

June 1st, 2016
Commission's Secretary
Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554
Deena Shetler: deena.shetler@fcc.gov
FCC Contractor: fcc@bcpiweb.com
Re: WC Docket No. 06-210
CCB/CPD 96-20

Motion to Clarify the FCC's January 2007 Order On Bureau Level

As the FCC can see Judge Wigenton did not address the FCC's Jan 12th 2007 Order. That should give the FCC clear indication that it was not explicit enough for Judge Wigenton.

Deena you have advised plaintiffs that when you wrote the FCC's 2007 Order you believed the District Court would understand it. You believed Judge Wigenton would understand that the obligations allocation question referred by Judge Bassler in 2006 "did not expand the scope of the issue previously presented.

January 12th 2007 FCC Order:

The district court's June 2006 order does not expand the scope of the issue previously presented." Rather, we have been asked to interpret the scope of section 2.1.8 of AT&T's Tariff No.2, a matter already extensively briefed by the parties.

The FCC's Oct 2003 Order explicitly stated the sole controversy referred was fraudulent use. AT&T's sole defense of fraudulent is not a controversy under 2.1.8 it is a controversy as per section 2.2.4. The FCC's sole task was to interpret whether AT&T could rely upon section 2.2.4 fraudulent use to prevent a traffic only transfer.

"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." FCC Pg.10 para 13

It was not relevant that the FCC in its Oct 2003 Order did not see that section 2.1.8 allowed "any number(s)" of locations to transfer. The FCC's only task was to interpret 2.2.4. The FCC denied

2.2.4 due to the illegal remedy of permanently denying the transfer instead of the tariffed remedy of temporarily suspending service.

The FCC in its 2003 Order never even got to the tariff interpretation question of whether AT&T could use section 2.2.4 to prevent a permissible traffic only transfer under either a direct traffic only transfer under section 2.1.8 or 3.3.1.Q4 (delete and add). The FCC advised the DC Circuit that if it were to evaluate that it would rule against AT&T. The FCC asserted to the DC Circuit that the location transfer sections of AT&T's tariff (3.3.1.Q4 and 2.1.8) would have to explicitly state along the lines of: "A location transfer is first subjected and conditioned upon meeting the fraudulent use section 2.2.4 of this tariff." The FCC advised the DC Circuit that tariff must be explicit and the FCC would find that AT&T could not rely upon 2.2.4 to prevent a location transfer.

Furthermore, the FCC's R.L Smith in his notes to FCC case manager Judith Nitsche and AT&T in 1996 stated the FCC should NOT be deciding the fraudulent use issue to begin with. Ultimately the fraudulent use issue is a fact based issue not a tariff interpretation issue. The fact is Judge Politan in March 1996 overwhelming made it clear that AT&T's mere speculation that it was not going to be able to collect shortfall and termination charges on the non-transferred plans revenue and time commitment was "not substantiated by AT&T." Judge Politan made it explicitly clear that the plans were pre June 17th 1994 immune from the shortfall charges AT&T bogusly suspected.

The FCC 2003 Order noted that Judge Politan did not refer the June 17th 1994 provision and that is because it is the law of the case that the plans were pre June 17th 1994 immune. The FCC 2003 Order stated the plans were ordered prior to June 17th 1994 to indicate they were immune. The tariff is explicit that a CSTPII/RVPP plan does not end until the 3 years end----AND the customer has the option as to whether to continue the plan for another 3 year period under the original TERMS AND CONDITIONS---thus the pre June 17th 1994 terms and conditions would continue. Plaintiffs have detailed with explicit tariff evidence that the plans were under the pre June 17th 1994 terms and conditions several years after AT&T inflicted charges in June of 1996. Because time retires commitments under the tariff the entire revenue commitment would have been ameliorated by the time of AT&T de-tariffing many years after 1996.

FCC 2003:

...Declaratory relief on this issue – **which also was not referred to us by the district court**

If there are any disputes regarding what regarding the tariff by law it must be ruled in plaintiff's favor. The FCC states the plans were ordered prior to June 17th 1994. AT&T was also under the Oct 23rd 1995 FCC Order to maintain the customers grandfathered terms and conditions.

AT&T had the right to appeal the FCC's Jan 2007 Order and did not. There was no reason why the FCC needed to circulate to the Commissioners a Bureau Level Order that simply stated the

Judge Bassler referral did not expand the scope of the original referral.

Deena your analysis of what was before the FCC in 1996 was spot on—fraudulent use. The FCC 2007 Order obviously was confusing. As you can see by Judge Wigenton’s Decision her Court does not even address the Jan 2007 FCC Order! Her decision states that the FCC must decide the Bassler referral and the FCC 2007 Order does that but Judge Wigenton obviously did not understand it and simply ignored it totally. The FCC issued an order that determined the Judge Bassler controversy created by AT&T in 2006 as to which obligations transfer under 2.1.8 was in essence MOOT! There was no controversy in 1995 regarding which obligations transfer under 2.1.8. AT&T’s sole defense of fraudulent use takes the position that plan obligations don’t transfer on a traffic only transfer. AT&T counsel points to a statement it made in March 1995 that the CCI-PSE transfer was a plan transfer and under that mischaracterization stated the plan commitments must transfer. That is NOT a defense. That is a mischaracterization of the transaction in 1995. In 2006 AT&T no longer mischaracterized the transaction as a plan transfer it simply lied to Judge Bassler that on traffic only transfers the plan commitments must transfer.

AT&T’s scam of pointing to its March 30th 1995 statement that plan commitments must transfer is just one of the many intentional misrepresentations engaged in by AT&T’s counsels. Obviously AT&T in 1995 was not simultaneously asserting to Judge Politan that under 2.1.8 plan commitments transfer and don’t transfer. Judge Politan was advised by AT&T counsel repeatedly that plan obligations do not transfer on the traffic transfer at issue.

See NJFDC Judge Politan March 1996 page 17 fn 7

“Indeed, **AT&T’s own counsel** focused the issue by indicating that the tariffed obligations “involved herein” are all **tariffed obligations**, for which “**CCI, not PSE**” would be obligated. AT&T’s sole defense and thus the controversy in 1995 was whether section 2.2.4 fraudulent use could prohibit a permissible 2.1.8 traffic only transfer.

--During the 11.28.95 hearing AT&T counsel kept asserting its fraudulent use defense and CCI’s Mr Shipp kept agreeing that as per section 2.1.8 plan commitments don’t transfer. It led to this comment:

AT&T’s Whitmer: And one of the obligations of the customer, Winback & Conserve or CCI, that did not go to PSE in the attempted transfer was the obligations for shortfall and termination, correct?

Mr Shipp: That’s correct. And we so identified that on the transfer of service document.

The Court: **I know all these facts, Mr Whitmer. I really do. I swear to God.**

Mr Whitmer: I have no further questions.

There is NO WAY that AT&T was in front of Judge Politan asserting that plan obligations transfer under 2.1.8. AT&T counsels are attempting to revise history by having so far 3 personal chit chats with FCC staff instead of addressing its position in writing. Amazingly AT&T is doing this with ZERO EVIDENCE and doing this this despite the fact that the tariff explicitly states plan obligations don’t transfer.

This is not client advocacy!!! This AT&T counsel conduct is intentional misrepresentation.

The Bureau Level simply needs to EXPLICITLY re-issue the Jan 12th 2007 Order and advise Judge Wigenton that Judge Bassler question on which obligations transfer was not a controversy in 1995 as all parties agreed plan obligations do not transfer. The FCC considers this a new controversy and thus it is moot. The Commissioners do not need to get involved in what was and still should be a Bureau Level order. There is no tariff interpretation issue involved regarding 2.1.8. The DC Circuit has already determined 2.1.8 allows traffic only transfers and the sole 1995 issue of fraudulent use fails due to: 1) The fact issue that the plans were pre June 17th 1994 and thus suspecting fraudulent use has no merit to raise such a defense in the first place. Even if the plans were not pre June 17th 19942) Section 2.1.8 or 3.3.1Q4 was not conditioned upon 2.2.4 and 3) the illegal remedy used.

As the FCC can see Judge Wigenton by not addressing the Jan 12th 1994 Order in her Decision means she did not understand it. Obviously the reason why the FCC did not release an order on which obligations transfer under 2.1.8 was because this was a moot issue. Judge Wigenton ignored the DC Circuit statements that the FCC did not interpret which obligations transfer because it was not referred by the District Court and the 2003 FCC statement that the only issue was fraudulent use.

Judge Wigenton needs EXPLICIT LANGAUGE!!!!

Dear Judge Wigenton

THE REASON WHY THE FCC IN 10 YEARS HAS NOT ISSUED A DECISION AS TO WHICH OBLIGATIONS TRANSFER IS BECAUSE THE FCC 2007 ORDER EXPLICITLY STATED THE JUDGE BASSLER 2006 REFERRAL DID NOT EXPAND THE SCOPE OF THE 1996 REFERRED ISSUE. THERE IS NO NEED TO MANDAMUS THE FCC AS THE OBLIGATIONS ALLOCATION ISSUE THAT WAS REFERRED BY JUDGE BASSLER IN 2006 IS TOTALLY MOOT!!!! AGAIN IT IS TOTALLY MOOT!!!! THERE NEVER WAS A CONTROVERSY IN 1995 REGARDING WHICH OBLIGATIONS TRANSFER! THE SOLE 1995 ISSUE OF FRAUDULENT USE 2.2.4 HAS BEEN DECIDED AND IS ULTIMATELY A FACT BASED ISSUE IN ANY EVENT. THE DC CIRCUIT HAS DETERMINED THAT 2.1.8 ALLOWS TRAFFIC ONLY TO TRANSFER. THE DC CIRCUIT EXPLICITLY STATED THAT THE FCC DID NOT INTERPET THE OBLIGTIONS ALLOCATION QUESTION AND THAT WAS SIMPLY BECAUSE IT WAS NEVER REFERRED TO THE FCC BY JUDGE POLITAN BECAUSE IT WAS NOT A CONTROVERSY. THE FCC UNDER THE ADMINISTRATIVE PROCEDURES ACT ONLY DEALS WITH CONTROVERSIES AND UNCERTAINTIES. THERE WAS NO CONTROVERSY OR UNCERTAINTY REGARDING WHICH OBLIGATIONS TRANSFER IN 1995.

Thank you
FCC BUREAU

Judge Wigenton needs to understand that the FCC staff did not actually have an open issue before it for 10 YEARS and refused to address it! It's actually pathetic view of the FCC that any

Judge would believe that the FCC would not address for **10 years** what a Judge erroneously believes is an open issue!

AS JUDGE POLITAN SAID IN REFERNCE TO AT&T's position that obligations do not transfer: **I know all these facts, Mr Whitmer. I really do. I swear to God.**

The following is yesterday's email.....

From: Al [mailto:townnews@optonline.net]

Sent: Tuesday, May 31, 2016 9:28 AM

To: ray@grimes4law.com; 'Deena Shetler' <Deena.Shetler@fcc.gov>; Brown, Richard <rbrown@daypitney.com>

Cc: 'Pamela Arluk' <Pamela.Arluk@fcc.gov>; 'John Ingle' <John.Ingle@fcc.gov>; 'Jessica Rosenworcel' <Jessica.Rosenworcel@fcc.gov>; 'Robert McDowell' <Robert.McDowell@fcc.gov>; 'Kay Richman' <Kay.Richman@fcc.gov>; 'Sharon Kelley' <Sharon.Kelley@fcc.gov>; 'Jane Halprin' <Jane.Halprin@fcc.gov>; 'Julie Veach' <Julie.Veach@fcc.gov>; 'KJMWEB' <KJMWEB@fcc.gov>; 'Sharon Gillett' <Sharon.Gillett@fcc.gov>; 'MeredithAttwell.Baker@fcc.gov' <MeredithAttwell.Baker@fcc.gov>; 'Michael.Copps@fcc.gov' <Michael.Copps@fcc.gov>; 'Jonathan.Adelstein@fcc.gov' <Jonathan.Adelstein@fcc.gov>; 'Eddie.Lazarus@fcc.gov' <Eddie.Lazarus@fcc.gov>; 'Zachary Katz' <Zachary.Katz@fcc.gov>; 'thomas.wheeler@fcc.gov' <thomas.wheeler@fcc.gov>; 'Mike ORielly' <Mike.ORielly@fcc.gov>; 'Mignon Clyburn' <Mignon.Clyburn@fcc.gov>; 'Jessica Rosenworcel' <Jessica.Rosenworcel@fcc.gov>; 'robert.ratcliffe@fcc.gov' <robert.ratcliffe@fcc.gov>; 'Jane Halprin' <Jane.Halprin@fcc.gov>; 'Julie Veach' <Julie.Veach@fcc.gov>; 'Kay.Richman@fcc.gov' <Kay.Richman@fcc.gov>; 'KJMWEB' <KJMWEB@fcc.gov>; 'Matthew Berry' <Matthew.Berry@fcc.gov>; 'robert.ratcliffe@fcc.gov' <robert.ratcliffe@fcc.gov>; 'Sharon Kelley' <Sharon.Kelley@fcc.gov>; 'Tom Wheeler' <Tom.Wheeler@fcc.gov>; 'Suzanne Tetreault' <Suzanne.Tetreault@fcc.gov>; 'David Gossett' <David.Gossett@fcc.gov>; 'Jennifer Tatel' <Jennifer.Tatel@fcc.gov>; 'Karen.onyeue@fcc.gov' <Karen.onyeue@fcc.gov>; 'Stephanie Weiner' <Stephanie.Weiner@fcc.gov>; 'Madelein.findley@fcc.gov' <Madelein.findley@fcc.gov>; 'Jim Bird' <Jim.Bird@fcc.gov>; 'Jamilla.ferris@fcc.gov' <Jamilla.ferris@fcc.gov>; 'John Williams' <John.Williams2@fcc.gov>; 'Linda Oliver' <Linda.Oliver@fcc.gov>; 'Richard Welch' <Richard.Welch@fcc.gov>; 'John Ingle' <John.Ingle@fcc.gov>; 'Randolph Smith' <Randolph.Smith@fcc.gov>; 'Pamela Arluk' <Pamela.Arluk@fcc.gov>; 'Jay Keithley' <Jay.Keithley@fcc.gov>; 'eric.botker@fcc.gov' <eric.botker@fcc.gov>; Ajit.Pai@fcc.gov; Phillip Okin (pokin@giantpackaging.com) <pokin@giantpackaging.com>; Phillip Okin <phillo@giantpackaging.com>

Subject: Ray-- Did AT&T advise you that it filed this with FCC??

Deena

Plaintiffs are filing a reconsideration with Judge Wigenton. Please hold any FCC decision. Judge Wigenton's decision does not even mention the January 12th 2007 FCC Order which explicitly stated the obligations issue does not expand the scope of the 2006 referral. The FCC 2007 Order

has already determined that the 2006 referral from Judge Bassler on the controversy of which obligations transfer was not a controversy in 1995.

The DC Circuit Decision was explicit that the DC Circuit could not review the Judge Bassler obligations allocation question **because it was not interpreted by the FCC**. The FCC was not asked by the District Court Judge Politan to interpret which obligations transfer under 2.1.8 because that was **not a controversy in 1995**. Judge Wigenton simply needs to have the 2007 FCC Order made explicit. AT&T had a chance to object to the FCC Jan 12th 2007 Order that denied the obligations allocation issue as not expanding the scope of the 1995 controversy and did not. As the FCC 2003 Order states AT&T's sole defense in 1995 was section 2.2.4 fraudulent use. That AT&T defense correctly took the position that plan obligations do not transfer on traffic only transfers but the defense was bogus as the plans were pre June 17th 1994 immune. AT&T "merely suspecting shortfall" at the time of the Jan 1995 traffic only transfers was a bogus defense as AT&T was well aware the plans were pre June 17th 1994 immune. Additionally, AT&T was under the FCC's Oct 23rd 1995 Order to maintain the pre June 17th 1994 terms and conditions before it unlawfully applied shortfall and termination penalties in June 1996.

Today AT&T incredibly states that it had 2 defenses. Most incredible is that AT&T is simultaneously asserting that under 2.1.8 that plan obligations transfer and plan obligations don't transfer.

AT&T's defense created in 2006 was that PSE was supposed to assume as a traffic only transfer the plan obligations under 2.1.8. In 1995 AT&T was simply mischaracterizing the traffic only transfer was a plan transfer and under that mischaracterization AT&T claimed that the plans revenue and time commitment transfer. Judge Politan was not a total moron where he would ever entertain AT&T asserting that under 2.1.8 for traffic only transfers that plan obligations BOTH transferred and did not transfer. Incredibly today AT&T claims it has 2 defenses: The fraudulent use defense (plan obligations **don't transfer**) and the 2006 created plan obligations **must transfer** on traffic only transfers under 2.1.8. AT&T has been allowed to argue that 2.1.8 mandates plan obligations must transfer on a traffic only transfer that was not even an issue in 1995. AT&T incredibly created a defense in 2006 that was its justification for not transferring the traffic in 1995!

The FCC has already advised AT&T in its Tr8179 filing February 16th 1995 that section 2.1.8 did not enable AT&T the ability to decide at what point too much traffic being transferred would constitute a plan transfer versus a traffic only transfer. Especially when the plans were Pre June 17th grandfathered from the shortfall and termination penalties for failure to meet the revenue and time commitment –which of course do not transfer. As AT&T's own counsel Fred Whitmer explained in Court to Judge Politan when the lead/home account stays with the non-transferred plan it is a traffic only transfer.

The DC Circuit has explicitly stated that 2.1.8 allows traffic only transfers. That was the original question Judge Politan had. The issue of fraudulent use has been decided when AT&T availed itself of an illegal remedy and therefore could not reply upon the penalties not even considering that such penalties were not warranted in the first place as the plans were pre June 17th 1994

immune. There is no FCC decision needed that should be reviewed by the DC Circuit. The FCC 2007 Order correctly determined that the Judge Bassler referral on which obligation transfer under 2.1.8 was outside the scope of the case. The only thing the FCC needs to do is clarify the FCC 2007 Order. AT&T can't be given the ability to get a DC Circuit Review at this point. AT&T had the chance to oppose the FCC's 2007 Order that denied Judge Bassler's obligation allocation question and **AT&T chose not to appeal.**

Judge Wigenton's recent decision did not even address the FCC's 2007 Order because it was not explicit that Judge Bassler's obligations issue is MOOT.

AT&T's need to continue to make personal visits to the FCC in order to "explain" its case instead of putting the issues in writing to be addressed by plaintiffs is due to the fact the FCC staff is being fed nonsense.

The only controversy in 1995 was whether 2.1.8 allowed traffic only transfers when considering section 2.2.4 fraudulent use. As the FCC's RL Smith pointed out, 2.2.4 fraudulent use ultimately a FACT BASED ISSUE not an issue for the FCC. By the March 1996 the District Court issued an injunction and clearly understood the plan obligations do not transfer but since the plans were pre June 17th 1994 immune ordered AT&T to transfer the traffic.

AT&T has been able to revise history and intentionally scam Judge Bassler and Judge Wigenton silly and did this knowing AT&T had zero evidence to support its 2006 position that plan obligations transfer—despite its own counsel Whitmer saying AT&T has done thousands of traffic only transfers and the plan obligations don't transfer. Despite the fact that all of its former AT&T counsels claim obligations don't transfer. Despite AT&T's own executives state that plan obligations don't transfer despite the Tr9229 Tariff page EXPLICITLY STATES plan obligations don't transfer.

The FCC should do nothing at all until Judge Wigenton is provided a CLARIFIED 2007 FCC Order. Judge Wigenton states that primary jurisdiction means the FCC should decide the Judge Bassler issue. This has been done already. The FCC has decided the Bassler obligations "controversy" did not expand the scope of the original 1996 Third Circuit referral.

The FCC allowing AT&T to get a DC Circuit review would be turning FCC law on its head. The FCC 2007 Order only needed to be issued on the Bureau level as it simply advised the parties the obligations allocation issue did not expand the scope of the original issue.

This is the 3rd time AT&T has had personal meetings with the FCC and has uploaded it to the server but not notified plaintiffs.

<http://apps.fcc.gov/ecfs/comment/view?id=60001973233>



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VIA ELECTRONIC SUBMISSION

May 27, 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 26, 2016, Frank Simone and I, on behalf of AT&T, met with Stephanie Weiner, Senior Legal Advisor to Chairman Wheeler, and Deena Shetler of the Wireline Competition Bureau. Separately, we met with Rebekah Goodheart, Legal Advisor to Commissioner Clyburn. 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.

To ensure a complete record, AT&T hereby submits the attached Letter Order issued on May 18, 2016 in related litigation in the United States District Court for the District of New Jersey.

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

Group Discounts, Inc

June 1st, 2016