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March 2, 2016

Judge Wigenton

The FCC has requested that AT&T disclose recent Exparte contact with FCC Commissioners staffs. AT&T had its Washington DC Counsel visit Commissioners staffs as AT&T pressured the FCC to rule on Judge Bassler's referral. AT&T disclosed the meeting but does not discuss what was actually said. **Exhibit A**

You may first think that this is very odd that AT&T is the party that wants the FCC to rule as fast as possible but the following will explain what AT&T is up to. The issue has to do with what is or is not encompassed within Judge Bassler's referral. We are asking this Court to temporarily suspend the FCC case until it reviews plaintiff's motion and AT&T's again changing defense: Judge Bassler's referral:

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case closed.

IT IS FURTHER ORDERED that the Plaintiffs, no later than August 1, 2006, file an appropriate proceeding under Part I of the FCC's rules to initiate an administrative proceeding to resolve the issue of precisely which obligations should have been transferred under § 2.1.8 of Tariff No. 2 as well as any other issues left open by the D.C. Circuit's Opinion in AT&T Corp. v. Federal Communications Commission, 394 F.3d 933 (D.C. Cir. 2005).

/s/ WILLIAM G. BASSLER
WILLIAM G. BASSLER, U.S.S.D.J.

Plaintiffs have already showed how AT&T misrepresented the FCC's 2007 Order that determined the first part of Judge Bassler's question regarding which obligations transfer did

not expand the scope of the original Third Circuit Referral. The issue plaintiffs would like to address is the catch all phrase that AT&T added to the Order for Judge Bassler to sign: "as well as any other issues left open."

Plaintiffs have already provided this Court with evidence in which AT&T sliced and diced the Jan 12th 2007 FCC Order and spun it. The FCC 2007 Order determined that all AT&T's defenses under 2.1.8 did not expand the scope of the Third Circuit referral which was on 2.2.4 fraudulent use.

AT&T understands that this Court will recognize that all its defenses under 2.1.8 have been denied so AT&T is now at the FCC pressuring the FCC to revive its old fraudulent use defense under 2.2.4 as what is encompassed within Judge Bassler's phrase: "as well as any other issues left open"

AT&T on February 1st stated the scope of the 2006 Judge Bassler referral is which obligations transfer under 2.1.8 not fraudulent use 2.2.4.

AT&T February 1st 2016 Comments to FCC page 6:

> "The issue pending before the Commission is the scope of Section 2.1.8, not Section 2.2.4."

> Petitioners' reliance on the Commission's 1995 Order is also misplaced. They claim that this Order undermined AT&T's fraudulent use defense. Grimes Letter at 2-3. This is irrelevant: the issue pending before the Commission is the scope of Section 2.1.8, not Section 2.2.4. Nor does the 1995 Order have any other bearing on this proceeding. In the Order's "grandfathering"

Section 2.1.8 is not within the scope of the Third Circuit Referral. Even if it was it would be considered moot. [1]

Originally AT&T agreed with plaintiffs that CCI must keep its plan obligations (revenue and time commitment) as that was the basis of AT&T's sole defense of fraudulent use. AT&T's only defense was fraudulent use under 2.2.4.

FCC 2003 Pg.10 para 13.

> "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."

[1] Even if the FCC were to change the terms and conditions under 2.1.8 and decide that revenue and time commitments must transfer on a traffic only transfer, it would be a prospective tariff change and the CCI-PSE traffic only transfer would be grandfathered.

(Judge Politan's May 1995 Decision pg. 10 para 2) AT&T's only defense was fraudulent use:

> On January 13, 1995, PSE and CCI jointly executed and submitted written orders to AT&T to transfer the 800 traffic under the plans CCI had obtained from the Inga companies to the credit of PSE. Only the traffic was to be transferred, not the plans themselves. In this way, **CCI would maintain control over the plans** while at the same time benefiting from the much larger discounts enjoyed by PSE under KT-516. AT&T refused to accept this second transfer on the ground that CCI was not the customer of record on the plans at issue, and thus could not transfer the traffic under those plans to PSE. **AT&T was further troubled** by the fact that if **only the traffic on the plans and not the plans themselves were transferred to PSE**, the liability for **shortfall and termination charges attendant thereto would then be vested in CCI**: an empty shell in AT&T's view." [2]

AT&T abandoned its fraudulent use defense and created a brand new controversy in 2006 before Judge Bassler under 2.1.8, asserting that CCI **must transfer** its revenue and time commitment as AT&T asserted "all obligations" must transfer. The fraudulent use defense asserted that because the tariff mandates that CCI **must keep** its revenue and time commitment AT&T was going to be deprived of collecting shortfall charges. The fundamental basis of the two defenses is diametrically opposite. So obviously AT&T was not before Judge Bassler simultaneously asserting that CCI must keep and CCI must transfer its revenue and time commitments.

AT&T created in 2006 a controversy regarding which obligations transfer under 2.1.8. AT&T abandoned its 2.2.4 Fraudulent Use defense that took the position that CCI keeps the plan commitments to the 2006 created controversy that traffic only transfers without the plan require that CCI must transfer its revenue and time commitment---AT&T's "all obligations" defense that avoids quoting the rest of the sentence "all obligations of the **former** customer."

## Judge Bassler Oral Argument

AT&T definitely created a controversy in 2006 regarding which obligations transfer as Plaintiffs at that point had not presented Judge Bassler its "former customer" tariff analysis which explained why AT&T does not have any evidence as none exists. The controversy with Judge Bassler was all about which obligations transfer under 2.1.8:

[2] The security deposit issue when the Inga plans were transferred to CCI was resolved by the May 1995 Judge Politan Decision and the only issue that was left was the 2.2.4 fraudulent use issue. However that defense was not raised within the 15 days required by section 2.1.8.

THE COURT: PAGE 12:

But let's assume you're
10 correct in your argument and the only thing referred was a
11 fractionalization issue and the Circuit Court referral to the
12 agency is not as broad as defendants argue.
13 But assume that's correct. What would prevent me at
14 this juncture from saying, you know, I don't want to make this
15 call as to what is encompassed by **"all obligations."** Look at
16 that as being an interpretation of the tariff. That matter
17 refer to the agency.

Oral Argument Pg. 13:
1 THE COURT: I don't find much comfort in that because
2 **the agency wasn't focused on the term, "all obligations."**

PAGE 14:

15 THE COURT: Tariff uses the phrase, "**all obligations**"?
16 MR. ARLEO: Right.
17 THE COURT: So the question then is, what does that
18 mean?

PAGE 18:

Plaintiff Attorney Arleo:

10 We continue to find evidence that just undercuts any argument that shortfall
11 terminations are part of this **all obligation language** into
12 2.1.8.
13 THE COURT: Why don't we have the agency say that
14 because if I call it wrong then we got another appeal to the
15 Third Circuit. Then back to the agency again. Then an appeal
16 from the agency to the DC Circuit. So, why don't I short
17 circuit it, just say you go back?

Page 20 :
AT&T counsel Guerra Arguing plan obligations transferring is the controversy:

15 We have been litigating 11 years because they say they
16 didn't have to transfer that. I, frankly, don't understand.
17 They say that's a question of fact. It's in every one of their
18 briefs, including briefs they submitted here. They've done the
19 things. They have transferred. That's why they're fighting.

20 **They have no intention of transferring them.**

PAGE 22 AT&T Counsel Guerra regarding discrimination claims:

8 MR. GUERRA: It's a possibility. But I think getting
9 the answer from the FCC is first.
10 Just as the FCC said, you don't get to this question
11 until you conclude that 2.1.8. **Required all these obligations**
12 **to transfer.** Because if it didn't, then AT&T didn't
13 discriminate with respect to the other parties allegedly allowed
14 to make transfers without switching the obligations over.
15 THE COURT: If you waived it to the other ones,

16 assisted on it here --
17 MR. GUERRA: But already resolved the refusal here was
18 unlawful based on the language. Tariff, you wouldn't need to
19 get into discrimination.

Page 23 -24

19 THE COURT: Why does the agency have the more expertise
20 on making the call as to whether the tariff phraseology, "all
21 obligations" includes shortfall in termination?
22 MR. GUERRA: Well, your Honor, first of all the FCC
23 interprets tariffs all the time. It has an understanding of
24 what's common practice. It has an understanding that no Court
25 would have. The Third Circuit has always said **interpreting 2.18**

1 is a job. FCC, they identify generality, important social
2 policies.

Judge Bassler definitely wanted the question of which obligations transfer under 2.1.8 interpreted; however the FCC 2007 Order determined the 2.1.8 issues “did not expand the scope” of the Third Circuit referral on fraudulent use. AT&T absolutely understood that it was intentionally misrepresenting that CCI must transfer its revenue and time commitment but created that controversy in 2006. AT&T provides the Referral to Judge Bassler and instead of explicitly stating in the referral that it expects the FCC to decide 2.2.4 fraudulent use—which would make no sense as the fundamental basis of the argument is opposite---AT&T inserts into the proposed referral the nebulas phrase: “as well as any other issues left open”

The FCC addresses controversies or uncertainties:

The FCC page 11 para 15:

> The Commission has broad discretion under the Administrative Procedure Act and Commission rules to decide whether a declaratory ruling is necessary to "terminate a controversy or remove uncertainty."[3] When, as here, a petition for declaratory ruling derives from a primary jurisdiction referral, the Commission will seek, in exercising its discretion, to resolve issues arising under the Act that are necessary to assist the referring court.

Fraudulent use (2.2.4) was <u>not a controversy or uncertainty</u> in in 1995; however by 1996 Judge Politan determined there were no longer any controversies as his Court issued the injunction.

AT&T's 1995 Fraudulent use assertion was **<u>premised</u>** on AT&T suspecting it would be deprived of **<u>shortfall</u>** on CCI's plans. Judge Politan issued an injunction and stated:

> To the extent however that AT&T's demand for fifteen million dollars' security is **<u>premised on the danger of shortfalls,</u>** the Court finds that threat neither pivotal to the instant injunction **<u>nor properly substantiated by AT&T</u>**. March 1996 Politan Decision (page 19 para 1) **EXH L** in plaintiffs motion.

Judge Politan understood plaintiffs plans were pre June 17th 1994 grandfathered from shortfall and termination liabilities and this is clearly the Law of the case as Judge Politan did not refer this issue to the FCC:

> A) Judge Politan: "Commitments and shortfalls are little more than **<u>illusionary concepts</u>** 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 **<u>AT&T's demand for fifteen million dollars' security is premised on the danger of shortfalls,</u>** the Court finds that threat neither pivotal to the instant injunction **<u>nor properly substantiated by AT&T</u>**. March 1996 Politan Decision **EXH L.** (page 19 para 1)
> B) Judge Politan: **"**Suffice it to say that, with regard to **<u>pre-June, 1994 plans</u>**, 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." May 1995 NJFDC Decision pg. 11 **EXH K**
>
> 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 **<u>escape termination and also shortfall charges</u>** through renegotiating their plans with AT&T." May 1995 NJFDC Decision **EXH K** pg. 24

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[3] 5 U.S.C. § 554(e); 47 C.F.R. § 1.2; *see also* 47 U.S.C. §§ 154(i), (j); *Yale Broadcasting Co. v. FCC*, 478 F.2d 594, 602 (D.C.Cir.), *cert denied*, 414 U.S. 914 (1973).

The pre June 17th 1994 exemption is obviously prior to the Jan 13th 1995 CCI–PSE traffic transfer. So AT&T knew that the plans were immune from shortfall and termination for several years after the Jan 13th 1995 CCI-PSE transfer.

Despite Judge Politan having already determined that the plans were pre June 17th 1994 exempt AT&T ended up arguing at the FCC in 1996 its fraudulent use defense and the FCC determined: FCC 2003: PAGE 8 PARA 11:

> "Based upon our review of AT&T's tariff, we conclude that, **even assuming** that AT&T reasonably suspected a violation of the "fraudulent use" provisions of its tariff – **which we do not decide** – those provisions did not authorize AT&T to refuse to move the traffic from CCI to PSE.

The FCC had to erroneously assume the fraudulent use defense had merit. AT&T ended up on 1st base arguing fraudulent use when according to Judge Politan AT&T's premise of being deprived of shortfalls was not substantiated. In other words AT&T's fraudulent use defense did not have merit to begin with. The FCC 2003 Decision noted that even **assuming** AT&T had reason to suspect fraudulent use the FCC determined AT&T used an illegal remedy and thus AT&T lost its sole defense of fraudulent use.

The FCC's AT&T tariff expert R.L Smith's notes obtained via FOIA were made February 21 1995 to FCC's case manager Judith Nitche. 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.

The FCC's R. L Smith nailed the fraudulent use issue here:

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

Mr Smith was pointing out that AT&T should not have been allowed to automatically assume there was fraudulent use as this was a judgment call that is not appropriate within a declaratory ruling forum and was a District Court fact based issue. It is a disputed fact as to whether or not AT&T's reliance upon fraudulent use had merit to begin with. This is a fact disputed fact issue that should have been handled by the NJFDC.

R.L Smith noted that Fraudulent use section 2.2.4 did not even apply at all to Transfer of Service 2.1.8.

R.L SMITH:

> Finally the provisions noted by AT&T here **do not seemingly restrict TorA** ( Transfer or Assignment) per se but the new regs do, nor does it address TorA explicitly.

R.L SMITH:

> Finally the provisions noted by AT&T here **do not seemingly restrict TorA** (Transfer or Assignment) per se but the new regs do, nor does it address TorA explicitly.

R.L Smith:

> "Do we need to save AT&T from commitments per se? **Why not just loss of pay for charges.** If the moved locations are still with AT&T, they may well generate enough money to keep AT&T almost whole and **not cause the need for this intrusive method of protection."**

DC Circuit Judge Ginsburg understood CCI keeps its customer plan obligations but understood the plans were 6.17.94 penalty immune and completed the FCC's counsels' question as it was important for the DC Circuit Judge to want to know if the plans were grandfathered from shortfall.

DC Circuit ORAL (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?**
> FCC MR. BOURNE: **Right.** So it could well be that there were little or **no shortfall charges**.

It was important to the FCC that the plans were pre June 17th 1994 immune but noted to the DC Circuit that Judge Politan never referred the issue---- that is because he understood this issue. AT&T is still arguing fraudulent use without ever establishing whether it had the merits to assert this defense. [4]

AT&T's misrepresentation of the FCC 2007 Order has been exposed to this Court and it determined 2.1.8 is outside the scope of the case. AT&T is now arguing that 2.2.4 fraudulent use is encompassed within Judge Bassler's referral under "as well as any other issues left open". AT&T recently said the opposite February 1st 2016 Comments to FCC page 6:

> "The issue pending before the Commission is the scope of Section 2.1.8, not Section 2.2.4."

AT&T's Washington DC based counsel are now making personal visits to the FCC Commissioners staffs pressuring the FCC Commissioners to rule on 2.2.4 fraudulent use—

[4] To bolster its fraudulent use defense AT&T counsel wrote a certification for AT&T account manager Mr. Joseph Fitzpatrick that claimed plaintiffs were looking to go out of business. Mr Fitzpatrick later advised Mr Inga that AT&T counsels twisted his words. In fact this same Mr Fitzpatrick in a recorded phone call stated the plans would be forever be immune from shortfall which attacks the certification written by AT&T counsels for Mr Fitzpatrick.

before the NJFDC can address the disputed facts and decide whether AT&T had the right to raise this defense in the first place.

The FCC 2003 Order stated that the plans were pre June 17th 1994 plans Page 2 para 2:

> **Prior to June 17, 1994,** the Inga Companies completed and signed AT&T's "Network Services Commitment Form" for WATS under AT&T's Customer Specific Term Plan II (CSTP II), a tariffed plan, which offered volume discounts off AT&T's regular tariffed rates.

AT&T has conceded that the plans were pre June 17th 1994 immune from shortfall and termination charges at the time of the CCI-PSE transfer. The disputed fact is the duration of the grandfathering and this disputed fact must be handled by the NJFDC. FCC 2003 Order pg. 14 fn 94:

> Finally, we refuse the parties' request that we declare whether "pre-June 17, 1994 CSTP II plans, as are involved here, may never have shortfall charges imposed, as long as the plans are restructured prior to each one-year anniversary." *See* Joint Motion for Expedited Consideration at 2; Opposition at 14-15; Reply at 25. Declaratory relief on this issue – which also was not referred to us by the district court – is inappropriate because whether CCI's plans were pre- or post-June 17, 1994 plans **is a disputed fact.**

The June 17th 1994 exemption provision was a disputed fact and that has to be first handled by the NJFDC. If the NJFDC simply finds that Judge Politan's March 1996 Decision is the Law of the Case that the plans were pre June 17th 1994 immune that certainly would mean that the Jan 13th 1995 CCI-PSE transfer—which of course is after the June 17th 1994 exemption—would mandate that there was absolutely no merit to AT&T's 2.2.4 fraudulent use in the first place.

Not only were the plans pre June 17th 1994 immune but the fact is the plans had already met their revenue commitments in Jan 1995 and the traffic could be taken back within 30 days so obviously there was no reason to suspect fraudulent use in the first place. These are disputed fact based issues that the NJFDC decides not the FCC.

FCC 2003 pg 13 fn 87

> declaratory relief is not appropriate when all relevant facts are not clearly developed before the Commission and essentially undisputed. *See Cascade Utilities, Inc., American Telephone and Telegraph Company Petition for Declaratory Ruling,* Memorandum Opinion and Order, 8 FCC Rcd 781, 782 para. 11 (CCB 1993) (cited in Opposition at 10 (additional citations omitted)). As noted above, we agree that declaratory relief is inappropriate when the facts are disputed. …..Assuming that further inquiry is appropriate, efficiency favors their resolution in the **district court** where the evidentiary record already has been developed. That is consistent with petitioners' original choice of

> forum for this dispute, with petitioner's objective in this proceeding, *see* Reply at i ("Any factual issues which need to be addressed in order to apply the tariff, after the tariff is interpreted by the Commission, can be addressed by the District Court, which has already compiled an extensive factual record in this case"), 14, and with the court's primary jurisdiction referral. The district court proceeding is still pending and the parties have presented evidence in that forum, *inter alia*, in the course of a two-day hearing.

The fraudulent use defense has already been denied even if it had merit; however it was clearly a disputed fact that the FCC simply should have first asked the NJFDC to rule on ---especially when the NJFDC March Decision clearly stated AT&T's assertions premised on shortfalls was not substantiated.

The cart is before the horse in this case. The fraudulent use defense was denied but the FCC should not have even wasted time until the NJFDC first determined whether the fraudulent use defense had merit to begin with. The FCC proceedings are clearly moot at this point as there are no open controversies that are within the scope of the Third Circuit referral that have non-disputed facts.

AT&T's February 1st 2016 statement that the "scope of the case is 2.1.8 and not 2.2.4" takes the position that Judge Bassler's referral doesn't encompass 2.2.4 fraudulent use. Yet AT&T is now out there pressuring the FCC Commissioners staffs into ruling on fraudulent use, before AT&T ever established whether the defense had merit to begin with.

Additionally, both the DC Circuit and FCC have stated the DC Circuit Decision was not a remand. Since the fraudulent use defense was **not remanded** it is considered closed and therefore would not fit into the definition of what an "open issue" is in any event under: "as well as any other issues left open."

Moreover, if the FCC actually believed Judge Bassler was referring fraudulent use it would be assuming that Judge Bassler was sending in a referral in which AT&T was simultaneously arguing fraudulent use (CCI Keeps plan obligations) and arguing "all obligations" transfer which means CCI must transfer plan obligations. That would make absolutely no sense at all. A defendant can have numerous defenses however they all need to be based upon a fundamental set of facts asserted. In other words AT&T can't argue that under its tariff that "the former customer" both keeps and transfers its revenue and time commitments.

What Judge Bassler's referral may have wanted referred are other claims of plaintiffs (discrimination, unreasonable practices and the June 17th 1994 exemption, illegal billing, and section 2.5.7 extension of time etc.) But the FCC 2003 Decision states at fn. 87 and 94 that these claims must be handled by the District Court. What appears to have happened was AT&T counsels threw into the Judge Bassler referral the catch all phrase: "as well as any other issues left open." AT&T knew it could not have proposed a referral that explicitly stated that it wanted both which obligations transfer and fraudulent use referred as plaintiffs would have objected as AT&T can't simultaneously claim that CCI must keep and must transfer the revenue and time commitments.

AT&T is trying to get the FCC to rule before the NJFDC recognizes how AT&T has jumped to first base by assuming it already had merit to assert the fraudulent use defense in the first place. Plaintiffs would like to temporarily suspend the FCC proceedings while the NJFDC reviews plaintiffs motion to address the disputed facts and clarify what District Court referral encompasses. This way the FCC does not have to assume AT&T already gets to 1st base when Judge Politan has already clearly stated that AT&T's position:

> "**premised on the danger of shortfalls,** the Court finds that threat neither pivotal to the instant injunction **nor properly substantiated by AT&T**

If AT&T stands by its February 1st 2016 statement:

> "The issue pending before the Commission is the scope of Section 2.1.8, not Section 2.2.4."

Then the Judge Bassler referral means there are no issues to determine. The 2.1.8 issues were determined by the Jan 12th 2007 FCC Order as outside the scope of the Third Circuit referral. If AT&T is going to now assert that it has the right to assert fraudulent use which is not an open issue the NJFDC must first review the disputed facts and decide against Judge Politan that determined AT&T's suspecting of shortfalls was not substantiated –i.e. had no merit.

AT&T believed that due to this sentence there were open issues DC Circuit on page 11 fn2

> "How this enumeration affects the requirement that new customer assume "*all* obligations of the former Customer" (emphasis added) is **beyond the scope of our opinion**."

The DC Circuit decision states that this obligation allocation is **"beyond the scope of our opinion"** because DC was limited to reviewing **only what was referred to and interpreted by the FCC**. Therefore since it was not within DC's scope to review it, then certainly it was not within DC's scope to address it or remand it.

This definitively means the obligation allocation issue was not within the initial scope of the case that the FCC had to rule on. That is the point of the FCC Jan 12th 2007 Order.

Since the Commission was not afforded the opportunity from the District Court referral to interpret obligations the DC Circuit is **precluded from addressing this issue** and thus can't remand it as it was never before the FCC as stated within DC Circuit Decision pg. 10 fn1.

> The Communications Act **precludes us from addressing only those issues which the Commission has been afforded no opportunity to pass."** 47 U.S.C. Section 405(a). It does not prevent us from considering "whether the **original question** was correctly decided," MCI v FCC, 10 F3d 842, 845 ( D.C. Circ. 1993), or whether the FCC "relied upon faulty logic." Nat'l Ass'n for Better Broadcasting v. FCC 830 F2d 270, 275 D.C. Cir. 1987). The analysis recounted above speaks to the soundness of the Commission's ruling on **the question initially presented**, and not to any novel legal or factual claims."

The DC Circuit could only address the original 2.2.4 issue and whether 2.1.8 allows traffic only to transfer. Where it states on page 11 last line: "The petition for review is granted." That simply means that only what was referred to the FCC 2.2.4 and can traffic only transfer without the plan was reviewed by the DC Circuit.

The DC Circuit did not review obligations allocation as it was not referred to the FCC and therefore not reviewed and therefore can't remand what the FCC was not afforded the opportunity to address and thus no remand. The FCC also agrees that the DC Circuit was not a remand.

The FCC in its 2007 Order determined the Judge Bassler obligation allocation referral 2.1.8 was not within the scope of the original case 2.2.4 and thus the FCC banned all of AT&T's 2.1.8 defenses. The DC Circuit Decision itself stated that the obligations allocation issue was "beyond the scope of our opinion." The FCC 2007 Order confirmed the DC Circuits position that 2.1.8 was not the scope of the case.

The FCC 2003 Decision states that remaining claims (discrimination, unreasonable practices and the June 17th 1994 exemption, illegal billing remedy, Section 2.5.7 Extension of Term Commitment etc.,) are all disputed fact based issues the District Court must handle.

The NJFDC must address AT&T's attempt to again assert "fraudulent use" without ever having established the merits. This Court should temporarily suspend the FCC Declaratory Rulings and address the merits of AT&T's fraudulent use defense that as Judge Politan determined was **not properly substantiated by AT&T.**

Very truly yours,

Raymond A. Grimes, Esquire

Cc: Client
Cc: FCC

# EXHIBIT A

*Christi Shewman*
Executive Director-Senior Legal Counsel

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VIA ELECTRONIC SUBMISSION

February 29, 2016

Ms. Marlene Dortch
Secretary, Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

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

Dear Ms. Dortch:

On February 25, 2016, Frank Simone and I, on behalf of AT&T, met separately with Nicholas Degani, Legal Advisor to Commissioner Pai, and Amy Bender, Legal Advisor to Commissioner O'Rielly. AT&T urged the Commission to move forward with a declaratory ruling in the above-referenced docket. The discussion was consistent with AT&T's Response to Petitioners' Motion to Temporarily Suspend the Proceeding, filed February 1, 2016.

If you have any questions or need additional information, please do not hesitate to contact me. Pursuant to section 1.1206 of the Commission's rules, this letter is being filed electronically with the Commission.

Sincerely,

Christi Shewman

cc: Nicholas Degani
Amy Bender