March 9, 2016
Commission's Secretary
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Federal Communications Commission
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Deena Shetler: deena.shetler@fcc.gov
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Re: WC Docket No. 06-210
CCB/CPD 96-20

Motion to Include Petitioners Supplemental Declaratory Rulings Requests that were Initially Filed in 1996 that Cover the FCC's Delete and Add Permissibility of Moving Accounts from CCI to PSE Under 3.3.1Q Bullet 4.

There has been significant comments regarding whether section 2.1.8 allows traffic only to transfer without the plan. Both AT&T and plaintiffs agreed in 1995 that 2.1.8 does allow traffic only to transfer and the parties agreed that CCI must retain its revenue and time commitment on the non-transferred plan. CCI would thus be responsible for shortfall and termination liability for not meeting the revenue and time commitments.

The original 1995 controversy was simply section 2.2.4 (Fraudulent Use). Even after AT&T created a new controversy before Judge Bassler in 2006 as to which obligations transfer under 2.1.8 there was still no controversy between the parties that 2.1.8 did allow traffic only to transfer.

The following passage from the FCC 2003 Decision notes the Declaratory Ruling Requests made by Petitioners:

FCC pg. 2

> We conclude that AT&T's tariff did not prohibit such a movement of traffic and thus permitted it. Accordingly, AT&T's conduct was unauthorized and violated section 203 of the Communications Act. We explain our conclusions below.
>
> **Whether AT&T's Tariff Permitted the Movement of End-User Traffic Without The Plans**
>
> The district court asked "whether section 2.1.8 [of AT&T's Tariff] permits an aggregator to transfer traffic under a plan without transferring the plan

itself in the same transaction."[1] Similarly, petitioners' first request for declaratory relief asks the Commission to find that "[a]t the time of the attempted transfer … in or about January, 1995, by CCI to PSE of the end user traffic under the CSTP II plans held by CCI, neither Section 2.1.8 of AT&T's Tariff F.C.C. No. 2, nor any other provision of AT&T's Tariff ... prohibited CCI from transferring that traffic without also transferring the CSTP II plans with which that traffic was associated."[2] We conclude that section 2.1.8 of AT&T's tariff did not address or govern CCI's and PSE's request and that its respective tariffs with CCI and PSE permitted the movement of traffic at issue here.

Petitioners (Intervenors) Post Oral Brief to the DC Circuit Also Supported the FCC's determination that 3.3.1.Q Bullet 4 (DELETE And ADD **EXHIBIT A**) was also an acceptable method for moving locations from CCI to PSE without the plan.

1. Intervenors submit that the brief of the Federal Communications Commission ("Appellee") is more than sufficient to sustain its decision before this Court for review.

5. The meaning and applicability of Section 2.1.8 of Appellant's tariff will be clarified to show that it may be construed in **two ways** as AT&T counsel admitted during oral argument and **either way supports the FCC's decision** and the Intervenors' right to have the transaction completed as tendered to Appellant.

Petitioners have clearly stated throughout these proceedings that both section 2.1.8 and 3.3.1Q Bullet 4 both allow traffic only to transfer.

The reason why petitioners included within its initial 1996 filing to the Commission the additional declaratory ruling was because it was understood that 3.3.1Q Bullet 4 also allows traffic only to transfer.

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[1] *First District Court Opinion* at 15; *see also Third Circuit Opinion* at 3. Similarly, in its ordering clause, the district court questioned whether the transfer of traffic without the CSTP II Plans "compli[ed] or not with the terms of the governing tariff." *First Preliminary Injunction* at 2.

[2] Petition at 7-8. Tracking the language of section 2.1.8, petitioners refer to the requested movement of traffic from CCI to PSE as a "transfer (assignment)." *See, e.g.*, Petition at 7-8 (Requests No. 1, 3). AT&T uses the term "transfer." *See* Opposition. **We find that the relocation of end-user traffic from CCI to PSE would simply have been a movement of traffic from one AT&T aggregator to another. We note that the agreement between CCI and PSE expressly provided for the return of accounts to CCI upon request.** *See* Exhibit G to Petition. On a separate point, we note that the deposit provision of AT&T's tariff is not implicated here. In their first and third requests, petitioners seek, *inter alia*, declarations that AT&T had no basis to require a deposit to effect the movement of traffic without the associated plans. *See* Petition at 7-8. AT&T, however, does not argue that any deposit was required to effect the movement of traffic from CCI to PSE and notes that the deposit requirement related to the earlier transfer from the Inga Companies to CCI. *See* Opposition at 9 n.8.

The FCC did not see in its 2003 Decision that 2.1.8 explicitly permits for traffic only to transfer. Petitioners and AT&T have both advised the Commission the "any number" of telephone numbers language in 2.1.8 means not "all numbers" must transfer. AT&T's brief to the DC Circuit expressly states that this language indicates that 2.1.8 allows traffic only transfers.

However even if the FCC still does not believe that 2.1.8 permits traffic only to transfer the Commission must again rule in petitioners favor as 3.3.1Q bullet 4 does allow traffic only to transfer.

If it is decided by the FCC that 2.1.8 still does not allow traffic only to transfer but traffic can transfer under 3.3.1.Q-4 plaintiffs should have a 203 violation entered against AT&T. [1]

March 1996 Judge Politan Decision See Page 15-16:

> 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 FCC No. 2 permits fractionalization has been referred by this Court to the F.C.C**.

Whether the traffic moved via 2.1.8 or 3.3.1Q-4 is **not relevant**. The issue before NJFDC Judge Politan was his phrase (fractionalization). Does Tariff No 2 allow the plan to be separated from the traffic. It did not matter to the NJFDC how the accounts got from CCI to PSE as long as AT&T was protected for its costs.

Either 2.1.8 or 3.3.1.Q-4 the responsibility for bad debt went with the accounts to PSE. Either way the accounts that were not transferred would be CCI's responsibility for bad debt. Either way CCI would retain the revenue and time commitment.

The only reason petitioners chose 2.1.8 was a little less paperwork. Petitioners would have to submit for each end-user the original Main Billed Telephone Numbers Location profile to AT&T and indicate DELETE. Petitioners would also then sign up each end-user on PSE's Main Billed Telephone Numbers Location form.

The benefit of using 3.3.1Q-4 over 2.1.8 would be that there would not be a $50 per location account movement charge as there was no cost to delete or add accounts. However AT&T often ran promos like Promo 183 that waived the $50 charge.

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[1] The FCC should not be deciding the question of whether or not 2.1.8 allows traffic only transfers at this point because it is no longer a controversy. Both AT&T and petitioners before Judge Bassler in 2006 agreed 2.1.8 did allow traffic only transfers.

Because Petitioners had full Letter of Agency Status to control each account petitioners would not have needed to get another signature from each end-user but would have notified the end-users in any event that their account was being moved to another AT&T discount plan.

Petitioners Letter of Agency allowed petitioners to move the end-users to whatever reseller plan petitioners wanted as long as the underlying network was AT&T's. Even if Petitioners decided to move accounts to a plan in which the reseller did the billing that was fine as long as that reseller was purchasing time from AT&T. In PSE's case it was AT&T's underlying network and AT&T continued to do the billing so a movement from one plan to another would have made no difference to the end-users other than a bigger discount.

In any event if the NJFDC does not lift and the FCC again rules that 2.1.8 does not permit traffic only transfers but the FCC again decides that 3.3.1.Q-4 (delete and add) does permit or the Tariff No 2 in general does not prohibit traffic only transfers the Commission must again rule that AT&T violated 203.

The DC Circuit had an issue with the FCC's determination that 2.1.8 did not allow traffic only transfers:

The DC Circuit Decision 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.

and the DC 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.

However the DC Circuit nor AT&T has ever asserted that end-users can't be deleted and added under 3.3.1Q-4. In fact AT&T's order processing manager Joyce Suek stated that 2.1.8 no longer allowed traffic only transfers. At that point the only way to move an account from one plan to another was by deleting from the former customers plan and adding to the new customers plan.

AT&T order processing manager Ms. Joyce Suek's in June 1995 uses of the term "Partial TSA's" means "traffic only" transfers under 2.1.8 **T**ransfer **S**ervice **A**greement (TSA).

> 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.**

More evidence of the AT&T's position that deleting and adding locations was permitted:

July 7th 1995 letter from AT&T's counsel Mr. Fash to petitioners counsel Mr. Helein:

> 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.

Charles Fash indicates that 2.1.8 was not permissible to move traffic (i.e. locations) because his position was 2.1.8 addresses transfer of service not transfer of traffic.

However the DC Circuit believed that **traffic** could be transferred:

The DC Circuit Decision 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.

The DC Circuit believes that 2.1.8 permits traffic only transfers and the DC Circuit did not determine that traffic was prohibited from moving under 3.3.1Q-4.

As petitioners stated to the DC Circuit in its Post Oral Argument Brief either way would have accomplished the goal of petitioners which was to keep its plan that had several grandfathered terms and conditions.

Additionally that plan can be merged into a contract tariff without the need for security deposits in the many millions. Traffic comes and goes the grandfathered plan no matter how much traffic was on it was the golden goose. Petitioners goal was not to transfer away the Golden Goose.

The Commission should understand that the goal was not about needing to use 2.1.8. It did not matter how the accounts got to PSE as long as petitioners keep the Golden Goose grandfathered plan. Judge Politan did not care either how the accounts could get to PSE as long as AT&T's cost were covered and Judge Politan determined AT&T's fraudulent use defense was an AT&T fraud, in and of itself.

Thus Plaintiffs would like the FCC to advise the parties as to whether or not it is considering the original petitioner declaratory ruling requests that are within the scope of Third Circuit referral that the FCC has already considered in its initial 2003 Decision.

Respectfully Submitted,
One Stop Financial, Inc.
Winback & Conserve Program, Inc.
Group Discounts, Inc.
800 Discounts, Inc.
/s/ Al Inga
Al Inga President

EXHIBIT A

3.3.1.Q. AT&T 800 Customer Specific Term Plan II (continued)

- If the Customer terminates the CSTP II within the first year of the plan and concurrently establishes a new CSTP II of greater value, no additional one time 1/2t credit will apply.
- All other specific term plans and service discounts are excluded from the CSTP II with the exception of the $.01 per minute access line discount. The AT&T 800 Service-Domestic $.01 per minute access line discount is applied after the Term Plan discount but before the RVPP discount.
- The Customer must commit to an annual commitment for three years as shown in Sections 3.3.1.Q.1. and 3.3.1.Q.8., or two years as shown in Section 3.3.1.Q.7., or one year as shown in Section 3.3.1.Q.9, following.

ADD & DELETE

- The Customer may add or delete an AT&T 800 Service or AT&T Custom 800 Service covered under the plan.
- In the event the Customer converts from another AT&T Term Plan to a CSTP II, there will be no decrease in the percent discount received by the Customer.
- The Customer will assume all financial responsibility for all designated accounts in the plan and will be liable for all charges incurred by each location under the plan.
- The Customer must also provide to AT&T, for each location participating in the above mentioned plan, written authorization for including the locations in the plan, billing account number and/or billed name, type of service, and address to which the bill is to be sent.
- In the event that a location is in default of payment, AT&T will seek payment from the Customer. If the Customer fails to make payment for the location in default, AT&T will: (1) reduce the discount by the amount of the billed charges not paid by that location, if any, and apportion the remaining discount, if any, to all locations not in default, and if payment is not fully collected by the above method, (2) terminate the RVPP/CSTP II for failure of the Customer to pay the defaulted payment.
- In the event of termination of the Customer's RVPP and/or Term Plan, the Customer being terminated must notify the individual locations that the RVPP and/or Term Plan has been discontinued and the individual locations not in default of their location billing charges will be converted to monthly rates as individual customers unless they notify AT&T otherwise.

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S&T are responsibility of the Customer.

- Shortfall and/or termination liability are the responsibility of the Customer. Any penalty for shortfall and/or termination liability will be apportioned according to usage and billed to the individual locations designated by the Customer for inclusion under the plan. For billing purposes, such penalties shall reduce any discounts apportioned to the individual locations under the plan.

* This condition applies only to Customers whose CSTP II was in effect or on order prior to July 1, 1993. This does not apply to existing CSTP II Customers that renew their term plan after June 30, 1993.