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**NJFDC States Complaint includes the Inga to PSE Traffic only
Transfer that was Not Denied within 15 days**

**Additional Evidence that the NJFDC Judge Politan Understood that Section 2.1.8 Allowed Traffic
Only Transfers and the Customer of Record Commitments Do Not Transfer.**

March 15, 2016

Mr. Brown

As you are aware the Commission under the Administrative Procedure Act will “terminate a controversy or remove uncertainty.”

In 1995 there was no controversy or uncertainty regarding the fact that on a 2.1.8 plan transfer the revenue and time commitments transferred with the plan and on a 2.1.8 traffic only transfer the revenue and time commitments did not transfer. The only issue was 2.2.4 fraudulent use and AT&T confirmed it did not meet the 15 days on either the CCI-PSE traffic only transfer or the Inga-PSE traffic only transfer.

By March 5, 1996 there was no longer any controversy in Judge Politan’s Court regarding 2.2.4 fraudulent use defense as his Court issued the injunction.

Judge Politan March 5 1996 Decision Page 16 para 1:

The Court finds nothing in the Tariff F.C.C. No. 2 which prevents fractionalization, and contemplates a like finding by the F.C.C. Clearly, therefore, plaintiffs have established a strong likelihood of success on the merits.

Additional evidence from the March 21st 1995 NJFDC hearing as follows:

Here as Exhibit A is addressed the Inga to PSE traffic only transfer.

When AT&T turned that down basically through the untimely request for deposit, the parties decided to shortcut the deposit issue and putting the TSA directly from Winback to PSE. That really is the key transaction that we need to focus on today, because it voids the whole issue of deposits which AT&T has focused most of its time on. AT&T has never responded to the TSA's, which are transfer service agreements, the pieces of paper which are used to effect the transfer between Winback and PSE. Under the tariff they have 15 days to respond. They have never responded to the transfer. Instead, what they did is they went to the FCC to try to change their tariffs to stop this type of transaction. Now, it is our position--it has been well briefed already ---that AT&T has waived its ability to stop this transaction by failing to respond within the 15 days.

Here as page 1 of EXHIBIT B line 3:

So all the conditions of AT&T's tariff were met for this transfer from Winback to PSE. AT&T has only devoted one paragraph of its entire papers discussing the transfer from Winback to PSE. It is trying to focus on the earlier attempt to transfer from Winback to CCI on the deposit issue.

Above AT&T by devoting a paragraph to the Winback to PSE traffic only transfer is acknowledgement that it was requested.

EXHIBIT B page 1 line 25 into page 2 of Exhibit B:

The Court: You say it is a simple transfer from Winback to PSE?

Mr Yeskoo: Exactly. That was effected by CCI as agent for Winback. Winback appointed CCI as its agent pursuant to the tariffs.

Here as EXHIBIT C shows how many aggregators were moving to PSE and all used 2.1.8 in the same fashion as plaintiffs. The transfer on Jan 31st 1995 was the Winback to PSE direct transfer:

Additionally, PSE has received over 20 transfers of service from AT&T in the last two years. There has never been a deposit requirement. Finally AT&T had 15 days from the time these TSA's were submitted on Jan 31, 1995 to say whether it wanted any security and it never did.

Here as **EXHIBIT D is 4 pages** that covers previous traffic only transfers using section 2.1.8. Start at line 20 of the 1st page:

The Court: You have been here during the course of this hearing and you have heard and participated in the transfer of customers, end users, for service through PSE. You're familiar with that Correct?

Mr Inga Yes.

The Court: Have you on prior occasions transferred some but not all of one of your plan's customers to another plan?

Mr Inga: Yes One Stop Financial was obviously the first company I started. I had all my accounts on one corporation.

I transferred all of the --- used the transfer and service agreement form to transfer accounts from One Stop Financial to distinctly separate corporations

The Court: Is that the same TSA or transfer of service form that was used to transfer some but not all of the Winback end users for service through PSE?

Mr Inga: That form is six years has never changed. That is the form that is used for transfer of plans and transfer of accounts, for name changes, corporation changes, et cetera.

The Court: Was it the same form, identical form, that was used to attempt to transfer some of the Winback accounts but not all of them for service through PSE? Was it the same form?

Mr Inga: The same form.

EXHIBIT D page 4:

The Court: Did you transfer all obligations, both the plan and the

Mr Inga: No.

The Court: --and the service?

Counsel: Just the accounts get transferred?

Mr Inga: Every day they do this at AT&T, accounts are moved every day. In fact, in the tariff AT&T put a provision in there when you transfer an account from one CSTPII to another CSTPII, AT&T charges \$50 to move that. Because there are so many thousands of accounts being moved, AT&T said: Wait a minute. Put a \$50 location charge on this move. That was done back in the middle of --maybe the beginning of 1993. In that area. Location charge because of the tremendous amount of moves. We had a

letter from AT&T saying that from now on you're going to be charged \$50 every time you move an account.

The Court: Have you been paying it?

Mr Inga: Of Course.

EXHIBIT E page 1 line 25: Mr Inga confirms that accounts were all initially on One Stop Financial, Inc that started in 1989. Many thousands of accounts were moved from One Stop Financial, Inc to the 3 new corporations formed (Winback & Conserve, 800 Discounts and Group Discounts, Inc.). The reason why the new corporations were formed was that on May 1st 1993 toll free service went portable. One Stop was at the highest CSTPII/RVPP commitment level of \$33 million per year. AT&T advised that One Stop's president set up new corporations and transfer the excess traffic only to the other companies to obtain promotional monies and lock into AT&T higher overall commitment levels. This is just more evidence that section 2.1.8 was used to transfer traffic only and of course the revenue and time commitments of One Stop Financial did not transfer to the 3 new corporations.

AT&T Counsel: In point of fact when you started these companies, you **moved traffic** from One Stop Financial on to those plans; isn't that correct?

Mr Inga: You used a Transfer of Service Agreement to move account locations. Not plans.

Here is a 3 page EXHIBIT F: NJFDC Judge Politan only considered the CCI to PSE and the Winback to PSE traffic only transfers as part of the complaint. His Court did not consider the denial of a Contract tariff as part of the Complaint.

The point plaintiffs want to stress is the Inga Companies direct traffic only transfer to PSE is indeed included within the complaint--not just the CCI to PSE traffic only transfer. AT&T acknowledged the Inga Companies to PSE traffic only transfer but AT&T but never denied it--let alone within the 15 day requirement. Page 2 of the 3 page exhibit line 6:

That was the first scenario, factually that you went through.

The second scenario was CCI, as assignee or **agent for Winback, parked all the service with PSE, retained the plan commitment**, so to speak, and said: Approve that.

Those are the **two sets of facts** that have occurred. No one has alleged in this case that you went to AT&T and said: Extend the window on the 516 contract to Winback so they could subscribe to it. So it's not in the case.

The NJFDC or the FCC can rule on the non-disputed fact that AT&T failed to meet the 15 days statute of limitations within section 2.1.8 in reference to the Inga Companies to PSE traffic only transfer. Failure to meet the 15 days precludes AT&T raising any defenses.

If there is any ambiguity in the tariff by law it must be construed in favor of ATT's customer (plaintiff s). Here actions speak even louder than words as AT&T asserted to the DC Circuit that it met the 15 days on Jan 27th 1995 in reference to the CCI to PSE transfer when it actually did not. AT&T then stated that a Jan 23rd 1995 letter was the denial of the CCI-PSE traffic only transfer but that was a late denial of the plan transfer.

There was never a denial of the acknowledged Jan 31st 1995 Inga to PSE transfer. AT&T filed Tr9179 on February 16th 1995 in an attempt to retroactively change 2.1.8 but its Substantive Cause Pleading was denied.

By law the Inga to PSE traffic only transfer must be effectuated and a 203 Order issued against AT&T as this order is included within the complaint.

Very truly yours,
Raymond A. Grimes
CC: Client
CC: FCC

EXHIBIT A

1 traffic but not the plans to PSE.

2 >>>>>>>>>> When AT&T turned that down basically through the
3 untimely request for deposit, the parties decided to
4 shortcut the deposit issue and putting TSA directly from
5 Winback to PSE.

6 That really is the key transaction that we need
7 to focus on today, because it voids the whole issue of
8 deposits which AT&T has focused most of its time on.

9 AT&T has never responded to the TSAs, which are
10 transfer service agreements, the pieces of paper which are
11 used to effect the transfer between Winback and PSE.

12 Under the tariff they have 15 days to respond.
13 They have never responded to that transfer. Instead, what
14 they did is they went to the FCC to try to change their
15 tariffs to stop this type of transaction.

16 Now, it is our position -- it has been well
17 briefed already -- that AT&T has waived its ability to
18 stop this transaction by failing to respond within the 15
19 days.

20 Now, what we're asking the Court to do is just
21 follow the plain language of the tariff.

22 Section 2.1.8 of AT&T FCC Tariff 2 provides the
23 conditions for transfer. There are only two conditions
24 placed on the reseller. That is, number one, it be a
25 written request. This request was in writing.

EXHIBIT B

1 Number two, that the agreement to assume the
2 obligations by the transferee be placed in writing. That
3 was done. So all the conditions of AT&T's tariff were met
4 for this transfer from Winback to PSE.

5 AT&T has only devoted one paragraph of its entire
6 papers discussing the transfer from Winback to PSE. It is
7 trying to focus on the earlier attempt to transfer from
8 Winback to CCI on the deposit issue. PSE would not have
9 posted a deposit. It had 20 plans -- over 20 plans
10 transferred to it without a deposit. And it meets the
11 no-deposit requirement of the tariff.

12 THE COURT: Can I ask you a question?

13 What is your interest in this proceeding?
14 Combined Companies, Inc. What is your interest in this
15 proceeding?

16 MR. YESKOO: Combined Companies has an agreement
17 with both PSE and Winback whereby it will share in the
18 revenue stream once the traffic goes from Winback to PSE.

19 THE COURT: Because you said the first
20 transaction is gone?

21 MR. YESKOO: It's not gone. We're prepared to
22 argue that, too.

23 The second transaction is a much simpler
24 transaction with much fewer --

25 THE COURT: You say it is a simple transfer from

1 Winback to PSE?

2 MR. YESKOO: Exactly. That was effected by CCI
3 as agent for Winback. Winback appointed CCI as its agent
4 pursuant to the tariffs. So if the question is one of
5 standing, there is no doubt that CCI would have standing
6 because it was the appointed agent for the purpose of this
7 transaction and receives compensation from effecting the
8 transaction.

9 THE COURT: Why aren't you -- excuse me for
10 interrupting you. I might as well ask you the question.

11 MR. YESKOO: Please.

12 THE COURT: Why aren't you before the FCC on a
13 petition to, if you would, mandatorily order them to abide
14 by the tariffs and rules and regulations?

15 MR. YESKOO: The Federal Communications Act gives
16 the communications company the choice of forum.

17 THE COURT: 407 or 406. Is that what you will --

18 MR. HELEIN: 207, your Honor.

19 MR. YESKOO: 207 and 406.

20 MR. HELEIN: That gives the Court authority to
21 deal with this.

22 MR. YESKOO: Our firm and Mr. Helein's firm,
23 particularly, have had a long history of dealing both with
24 the federal courts and with the FCC. As a practical
25 matter, the only way to get immediate relief or immediate

EXHIBIT C

1 Since PSE, which is joint ventured with General
2 Electric, has a long history of payment with AT&T -- it
3 has good credit -- no security would be required under
4 this section of the tariff.

5 >>>>>>>>> Additionally, PSE has received over 20 transfers
6 of service from AT&T in the last two years. There has
7 never been a deposit requirement.

8 >>>>>>>>> Finally, AT&T had 15 days from the time these
9 TSAs were submitted on January 31, 1995 to say whether it
10 wanted any security and it never did.

11 I submit, your Honor, that the issue of security
12 is a relatively simple issue to deal with.

13 Now, your Honor asked -- to go back to your
14 Honor's question: Aren't we changing the status quo?
15 There is really a twofold answer to that. I've addressed
16 the first answer, which is Section 406 clearly
17 contemplates a change in the status quo by giving a
18 district court the right to order service.

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EXHIBIT D

1 there which I couldn't meet. There were location caps on
2 it. I couldn't obtain it.

3 516 doesn't have a location cap on it. That one
4 would be available for me.

5 Q What do you mean by "location cap"?

6 A AT&T does -- what they do with all their contract
7 tariffs except for the mistake they made on 516 was they
8 put a cap on the amount of locations that could be entered
9 on to a contract tariff. This way, no aggregator can pick
10 it up for resale.

11 Q Why can't an aggregator pick it up for resale?

12 A Obviously, at this point we would have maybe 15,000
13 accounts. If the contract says you can't have more than
14 50 locations on a plan, obviously, you can't take -- the
15 only way to do that would be 400 different corporations.

16 THE COURT: That's not beyond the pale of
17 imagination, is it?

18 MR. MEANOR: It will keep the Secretary of State
19 happy, anyway.

20 >>>>>>>>>> You have been here during the course of this
21 hearing and you have heard and participated in the
22 transfer of customers, end users, for service through PSE.
23 You're familiar with that. Correct?

24 A Yes.

25 Q Have you on prior occasions transferred some but not

1 all of one of your plan's customers to another plan?

2 A Yes One Stop Financial was obviously the first company
3 I started. I had all my accounts on one corporation.

4 When Mr. Fitzpatrick told me to take on more
5 corporations to obtain more promotions and make more of a
6 commitment to AT&T, when we were just going into that
7 portability environment, I transferred all of the -- used
8 the transfer and service agreement form to transfer
9 accounts from One Stop Financial to distinctly separate
10 corporations which I did not guarantee any of the
11 liabilities. Winback & Conserve, 800 Discounts and Group
12 Discounts. The Transfer of Service Agreement form was
13 used to move those locations. The plan was not moved.
14 Just the locations.

15 Q Is that the same TSA or transfer of service form that
16 was used to transfer some but not all of the Winback end
17 users for service through PSE?

18 A That form in six years has never changed. That is the
19 form that is used for transfer of plans and transfer of
20 accounts for name changes, corporation changes, et cetera.

21 **** Q Was it the same form, identical form, that was used to
22 attempt to transfer some of the Winback accounts but not
23 all of them for service through PSE? Was it the same
24 form?

25 A The same form.

1 Q When you used that TSA form, Transfer of Service
2 Agreement, on prior occasions to transfer end users for
3 service through one of your companies to another, were you
4 ever asked to put up a deposit, security deposit?

5 A No. Not only did I do it to my own corporations, but
6 I had transferred hundreds and hundreds of accounts to
7 other aggregators' plans and never was there a security
8 deposit.

9 Q Tell us about that.

10 A Linvan and Ameratel 800. I transferred approximately
11 200 accounts to his plan, which was called Ameratel 800 at
12 that point.

13 That was -- he did not take up a security deposit
14 at all.

15 THE COURT: What were the value of the services
16 for a year on those 200 accounts?

17 THE WITNESS: Maybe each location was \$250.
18 Maybe 40 or 50,000 in traffic.

19 THE COURT: Forty or 50,000. It's not 54
20 million.

21 THE WITNESS: Neither was the transfer of One
22 Stop over to Winback.

23 THE COURT: I understand. Go ahead.

24 Q Yes?

25 A They were in shortfall.

1 Q When you say "transfer an account," you mean transfer
2 customers, end users?

3 A Two transfers. One is of the account and the other of
4 the plan.

5 Q Linvan was what?

6 A They were a manager of a company called Ameratel 800.

7 Q Did you transfer any accounts from one of your
8 companies to any other company than Mr. Linvan's company
9 if you know, if you can recall? If you don't remember,
10 you don't remember.

11 A I don't remember.

12 Q When did the transfer of 200 or so accounts to Mr.
13 Linvan's company take place?

14 A The end of '93, I believe.

15 Q Did AT&T make any objection to the transfer of those
16 accounts?

17 A Not at all.

18 Q Were they accepted by AT&T?

19 ***** A Yes. I also transferred accounts between my
20 corporations all the time.

21 Q No deposits?

22 A Never.

23 Q No objection?

24 A No.

25 MR. MEANOR: Thank you.

1 >>>>>>>>> THE COURT: Did you transfer all obligations,
2 both the plan and the --

3 THE WITNESS: No.

4 THE COURT: -- and the service?

5 Q Just the accounts get transferred?

6 A Every day they do this at AT&T, accounts are moved
7 every day. In fact, in the tariff AT&T put a provision in
8 there when you transfer an account from one CSTP II to
9 another CSTP II, AT&T charges \$50 to move that.

10 Because there are so many thousands of accounts
11 being moved, AT&T said: Wait a minute. Put a \$50
12 location charge on this move. That was done back in the
13 middle of -- maybe at the beginning of 1993. In that
14 area. Location charge because of the tremendous amount of
15 moves.

16 We had a letter from AT&T saying that from now on
17 you're going to be charged \$50 every time you move an
18 account.

19 Q Have you been paying it?

20 A Of course.

21 Q What would be the effect with respect to that charge
22 on the movement of these companies to PSE?

23 A This is different because this is a movement of
24 accounts from a CSTP II into a contract tariff. Under FCC
25 No. 2 Tariff, what happens when you move an account from a

1 tariff, a CSTP II to a contract tariff, there is no \$50
2 charge in the FCC tariff that you have to pay to notify an
3 account. That is another reason why we want to do this.
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EXHIBIT E

1 A That's right.

2 Q You've been paid promotional credits in the form of
3 air line tickets; isn't that correct?

4 A Yes.

5 Q Is it fair to say many thousands of dollars in airline
6 tickets in promotional credits have been given to the
7 corporations who own those plans?

8 A I have not made a list of the dollars that have been
9 accumulating on airline tickets. That is a very nothing
10 part of our business. 516 offers million dollars in promo
11 money, also.

12 So far as the passes, what the CSTP would be, the
13 point is moot.

14 Q Whether it is moot or not, Mr. Inga, the fact is you
15 have received promotional credits all along in holding the
16 CSTP plans?

17 A If I was given 516, I would have --

18 THE COURT: Mr. Inga, we'll be here to midnight.
19 Listen to his question. How ever stupid you may think the
20 question is, answer it. Don't make a speech.

21 A Okay.

22 Q You've been paid promotional credits on the CSTP II
23 plans, correct?

24 A My companies have been, yes.

25 ***** Q In point of fact when you started these companies, you

1 moved traffic from One Stop Financial on to those plans;
2 isn't that correct?

3 >>> A You Used a Transfer of Service Agreement to move
4 account locations. Not plans.

5 Q You created those CSTP II plans, created the companies
6 to take the service under those CSTP II plans in part for
7 the opportunity to gain those promotional credits, is that
8 correct?

9 A Mr. Fitzpatrick directed my to do that. Yes.

10 Q Mr. Fitzpatrick directed you to do it, but you, in
11 fact, did it; isn't that correct?

12 A Because they wouldn't give me a contract tariff.

13 Q Mr. Inga, you were told by Mr. Fitzpatrick that if you
14 formed companies, you could get a CSTP II plan at
15 promotional credits, correct?

16 A If I formed four companies, I could have taken out
17 four 4516 tariffs because it was only for 20 million a
18 year.

19 Q Mr. Inga, my question is a simple one. Please try to
20 listen to my question.

21 You formed the CSTP II plans for the purpose of
22 getting the promotional credits on the CSTP II plans,
23 correct?

24 A No. I formed them to obtain the promotional moneys.
25 Is that what I really wanted to do? That was my only

EXHIBIT F

1 There is no response in 15 days. Then 15 days thereafter
2 or at some time thereafter, response was: Put up \$13.4
3 million dollars or \$7 million of security.

4 That was the first scenario, factually, that you
5 went through.

6 >>>>>>>>>> The second scenario was CCI, as the assignee or
7 agent for Winback, parked all the service with PSE,
8 retained the plan commitment, so to speak, and said:
9 Approve that.

10 >>>>>>>>>> Those are the two sets of facts that have
11 occurred. No one has alleged in this case that you went
12 to AT&T and said: Extend the window on the 516 contract
13 to Winback so they could subscribe to it.

14 So it's not in the case. It is very interesting.
15 I find it -- I hope some day to have many more FCC cases
16 so I can apply all this knowledge I've learned. I'm sure
17 if Whitmer and Meanor have their way, I'll have a thousand
18 of them. But the point of the matter is it is not this
19 case.

20 MR. HELEIN: Your Honor, but the denial of
21 service is very broad that we're talking about here.

22 THE COURT: But you didn't ask for that. That is
23 not an allegation in the Complaint.

24 MR. HELEIN: It is in this fashion.

25 CCI asked for a contract tariff. That is

1 factually stated in the Complaint. Part of the process by
2 which we moved from the transfer, when the transfers --

3 THE COURT: The answer is no. The answer is no.
4 I won't hear that testimony. Fitzpatrick doesn't have to
5 come.

6 Mr. Inga, let's finish with you, sir.

7 I have some very discrete issues that I have to
8 decide here which are not easy. I don't think we should
9 complicate them with things like which would have, could
10 have, should have.

11 Just like Mr. Inga's recent speeches about what
12 Fitzpatrick said in 1993. We're here to address the
13 wrongs which are alleged in the Complaint and not the
14 wrongs which may or may not have been committed in years
15 past.

16 Time -- you talked about time wipes away the
17 commitment. In the law, time wipes away former wrongs.

18 (Comment addressed to Mr. Inga.)

19 THE COURT: Called laches, statute of limitations
20 and other doctrines.

21 Go ahead.

22 MR. WHITMER: Thank you, your Honor.

23 THE COURT: Answer these questions quickly and
24 we'll get out of here.

25 THE WITNESS: I'll try, your Honor.