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VIA ELECTRONIC SUBMISSION

May 19, 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 May 17, 2016, Frank Simone and I, on behalf of AT&T, met with Travis Litman, Senior Legal Advisor to Commissioner Rosenworcel. 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. AT&T provided a copy of its response (exhibits omitted).

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,

A handwritten signature in black ink, appearing to read "Christi Shewman", written in a cursive style.

Christi Shewman

cc: Travis Litman

In the matter of :)	
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)	
)	WC Docket No. 06-210
One Stop Financial, Inc.)	
Group Discounts, Inc.)	
Winback & Conserve Program, Inc.)	
800 Discounts, Inc.)	
)	
)	Petitioners
and)	
)	
AT&T Corp.)	
)	Respondent

**AT&T’S RESPONSE TO PETITIONERS’ MOTION
TO TEMPORARILY SUSPEND THE PROCEEDING**

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February 1, 2016

AT&T submits this response to the January 20, 2016 submission by Petitioners One Stop Financial, Inc., Winback & Conserve Program, Inc., Group Discounts, Inc., 800 Discounts, Inc. (“petitioners”). Petitioners’ January 20 Submission consists primarily of a letter from their latest counsel, Mr. Raymond Grimes, to AT&T’s counsel announcing petitioners’ intention to move to lift the stay of the district court proceeding, and a string of emails written by their president, Al Inga, to various individuals, including Commission staff. To the extent this aggregation of documents constitutes a proper request for a temporary suspension, AT&T opposes that request.

In 2006, the federal court in the District of New Jersey directed petitioners to institute this proceeding to obtain an interpretation of an AT&T tariff provision. Just last March, the Court affirmed that directive. None of the arguments in petitioners’ rambling January 20, 2016 submission provides any conceivable basis for suspending a proceeding that, less than a year ago, petitioners complained was taking too long. Their request for sanctions—the latest in an endless litany of groundless accusations against AT&T and its counsel—is equally frivolous.

I. There Is No Basis For Temporarily Suspending The Declaratory Ruling Proceeding.

As the Commission is aware, petitioners sued AT&T in federal district court after AT&T refused to process a proposed transfer of telephone traffic. The Judge then presiding over the case, Judge Politan, eventually referred to the Commission the question of whether Section 2.1.8 of AT&T Tariff No. 2 required AT&T to process requests to transfer virtually all traffic on certain term plans from Combined Companies, Inc. (“CCI”) to Public Service Enterprises of Pennsylvania (“PSE”), despite PSE’s failure to assume all obligations under the plans, including obligations for potential shortfall and termination charges. The district court case was stayed pending resolution of that issue. When that issue remained unresolved after a 2003 Commission ruling and subsequent appeal to the D.C. Circuit, Judge Bassler (who had succeeded Judge

Politan) denied petitioners' motion to lift the stay in 2006 and directed them to reinstitute proceedings to obtain a ruling from the Commission on the Section 2.1.8 issue.

In December 2014, petitioners filed a new motion to lift the stay. In addition to complaining about agency delay, they claimed that the question of what obligations had to be assumed under Section 2.1.8 was a "red herring." Br. in Supp. of Pls. Mot. to Lift Stay and for Partial Summ. J. at 13 (Dec. 15, 2014).¹ After briefing and argument, Judge Wigenton (who had succeeded Judge Bassler) denied petitioners' motion. She found it appropriate to continue the stay to obtain a ruling from the Commission on the referred issue.

Petitioners now ask the Commission to suspend its efforts to resolve that very issue. The basis for this request is difficult to discern, to say the least. Apparently convinced that the hodgepodge of arguments set forth in their counsel's January 18 letter² will induce the Court to lift the stay, petitioners claim that there is no need for the Commission to act unless "the [Court] still does not understand that the Judge Bassler 2006 referral on obligation allocation is totally moot by both the FCC Orders as well as the merits." January 20 Submission at 1. The short answer to this contention is that the current proceeding was instituted at the direction of the Court, and should not be suspended unless and until the Court changes that directive. Petitioners have sought and failed to obtain such a ruling from the Court on multiple prior occasions. Their belief that this time will be different is not a basis for the extraordinary relief they request.

That belief, moreover, is completely misplaced. As AT&T explained in its recent response to Mr. Grimes, the central arguments set forth in his letter rest on premises that are

¹ AT&T explained that petitioners were largely responsible for the delay, having inundated the Commission with nearly 100 formal submissions (and countless additional emails) comprising thousands of pages of repetitive arguments, including many that improperly sought to expand the scope of the proceeding. Br. of AT&T Corp. in Opp. to Pls. Mot. to Lift Stay and for Partial Summ. J. at 10-19 (Jan. 16, 2015) ("AT&T Opp. to Mot. to Lift Stay").

² Letter from Raymond Grimes to Richard Brown, Jan. 18, 2016 ("Grimes Letter").

demonstrably false and/or baseless. *See* Exh. A. The centerpiece of the Grimes Letter is the claim that the Court’s referral is limited to what petitioners’ repeatedly (and erroneously) describe as AT&T’s “sole defense” prior to the Commission’s ruling in 2003—namely, that AT&T could refuse to process the transfer under the tariff’s “fraudulent use” provision, Section 2.2.4. *See* Grimes Letter at 1-3. Petitioners argue that Judge Wigenton never saw the Commission’s January 12, 2007 Order, which (they claim) declined to expand the referral beyond AT&T’s “sole defense of fraudulent use.” *Id.* at 5. Petitioners thus imply that, once the Judge sees that Order, she will lift the stay. Petitioners also claim that a 1995 Commission order effectively foreclosed AT&T’s “fraudulent use” defense. *Id.* at 2-3. As AT&T explained in its response to Mr. Grimes, these assertions are frivolous.

There is no merit to petitioners’ claim that AT&T’s “sole defense” was “fraudulent use.” As AT&T explained in its response to the Grimes Letter, AT&T defended its refusal to process the proposed CCI-to-PSE transfer based not only on its fraudulent use claim, but also because the proposed transfer was invalid under *section 2.1.8*. *See* Exh. B, AT&T’s March 30, 1995 Post-Hearing Br. at 7-8 (AT&T “refused to permit the transfer precisely because PSE, the ‘new’ customer in the transfer, did not assume ‘*all* of the obligations’ of the ‘old’ customer, CCI. *See* AT&T FCC Tariff No. 2, § *2.1.8*”) (second emphasis added). The Commission itself stated that the “question referred by the Third Circuit is ‘whether *section 2.1.8* [of AT&T’s Tariff FCC No. 2] permits an aggregator to transfer traffic under a [tariffed] plan without transferring the plan itself in the same transaction.’” October 17, 2003 Order at ¶ 1 (“2003 Order”) (emphasis added). That Order also quotes AT&T’s filing before the agency, which confirms that AT&T raised two defenses, not just a fraudulent use defense. *Id.* ¶ 4 n.26 (“AT&T objected on the grounds that *Section 2.1.8* did not authorize the transfer of a plan unless the transferee ... assumes the original

customer's liability *and that* the location-only transfer violated the "fraudulent use" provisions of Section 2.2.4") (emphases added).

Petitioners' "sole defense" theory rests on the fact that, after the Commission rejected AT&T's fraudulent use argument in the 2003 Order, it stated that "AT&T does not rely upon any other provisions of its tariff to justify its conduct." Exh. C (quoting 2003 Order at ¶ 13); *see also* Grimes Letter at 1 ("the FCC 2003 decision states AT&T's sole defense in 1995 was under section 2.2.4"). But it was only after rejecting *both* the Section 2.2.4 *and* the Section 2.1.8 defenses, 2003 Order at ¶¶ 8-9, that the Commission stated that AT&T did not "rely upon any other provisions of its tariff." No reasonable reader could possibly understand that statement to mean that AT&T never even raised the Section 2.1.8 argument *that the Commission had just rejected a few paragraphs earlier*.

Petitioners also claim that AT&T could not have made its Section 2.1.8 argument because that argument would have been fatally inconsistent with its fraudulent use defense. *See* Grimes Letter at 3, 4 ¶¶ (5) & (6). But this is one of the many claims petitioners raise that simply "rehash issues that have been the subject of extensive prior briefing." Exh. A at 2. As AT&T has explained, a traffic transfer would *not* have divested a transferor such as CCI of obligations existing at the time of the transfer. Comments of AT&T in Opposition to Request for Declaratory Rulings (Dec. 20, 2006) ("AT&T 2006 Comments") at 17-18 (discussing Section 2.1.8's "joint and several liability" provision). Thus, CCI had obligations PSE was obligated to assume.³

³ Petitioners also claim that, before the 2003 Order, AT&T made a *different* Section 2.1.8 argument—*i.e.*, that the requirement that "all obligations" be assumed applied only on plan transfers. Exh. C. This very claim shows that AT&T did not rely "solely" on a fraudulent use defense. The D.C. Circuit, moreover, rejected this reading of AT&T's Section 2.1.8 argument. *See AT&T Corp. v. FCC*, 394 F.3d 933, 937 (D.C. Cir. 2005) ("AT&T did not concede the inapplicability of Section 2.1.8 to transfers of traffic only. Indeed, had AT&T been willing to make such a concession, it presumably would not have contested the meaning of this provision").

In short, the referral from the Court was not limited to AT&T's fraudulent use defense. Petitioners' assertion that the 2007 Order "did not expand the scope of the Third Circuit Referral concerning AT&T's *sole defense* of fraudulent use," Grimes Letter at 5 (emphasis added), is thus wrong. Indeed, the 2007 Order itself states that the Commission had been asked to resolve "the scope of section 2.1.8." January 12, 2007 Order ¶ 3. Thus, the Commission did not "den[y]," but instead recognized, "Judge Bassler's referral regarding which obligations transfer." Grimes Letter at 8. Instead, the 2007 Order rebuffed petitioners' efforts to raise *other* issues (pertaining to alleged discrimination and the infliction of shortfall charges, *see* Grimes Letter at 6-7), by making clear that the Commission would not address these issues, either in this proceeding or another one initiated by Tips Marketing ("Tips"), an entity owned by Mr. Inga.⁴

Petitioners' assertion that Judge Wigenton "has never seen the FCC's January 12, 2007 Order," Grimes Letter at 5, is patently false. AT&T included a block quote of that Order in its opposition to petitioners' 2014 motion to lift the stay and attached the Order as an exhibit. AT&T Opp. to Mot. to Lift Stay at 11 & Exh. N. At the hearing on petitioners' motion, Judge Wigenton expressly stated that she had "read *all of the submissions*. In addition to that, I have

⁴ Recognizing this, petitioners filed a motion asking whether they should seek a Court order to expand the referral, or to issue a new referral that would "receive its own FCC case ID and additional public comments." Request for Reconsideration or FCC Guidance for District Court Re: Issues Already Commented On, But Not Before FCC (Feb. 8, 2007) at 2 (referring to shortfall infliction claim). Tips later claimed that the shortfall infliction claim was reintroduced into this proceeding by the fabricated "referral" from the Internal Revenue Service (IRS). *See* Ex-Parte Comments of Tips Marketing (March 16, 2007). Later still, petitioners asked the Commission whether it would address the shortfall infliction claim, noting that "there has been no Public Notice issued" in the Tips proceeding, and threatening to file a "writ of mandamus to the DC Circuit to obtain the referral order that the FCC seems to require." Motion for FCC to Announce Whether or Not it Will Address Shortfall/and or Discrimination Claims (Sept. 12, 2007) at 2. AT&T strenuously objected to petitioners' efforts to raise these extraneous issues. *See, e.g.*, Reply to Ptrs. Request for Combining Declaratory Rulings (Jan. 10, 2007) at 1 (Tips' request was an improper "ploy by Mr. Inga to have the Commission consider issues that petitioners deliberately chose to litigate by filing a complaint with the District Court"). *See also* 47 U.S.C. § 207 (election of remedies). As a consequence of the various procedural filings, there was no joining of the issue on the merits of the shortfall infliction claim, and the Commission ultimately terminated the Tips proceeding in 2014. *See In the Matter of Termination of Certain Proceedings as Dormant*, 29 FCC Rcd 11017, 11068 (Sept 15, 2014).

read the opinions that have been issued in this matter, not only from Judge Politan . . . but *also the opinions from the FCC.*” March 18, 2015 Transcript at 4:2-5 (emphases added).

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” provision, AT&T promised that, for a 12-month period, it would provide 5 days notice before it made “any *change* to an existing term plan,” and 14-days notice for “*changes* to discontinuance with or without liability . . . or transfer or assignment of service.” 1995 Order ¶ 134 (emphases added). In refusing to process the proposed CCI-to-PSE transfer, AT&T was not *changing* the plans; it was enforcing them in accordance with their pre-October 1995 terms. As AT&T has explained, those pre-October 1995 terms did not enjoy “immunity” from shortfall obligations. AT&T 2006 Comments at 31-34.⁵

Petitioners also claim that the D.C. Circuit did not remand the case to the Commission, “so there were no open issues.” Grimes Letter at 7. But Judge Bassler’s 2006 decision makes clear that, while he did not believe the D.C. Circuit had “expressly remand[ed] the case back to the FCC,” Opinion, *Combined Companies, Inc. and Winback & Conserve Program et al. v. AT&T Corp.*, Civil Action No. 95-908 (filed June 1, 2006) at 12, the parties had to return to the Commission for the resolution of issues under section 2.1.8 that remained unresolved, *id.* at 13-18. Those issues remain unresolved.

⁵ Petitioners also assert that Judge Bassler never saw the 1995 Order. Grimes Letter at 8. In fact, petitioners’ prior counsel cited that Order and attached it as an exhibit to a letter to Judge Bassler in which he argued that the stay should be lifted. *See* Exh. D.

Finally, petitioners assert that “[t]he FCC staff stated that even if Judge Bassler’s referral was within the scope of the case, it is still a moot issue.” Grimes Letter at 5. Petitioners cite no support for this claim, and AT&T is not aware of any.⁶ In all events, it is clear that the issue is not moot. Petitioners have sued for damages on the grounds that AT&T improperly refused to process the CCI-to-PSE transfer. AT&T contends its refusal was proper because PSE did not agree to assume in writing “all obligations,” as Section 2.1.8 required. A Commission ruling that Section 2.1.8 required such a written assumption of “all obligations” would thus not be a matter of purely academic interest, nor would it be “a change in the terms and conditions of section 2.1.8.” Grimes Letter at 5. It would be a determination of what section 2.1.8 meant at the time of the proposed CCI-to-PSE transfer, and thus directly relevant to the resolution of petitioners’ still-pending claims in federal court.⁷

II. Petitioners’ Request For Sanctions Is Utterly Frivolous.

As the Commission is aware, AT&T sought sanctions against petitioners based on their submission of a fabricated document, purportedly from the IRS, in an effort to expand the issues before the Commission, and their never-ending stream of baseless and intemperate submissions accusing virtually every AT&T in-house and outside lawyer involved in this case of attempting to defraud the Commission, the D.C. Circuit and the District Court. *See* AT&T’s Motion for Sanctions Against Mr. Alfonse Inga and Petitioners (June 12, 2007). AT&T presciently warned that, because petitioners and their president were incapable of restraint or responsible advocacy, they would continue their abusive tactics unless sanctioned. *See* AT&T’s Reply in Support of its

⁶ In a December 10, 2014 email, Mr. Inga asserted that Commission Staff had “confirmed petitioner’s realization that the FCC decision in regards to the traffic only transfer issue is a moot issue.” Exh. E. In the attached email chain, however, Commission Staff had explicitly stated: “to be clear, I am not answering a question specific to the facts of your case or providing legal advice, nor am I providing a statement on behalf of the Commission.”

⁷ Petitioners raise a number of other issues that have been the subject of prior briefing. Accordingly, none provides a basis for suspending the proceeding.

Motion for Sanctions at 26 (July 18, 2007). Petitioners' latest motion, as well as numerous submissions and countless emails from Mr. Inga over the last eight and a half years, have confirmed the accuracy of that prediction.

In their submissions, petitioners repeatedly claim that legal arguments with which they disagree are “misrepresentations,” “scams” and “frauds.” When respected jurists, including the current Chief Justice of the United States, accept these arguments, petitioners insist that the outcomes demonstrate that the courts have been misled, “scammed,” or defrauded by AT&T. In petitioners' view, only fraud—not valid arguments—can explain an adverse ruling.

In just one of many examples, petitioners claim that AT&T “scammed” Judge Bassler by drawing his attention to “just the two words ‘all obligations’ and not the full sentence” in Section 2.1.8. Nov. 12, 2015 Comments at 25. According to petitioners, “AT&T’s short quote of the full sentence and *focus* on only the 2 words ‘**all obligations**’ scam worked on Judge Bassler and thus the moot 2006 Referral was sent to the FCC.” *Id.* at 26. *See also* Grimes Letter at 4 (referring to “AT&T’s ‘all obligations’ misrepresentation” and its “‘all obligations’ fraud”).⁸ To suggest that when a party asks a tribunal to focus on the relevant portion of a legal document it is engaging in a “fraud,” “scam,” or “misrepresentation” is to strip these words of any recognized meaning.

Yet at the same time that they recklessly impugn the integrity of AT&T’s lawyers and denigrate the intelligence of federal judges, petitioners repeatedly make unfounded and in some cases completely false statements. In their latest motion, they claim that Judge Wigenton never

⁸ Petitioners also claim that AT&T “pull[ed] off the fraud on Judge Bassler” by “intentionally misquot[ing]” the language of section 2.1.8. *Id.* at 25. In the passages petitioners quote—which are taken from AT&T’s opening comments to the Commission—AT&T did not misquote but paraphrased the tariff, using the words “transferee” and “transferor” for the phrases “former customer” and “new customer”—something the Commission itself did in its brief to the D.C. Circuit. *See* Brief for Respondent, *AT&T Corp. v. Federal Communications Commission*, No. 03-1431 (filed May 17, 2004) at 19-20 n.10.

saw the Commission's 2007 Order (when the record shows that she did), and that Judge Bassler never saw the Commission's 1995 Order (when petitioners' prior counsel provided it to him). *Supra* at 5-6 & n.4. They further claim that there "was never an argument that petitioners did not adhere to section 2.1.8," Grimes Letter at 6, when the record shows that AT&T objected to the proposed CCI-to-PSE transfer 21 years ago "precisely because PSE, the 'new' customer in the transfer, did not agree to assume '*all* of the obligations' of the 'old' customer, CCI. *See* AT&T FCC Tariff No. 2, § 2.1.8." AT&T's March 30, 1995 Post-Hearing Br. at 7-8 (second emphasis added). And they claim that AT&T did not deny the CCI-to-PSE transfer within 15 days, Grimes Letter at 3, when AT&T demonstrated the falsity of this claim years ago, in response to yet another of petitioners' allegations that AT&T lawyers had made false statements to the courts. *See* AT&T's Response to Petition to Expedite at 1-2 (May 14, 2008).

There can be no doubt about how petitioners will respond to AT&T's opposition. They will file yet another pleading (and likely multiple pleadings) repeating yet again their groundless accusations, and bombard the Commission with multiple, intemperate emails that repeat their groundless arguments and accusations. To end this cycle, and the burdens that petitioners' conduct places on the Commission as well as AT&T, the Commission should resolve the pending 2.1.8 issue in AT&T's favor as promptly as possible.

Respectfully submitted,

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