCC determination in the instant case.

could constitute irreparable harm through the loss of customers. 813 F.Supp. at 264. While a telecommunications reseller can expect to lose certain customers through the normal course of business, the National Communications court recognized the impossibility of determining exactly which customers were lost through normal business attrition and which were lost as a result of the difficulties in dispute. "In this case, however, monetary damages cannot be calculated to a reasonable degree of certainty because there is no way in which to determine exactly which departed customers leave [plaintiff] because of the new billing procedures . . . . Furthermore, to the extent that [plaintiff] retains customers yet loses good will, damages cannot be reasonably measured . . . ." Id. at 265 (citations omitted). On those grounds, the National Communications court determined that the grant of a preliminary injunction pending an FCC determination was appropriate. Id.

Two other opinions, though reaching a different result, are indicative of the appropriateness of interim relief in instances where undue hardship and/or prejudice will result to a party while its controversy remains unresolved before an administrative body. In Allnet Communications Services v. N.E.A., 965 F.2d 1118 (D.C. Cir. 1992), the circuit court determined that, despite the district court's errant reasoning, the outcome of its dismissal of an action seeking a declaratory judgment/injunctive relief was appropriate where primary jurisdiction was vested in the FCC. In Allnet, one of the parties had sought injunctive relief pending

the outcome of the litigation. However, its adversary agreed to refrain from offensive conduct, thus mooting the claim for injunctive relief. The circuit court reasoned:

> Although courts often apply the primary jurisdiction doctrine by holding the lawsuit in abeyance so that the parties may turn to the relevant agency, . . . we see no need to do so here . . . . As [plaintiff] has secured [defendant's] promise not to proceed to self-help measures . . . and as [plaintiff] has agreed to waive its statute of limitations defense against [defendant's] claim . . ., we can discern no present prejudice to either party . . . .

Id. at 1123 (citations omitted). Clearly, the Allnet court considered the issue of prejudice and was satisfied that none existed; thus, the question of interim relief was a non-issue.

In like manner, the Third Circuit acknowledged, in Richmond Bros. Records v. U.S. Sprint, 953 F.2d 1431 (3d Cir. 1991), cert. denied, 112 S.Ct. 3056 (1992), that in certain instances the delay effected by the referral of a controversy to an administrative body might be so harmful to one party that interim relief ought to be granted. In dicta, the court stated:

> We are not, however, wholly unsympathetic to [plaintiff's] inability to secure prompt and cost-effective disposition of its negligence claim against [defendant]. Those delays are unfortunate attendants upon the legal and technical complexities of our recently revamped national system of telecommunications. We assume, of course, that the Commission will undertake the proceedings necessary to resolve the issues the district court's order has referred to it within a reasonable time and proceed as expeditiously as possible to complete them. In the unlikely event the Commission does not do so, [plaintiff] is not barred from seeking help from the district court.

Id. at 1448 (citations omitted and emphasis supplied).

As is clear from both Allnet and Richmond, in appropriate circumstances -- albeit reservedly -- courts can act to prevent irreparable harm and prejudice to parties awaiting the determination of a matter referred to an administrative body. Plaintiffs in the instant case request such action. Therefore, the Court must consider in whether plaintiffs have established sufficient threat and likelihood of injury to warrant the grant of such unusual interim relief.

Preliminary Injunction

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 Bldg. Prods., 963 F.2d 628, 632-33 (3d Cir. 1992); Hoxworth v. Blinder, Robinson & Co., Inc., 903 F.2d 186, 197-97 (3d Cir. 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,

632 F.Supp. 196, 201 (D.N.J. 1986). Only when the plaintiff produces sufficient evidence to convince the court that all four factors favor preliminary relief should an injunction issue. Opticians Ass'n v. Independent Opticians, 920 F.2d 187, 192 (3d Cir. 1990).

Application

In the instant case, plaintiffs have asserted that AT&T withdrew Transmittal No. 8179 in an effort to further thwart plaintiffs' business by delaying an FCC determination favorable to their position in this case. AT&T refutes this contention by arguing that the withdrawal of the initial transmittal was in compliance with the FCC's request that the transmittal be withdrawn and refiled. See Second Supplemental Certification of Richard R. Meade, ¶ 11. Richard Meade, "a Senior Attorney with defendant AT&T Corp." (id. at ¶ 1), "did not understand the Court's reference of this issue to the FCC to mean that the Court was relying on Transmittal No. 8179 to resolve the issue." Id. at ¶ 12. Such a misunderstanding -- by a party's senior counsel -- gives the Court pause, especially so in light of the revised transmittal filed by AT&T.

It appears that, rather than attempting to resolve the fractionalization issue sub judice in an expedited manner, AT&T decided to air all of its concerns at this time with the FCC. Apparently, somewhere in the morass which is Transmittal No. 9229 can be found the issue of fractionalization, although this Court is at a loss as to its exact location in a submission which more

than half an inch thick, and has neither a table of contents nor an index.[5] (See Supplemental Certification of Richard R. Meade, Ex. A). Suffice it to say that AT&T misspent over one hundred and forty days (from June 5 to October 26, 1995) 'fine-tuning' and 'clarifying' its transmittal. The end result of this effort is that AT&T has obfuscated the issue referred by this Court to the FCC and in so doing has prejudiced plaintiffs and delayed the determination of a concern of vital importance to them as expressed by this Court in the Opinion.

The Court finds it incredible that AT&T's 'senior counsel' could not understand the Court's focus of concern from the unambiguous language of the Opinion. In its earlier determination, the Court pinpointed the pivotal disagreement remaining between the parties to this litigation. The discreet issue then, as now, was whether AT&T must honor the fractionalization of plans and service attempted by the plaintiffs. There is no mystery.

It appeared at earlier hearings in this matter that AT&T's litigation counsel clearly understood the narrow issue about which the Court was concerned. Indeed, it was at AT&T's behest -- relying on the then-filed Transmittal No. 8179 -- that the Court refrained from deciding the fractionalization issue and referred it to the FCC. There is little to misunderstand. And yet the new transmittal, No. 9229, by virtue of its all-

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[5] See Charles Helein's prediction in his letter of October 10, 1995, p.2, supra.

encompassing bulk, can be testimony to one of only two truths: either AT&T totally misunderstood the Opinion and in good faith included the kitchen sink in its new transmittal for fear of missing the true issue, or else it submitted the second transmittal after an unconscionable delay in an effort to elongate the process in the hope that time would moot the issue by driving plaintiffs out of business.

The delay in the determination of the fractionalization issue has indeed affected the plaintiffs -- in ways immeasurable because of the manner in which the reselling business operates. As established by plaintiffs' supporting certifications and affidavits, their revenue and customer base have been greatly eroded since the initial refusal by defendant to authorize the fractionalization of plans and traffic. See, e.g., Shipp and Inga Certifications. Compare National Communications v. AT&T, supra, 913 F.Supp. 259. While the Court recognizes that administrative agency determinations often involve protracted periods of gestation whose labor pangs can severely impact one or all parties to a dispute, AT&T has clearly exacerbated the delay and the consequent impact on plaintiffs in the instant matter. See generally National Comm. Ass'n v. AT&T, 46 F.3d 220, 225 (2d Cir. 1995); Richmond Bros. Records v. U.S.Sprint, 953 F.2d 1431, supra.

Applying the criteria for preliminary injunctions to the instant case, the Court finds that the interim relief requested by plaintiffs at this stage of the litigation is not only

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

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[6] As to this element of preliminary injunction analysis, plaintiffs contend -- and defendant denies -- that AT&T has authorized a fractionalization of plan and traffic between other aggregators since the inception of the instant litigation. See H. Curtis Meanor's Letter and Attachments of December 15, 1995; Letter of December 21, 1995; Certification of Robert Collett; and Meanor Letter of January 29, 1996. AT&T has submitted neither testimonial not documentary evidence to satisfactorily refute that representation. See, e.g., Letter of Frederick L. Whitmer, dated February 7, 1996.

has been referred by this Court to the F.C.C. For several reasons, the Court finds that plaintiffs have established the likelihood of their succeeding in their contention that Tariff F.C.C. No. 2 does in fact permit fractionalization. Among those reasons are the fact that nowhere does Tariff F.C.C. No. 2 specifically forbid such fractionalization; a reasonable construction of the Tariff by a lay person would undoubtedly permit fractionalization; even if the F.C.C. were to find in AT&T's favor on the fractionalization issue, there is a strong question whether such a finding would have retroactive or merely prospective effect; and AT&T's protection in its provision of end user services shall in no way be either diluted or threatened by fractionalization of the plans and traffic (see discussion of security issue, infra).

While not seeking to invade the F.C.C.'s area of expertise, the Court finds nothing in Tariff F.C.C. No. 2 which prevents fractionalization, and contemplates a like finding by the F.C.C. See, e.g., American Satellite Corp. v. MCI Telecommunications, 57 F.C.C. 1165, 1167 (1976) (citing U.S. v. Gulf Refining Co., 268 U.S. 542, 546 (1925)); In re AT&T Communications Apparent Liability for Forfeiture and Order to Show Cause, Rel. No. FCC 94-359, 10 F.C.C. Rcd. 1664, 1995 FCC Lexis 71 (January 4, 1995). Clearly, therefore, plaintiffs have established a strong likelihood of success on the merits.

Secondly, plaintiffs have established that their loss of revenue coupled with loss of end users resultant from an

indefinite denial by AT&T to recognize the subject transfer is causing -- and shall continue to cause -- them irreparable harm. Their losses are clearly unquantifiable and may well lead to their business demise.

Thirdly, AT&T has little or no danger of being harmed should the sought-for relief be granted. Its economic risk, if any, would arguably be covered by an anticipated excess over commitment under Contract No. 516,[7] and/or by its increase in revenue by dint of acquiring plaintiffs' customers as they are siphoned into Contract No. 516 by alternative avenues. Indeed, the Court notes that the services provided by AT&T are billed directly to the end user who in turn remits payment directly to AT&T. The instant injunction does not change that, nor does it increase the risk that the end user shall not pay. Other interested parties -- among them, end users themselves -- face no threat of harm should the relief sought be granted.[8]

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[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 focussed 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.

Lastly, the strong public policy favoring healthy competition among and between resellers would not be offended by the grant of the interim relief now requested by plaintiffs. Therefore, the fourth criterion for the issuance of a preliminary injunction has been met.

Ergo, the Court is satisfied that interim relief ought to be granted at this juncture in the instant litigation. As such, the issue of an appropriate bond must be addressed. Fed.R.Civ.P. 65(b).

Security

When the risk of monetary loss to the enjoined party is great, a security bond must be posted by the party securing a preliminary injunction. System Operations v. Scientific Games Dev. Corp., 555 F.2d 1131, 1145 (3d Cir. 1977). AT&T contends that recognition of plaintiffs' traffic transfer could amount to a shortfall of $13,293,000 -- in addition to the shortfall already projected against CCI. Plaintiffs argue that any shortfall resultant from the transfer would be covered by PSE's excess over commitment after the transfer. Thus, the Court must consider whether AT&T's request for security in the amount of $15,000,000; plaintiffs' suggestion that no bond be set; or some alternative amount of security ought to be posted to protect AT&T in the event it "is found to have been wrongfully enjoined or restrained." Fed.R.Civ.P. 65(c).

In the instant case, the Court has not been furnished with either certifications or affidavits from AT&T indicating the

extent, if any, of security demands made of other carriers requesting transfers like that sought herein. The Court recognizes that all of the services provided by AT&T under the plans at issue are billed directly to the end user by AT&T itself. End users pay AT&T, not plaintiffs. As such, any services provided pursuant to this injunction shall be no more likely to go unpaid than if the injunction never issued.

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

neither pivotal to the instant injunction nor properly substantiated by AT&T.

Therefore, unconvinced of any real threat to AT&T by the grant of the instant injunction, the Court shall order that a bond of one hundred thousand dollars ($100,000.00) be posted as security pursuant to Fed.R.Civ.P. 65(c). That sum shall satisfactorily cover any unforeseeable losses resultant from this injunction, should the injunction later prove to have been issued in error.

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.