by the transfer of component parts such as individual billed telephone numbers. *See* FCC Order at 6–7; FCC Br. at 16–18.

AT&T, however, argues persuasively that the FCC misinterpreted its comment. Immediately following the alleged concession, AT&T's submission noted that:

> [Section 2.1.8], by its terms, allows a transfer of CCI's service to PSE only if PSE agreed to assume all obligations under those plans. *Yet CCI explicitly amended the transfer of services form to read "Traffic Only."* By expressly declaring that it did not intend to effectuate a transfer of all obligations under the plans to PSE . . . *the proposed transfer, on its face, violated the terms of Section 2.1.8.*

Comments of AT&T Corp. at 10–11 (emphasis added) (citation omitted). It appears quite clear, then, that 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 before the Commission. Accordingly, the FCC's reliance on AT&T's comment is plainly misplaced.

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 Commission maintains that "[r]ather than a single transfer request, here CCI and PSE effectively made two requests: one by CCI to AT&T to decrease its traffic, and another by PSE to increase its traffic." FCC Order at 7; *see* FCC Br. at 17. But this hardly sheds light on the meaning of the transfer provision. First, AT&T contends that a simultaneous decrease and increase in the respective service of CCI and PSE would in fact not accomplish the same objectives as a transfer of service. AT&T argues that the transfer provision, Section 2.1.8, was included precisely because there are practical benefits to a transfer that would be lost through a transaction of the sort hypothesized by the Commission. These include guarantees against service interruptions and the loss of particular 800 numbers, as well as exemption from a requirement that resellers obtain their end-users' written consent prior to the transaction. *See* AT&T Br. at 21–23.

Be that as it may, proceeding by analogy does not change the fact that CCI and PSE did request a *transfer* — a transaction on its face at least potentially within the reach of Section 2.1.8, which governs "Transfer or Assignment" — instead of dropping and adding traffic in separate transactions. George Eliot has written that "the world is full of hopeful analogies," MIDDLEMARCH 83 (Penguin Classics 1994) (1872), and this must be one of them, but likening the transfer at issue to a different arrangement, and then analyzing how *that* arrangement would fare under Section 2.1.8, does not advance the FCC's position very far.

In addition, the Commission's failure to grasp AT&T's comment reveals a more fundamental error in its approach. The reason AT&T seemed to equate the transfers in this case with a transfer of plans is that CCI sought to move *virtually all* of the billed telephone numbers in each of its CSTP II plans. Thus, for each of the nine plans, CCI asked AT&T to move all but one, or all but two, of the telephone numbers included in that plan. *See* Transfer of Service Agreement Forms. In so doing, CCI asked AT&T to move nearly all the services — all the benefits — associated with its CSTP II plans. What was left behind were CCI's obligations — the burdens under the plans. Accordingly, even if small scale transfers of traffic were outside the scope of Section 2.1.8, allowing *this* transaction to go through would create an obvious end-run around the unquestioned rule that new Customers had to "assume all obligations" in transferring WATS *plans*. Any reseller could circumvent Section 2.1.8 simply by asking AT&T to move its business one billed telephone number at a time. Using such a scheme, a reseller could move every component of a plan, save its obligations to AT&T. The transfer provision would then have no effect except in those cases where the transferor foolishly fell within its scope by phrasing its request in terms of the tariffed plans themselves.

The FCC itself recognized that the "purpose" of Section 2.1.8 "was to maintain intact the balance of obligations and benefits between parties under the tariff when one customer stepped into the shoes of another." FCC Order at 7. The Commission's interpretation eviscerates this very purpose, allowing PSE to take up essentially all of CCI's resale business without assuming so much as one of CCI's obligations to AT&T.[1]

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. In the absence of any contrary evidence, we find that "traffic" is a type of service covered by the tariff. Second, the FCC's interpretation, permitting the movement of benefits without any assumption of obligations, would render the transfer provision meaningless

[1] The FCC contends that this entire line of argument — challenging the Commission's interpretation as rendering Section 2.1.8 meaningless — is not properly before us, as AT&T did not first present it to the Commission in a petition for reconsideration. FCC Br. at 15 & 19. We disagree. The Communications Act precludes us from addressing only those issues upon which the Commission "has been afforded no opportunity to pass." 47 U.S.C. § 405(a). It does not prevent us from considering "whether the original question was correctly decided," *MCI v. FCC*, 10 F.3d 842, 845 (D.C. Cir. 1993), or whether the FCC "relied on faulty logic." *Nat'l Ass'n for Better Broadcasting v. FCC*, 830 F.2d 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.

even in cases involving the transfer of entire plans, so long as the parties asked the carrier to move all the beneficial plan components rather than the plan itself. The whole purpose of the tariff provision in question was to ensure that benefits could not be transferred without concomitant obligations. It is utterly untenable to contend that the provision does not apply when only benefits are transferred.

In sum, the FCC clearly erred in ruling that Section 2.1.8 of AT&T Tariff FCC No. 2 does not apply to a transfer of "traffic." As this was a threshold determination in the FCC's order, we do not reach the remaining issues addressed by the Commission and argued by the parties before us. We also do not decide precisely which obligations should have been transferred in this case, as this question was neither addressed by the Commission nor adequately presented to us.[2] All we decide is that Section 2.1.8 cannot be read to allow parties to transfer the benefits associated with 800 service without assuming any obligations. The petition for review is granted.

[2] At oral argument, AT&T's counsel repeatedly stated that Tariff No. 2 expressly required PSE to assume the volume commitments that form the heart of AT&T's concern in this case. *See* Transcript of Oral Argument at 11, 13. In a motion submitted after the argument, however, the Inga companies note that the only obligations enumerated by Section 2.1.8 are "outstanding indebtedness for the service" and "the unexpired portion of any applicable minimum payment period." Intervenors Motion to Clarify and Correct the Facts of the Record at 4. How this enumeration affects the requirement that new customers assume "*all* obligations of the former Customer" (emphasis added) is beyond the scope of our opinion.

Exhibit D

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 1/2% 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.

Bullet 4

- 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.

Bullet 10

- 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.

Issued on not less than one day's notice under authority of Special Permission No. 93-672.

Exhibit E

Certification of Larry G. Shipp Jr.

I Larry G. Shipp Jr. do hereby state and affirm as follows:

1) I have not received or expect to receive any compensation for this certification .

2) I have been asked by Mr. Al Inga, of the Inga Companies, to further clarify the record regarding certain actions taken by or involving Combined Companies, Inc. ("CCI") that might be relevant to Winback & Conserve Program, Inc., One Stop Financial, Inc., Group Discounts, Inc., and 800 Discounts, Inc. (collectively the Inga Companies) and their remaining case against AT&T; as well as to review and comment on recent court rulings and other proceedings which were just this past January called to my attention, to include, but not be limited to, Federal Communications Commission, Memorandum Opinion and Order, Internal File No. CCB/CPD 96-20 and United States Court of Appeals, For the District of Columbia Circuit, On Petition for Review of an Order of the Federal Communications Commission, No. 03-1431.

3) I was the president of CCI during all times relevant to the issues addressed herein, including the period that CCI was a co-plaintiff with the 4 Inga Companies against AT&T prior to CCI's settlement agreement with AT&T in July of 1997.

4) It should be noted, that after CCI's settlement with AT&T, Judge Hayden found in the case between the Inga Companies and CCI, that CCI did not compromise the Inga Companies continued claims against AT&T when settling with AT&T. Judge Hayden made this decision based upon her reviewing the sealed confidential AT&T-CCI settlement agreement.

5) CCI was an aggregator of AT&T services, and launched its business in early 1994 with a business plan to "aggregate" (or combine) other aggregators, including the Inga Companies to obtain more favorable rates and discounts than they could receive on their own.

6) The Inga Companies were CCI's largest company, and CCI agreed to provide the Inga Companies with 80% of any additional margin it would earn on Inga Companies accounts from plans that were transferred to CCI. It was CCI's plan to obtain these additional discounts through

a new Contract Tariff, or as a back-up, while waiting on the contract tariff, by placing the traffic in a deeply discounted plan CT 516 available from Public Service Enterprises (PSE).

7) The Inga Companies plans, including all its accounts, which were submitted to AT&T by CCI and the Inga Companies for transfer in December 1994 – which AT&T initially denied, and only did transfer them pursuant to a court order by the New Jersey District Court in May 1995, it became obvious that CCI's attempts to obtain a Contract Tariff from AT&T would not be successful.

8) So in January 1995, CCI went to its "back-up" plan and initiated a new transfer (a traffic only transfer) of accounts of most of its CSTPII/RVPP accounts, including most of the Inga Companies CSTPII/RVPP accounts which were within plans that were previously transferred to CCI, to the Contract Tariff 516 plan of Public Services Enterprises (PSE). This was done to achieve a greater margin of income and to further grow CCI's customer base by offering deeper discounts to new customers who could not obtain these deep discounts on their own. This would include not only AT&T 800 users, but Sprint and MCI 800 users as well.. The CSTPII/RVPP plans that CCI had offered a 28% discount and the CT 516 AT&T plan held by PSE had a 66% discount. The CT 516 was set up to have the end-users get 28% and the 38% supplemental discount would be paid by AT&T to PSE. PSE was to then pay CCI and the Inga Companies separately. This transfer of accounts (traffic) to PSE was denied by AT&T and is now the subject of an ongoing dispute between the Inga Companies and AT&T.

9) As mentioned earlier, CCI and the Inga Companies wanted their own Contract Tariff – and certainly qualified for one. However, while awaiting AT&T's decision, we knew we could earn a higher margin by simply assigning the traffic to CT 516 until we got our own Contract Tariff. We felt confident that we would get one since we were doing over $4 million per month in billing and CT 516 was only a $4.2 million per year commitment. However, AT&T did not provide us with a contract tariff of our own; and, additionally refused the account transfer (traffic only) request to CT 516 as well, although it was done properly under AT&T Tariff 2, Section 2.1.8.

10) As I have only now discovered, the FCC in its decision noted properly that the CCI account transfer, covered by its agreement with PSE, stated we could have the account traffic returned to us from PSE at any time within 30 days notice. This was agreed with PSE so as to allow CCI to meet any and all its commitments to AT&T without needing to restructure the plans it controlled, and as well, to insulate the transferred accounts from liability if PSE were to go into any default or encounter any other difficulty with AT&T. In which case by moving the traffic back, CCI would thereby be avoiding the impact of any potential PSE default or provisioning issue from affecting the end-users we had transferred.

11) Under many of AT&T's tariffs, including those governing PSE, and AT&T's Tariff 2 which governed CCI and the Inga Companies traffic, it was understood that if a plan incurs bad debt through some of its end-users, or is in shortfall, AT&T must first attempt to collect the debt from its customer who is the aggregator. Then if the aggregator does not pay, AT&T would off-set the debt obligation, usually after 90 days past due of any aggregator unpaid bill, from the RVPP or margin pool earned before paying the aggregator its margin. However, even if AT&T gave the aggregator only 30 days to pay, which was not their custom, AT&T's only option under its tariff was to then apply the debt against the Revenue Volume Pricing Plan (RVPP) or CT 516 pool of credits either of which were more than sufficient to meet the historical bad debt of our accounts. Additionally, it must be understood that even in the unlikely event shortfall charges if legitimate came into play, they are by tariff not even applied till fiscal year end; therefore it was possible to temporarily assign traffic back and forth – which is something aggregators, including the Inga Companies, had done many times before.

12) As per AT&T's Revenue at Risk Report at the time that we were denied transferring the traffic, CCI's plans volume was well above its volume obligation. Additionally these plans were all issued prior to June 17th 1994 anyway and were therefore forever immune from shortfall and termination obligations when we timely restructured them – which we did. In fact, there are dozens of audio tapes submitted to the District Court of many AT&T manager's who advised us that as long as the aggregator continued to use the same RVPP plan ID, which we did, it was a

grandfathered plan, forever immune from shortfall and termination charges. The plans were also immune from shortfall and termination charges owing to our filing a Tariff 2, section 2.5.7 claim, which waives these charges due to circumstances beyond the Customers Control. AT&T never refuted our section 2.5.7 application.

13) Restructuring was the common business term used in the business marketplace. It involved using AT&T's Network Services Commitment Form indicating an upgrade of a existing pre June 17, 1994 CSTPII/RVPP plan. The reason it was an upgrade was that the overall commitment to AT&T after the restructure was more than that prior to the restructure; however the yearly commitment went down due to stretching the plan over a longer time period. It was commonly known that on all pre June 17, 1994 plans ***time retired volume commitment*** no matter what the phone usage on the plans were when conducting a plan restructuring. This was ensured by always restructuring your plans, as allowed by AT&T's tariffs, successfully prior to any year-end anniversary "true-up" of the volume commitment for the various CSTPII/RVPP plans held by CCI.

14) The significance of having a pre June 17, 1994 plan **can not be understated.** And, as per the tariff if you wanted a new plan, you would be issued a new RVPP ID when you subscribed to a new CSTPII plan. If you simply upgraded an existing RVPP plan ID, as was allowed on all pre June 17th, 1994 CSTPII/RVPP plans such as ours, it was grandfathered and subject to the tariff laws that were effective when the plan was originally issued. Under the AT&T's tariff No.2 the terms restructuring and upgrading is defined as a "Discontinuance of a CSTPII/RVPP plan without Liability. In fact, it appears now that AT&T already knew this, as I find in just now reviewing what AT&T counsel Richard Brown said in AT&T's brief to the 3rd Circuit in AT&T's case against 800 Services, Inc., he admits that pre June 17th, 1994 plans qualified for restructuring to avoid shortfall and termination charges. Counsel Brown **inadvertently** supported the remaining Inga Companies case while presenting his case against 800 Services, Inc. AT&T claimed 800 Services, Inc had **post** June 17th 1994 plans, as opposed to CCI's plans which were **pre** June 17th 1994 originated.

15) When CCI did the traffic only transfer to PSE – which as mentioned is the subject of the ongoing dispute between the Inga Companies and AT&T, both CCI and PSE knew the requirements of AT&T Tariff 2, section 2.1.8, and therefore knew and agreed that all the obligations that were required by this specific request utilizing the AT&T Transfer of Service Agreement (TSA) were transferred by us and assumed by PSE. The AT&T TSA was followed verbatim as prescribed by AT&T tariff 2, section 2.1.8. Therefore, CCI intended, and PSE concurred that the Obligations transferred and assumed were (1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s). The AT&T Transfer of Service Form (TSA) was used for several different types of transfers. Therefore as was the norm, I had to indicate on each of the TSA's, what type of transfer it was. These were "traffic only" transfers as opposed to plan transfers, as in the Inga Companies transfer to CCI whereby we specified the transfer of the accounts together with the plan. Traffic Only was the common explanation used. AT&T's conjecture that I was somehow attempting to modify the tariff is absolutely false

16) Traffic only transfers such as the one that we submitted pursuant to the AT&T Tariff 2, section 2.1.8 were very common practice among aggregators and AT&T business customers as well. So common, in fact, that AT&T ended up placing within its tariff, after denying our transfer request, a $50 charge for every traffic location assigned from a AT&T plan to another AT&T plan – although AT&T would waive this charge by offering from time-to-time promotions that waived these charges in exchange for certain commitments. Such as AT&T Promo 128 that waived the charges on the first 500 accounts per plan transferred.

17) AT&T wanted to go beyond the transfer of obligations called for in its tariffs to require the aggregators to also transfer potential shortfall and termination obligations when doing a traffic only transfer. In the case of the CCI/PSE transfers, however, termination was a moot point. The FCC in fact stated and CCI agrees that termination obligations were not at issue to stop the account assignment.

FCC Declaratory Ruling Footnote 56

> Although AT&T also argues that the move also avoided the payment of tariff termination charges, id., it separately states that termination liability (payment of charges that apply if a term plan is discontinued before the end of the term) is not at issue here. Opposition at 3 n.1. That is consistent with the facts of this matter; petitioners never terminated their plans. Accordingly, termination charges are not at issue in this matter.

18) CCI also agrees with the FCC and NJ Federal District Court regarding the way CCI transferred the traffic in accordance with AT&T Tariff 2, section 2.1.8 when it initiated a "traffic only" transfer, as it relates to the non transferring of shortfall charges.

FCC Declaratory Ruling page 8 -9 para 11

> If AT&T had moved the traffic from CCI to PSE, then all of the traffic that CCI had used to meet its CSTP II/RVPP commitments would be associated with PSE's CT 516. Further, CCI . (as well as the Inga companies) but not PSE, would continue to have been responsible for any shortfall obligations under the CSTP II/RVPP plans (Also *See First District Court Opinion* at 9.) Once all of its traffic was moved to PSE, CCI might have needed to amass new traffic in order to meet its commitments under its CSTP II plans. AT&T's apparent speculation that CCI would fail to meet these commitments and would be judgment-proof did not justify its refusal to transfer the traffic in question

19) Quite simply, this transfer should have been allowed. In fact, CCI believes, based on its recent review of the record, that AT&T was obligated, under the very tariff they sited to the DC Circuit Court to deny the "traffic only" transfer, to transfer the traffic as ordered by CCI.

20) The proof is found in examining Tariff 2, section 2.1.8 as it applied to CCI's request in January 1995, with a focus on the "key question" that originated in the NJ District Court:

"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."

All these other issues regarding what obligations get transferred were already understood by the District Court and the FCC. The DC Court correctly understood that section 2.1.8 does allow traffic transfers without the plan; however the DC Court never saw where in section 2.1.8 how a subset of the accounts could be transferred, and AT&T certainly wasn't pointing it out, thus leading to confusion on obligations assumed. But, the answer is right there in section 2.1.8. At the time of the traffic transfer transaction January 1995 Section 2.1.8 stated.

> Transfer or Assignment- WATS, including ***ANY*** associated telephone number***(S)*** may be transferred or assigned to a new Customer, provided that: **(emphasis added),**

A. The Customer of Record (Former Customer) requests in writing that the company transfer or assign WATS to the new Customer.

B. The new Customer notifies the Company in writing that it agrees to assume all obligations of the former Customer at the time of transfer or assignment. These obligations include (1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s).

21) CSTPII/RVPP plans are AT&T discount plans for large customers with **many locations.** The fact that the tariff language allows for **ANY NUMBER(s) (Singular** or Plural), of account transfers, is clear indication that **any subset amount** of traffic, is expressly permissible under 2.1.8. If 2.1.8 only allowed plan transfers the word **ANY** would have to be changed to **ALL** and the singular option **NUMBER** would therefore not have been used. The tariff does not use the word: **"ALL"** it uses the word **"ANY"** before the word: "number**(s)**" of accounts to be transferred. Any of course could mean: One, or some, or most, without specification. Therefore it is clear that since 2.1.8 allows **"any number(S)"** of accounts less than **ALL NUMBERS** of accounts on the plan to be transferred, this obviously means one, some, or almost all of the traffic can be transferred without the plan. The word **number(s)** has in parenthesis the **(s)** which of course means that 1 single number or any amount of numbers of WATS accounts, can be transferred. If 2.1.8 only allowed the entire plan to be transferred then the section would have to say **all numbers**. Not the words **ANY** or the singular **NUMBER**(S).

22) Once this is understood then it is easier to understand what the phrase ALL THE OBLIGATIONS means in requirement B, and how by not recognizing how a subset of accounts can be moved leads to confusion as to what **all the obligations** means. If only account traffic is transferred, than all the obligations that just pertain to only the accounts that are transferred go from the former customer to the new customer. Shortfall and termination obligations are obligations of the aggregators' CSTPII/RVPP plan commitment. Simply stated the plan was not being transferred and therefore the shortfall and termination obligations associated with the plan should NOT be transferred. The fact that multiple Courts and the FCC could not fully decipher this tariff section defines the word: "ambiguous." This ambiguity even more justifies finding in favor of the Inga

companies because the law states that any ambiguity in the tariff must be construed against the maker of the tariff.

23) It was not until November of 1995 that AT&T added to its tariff that a percentage of shortfall and termination charges had to also be transferred on traffic only transfers. This tariff change was done only on a prospective basis and was not instituted until 11 months after the Jan 1995 traffic transfer to PSE. AT&T surely must have known then that no shortfall or termination liability were applicable for any of the plans from which CCI submitted for transfer to PSE in January of 1995. These plans were forever immune from shortfall and termination because AT&T knew the June 17th 1994 grandfather rule was in place some 6 months before we submitted this new traffic only transfer.. Furthermore, the FCC also stated that the plans were issued **prior to June 17th 1994** communicating the plans were immune from shortfall and termination charges.

FCC Ruling pg 2 para.2:

"**Prior to June 17th 1994**, the Inga Companies completed and signed AT&T's "Network Services Commitment Forms for WATS under AT&T's Customer Specific term plan II (CSTPII), a tariffed plan, which offered volume discounts off AT&T's regular tariff rates

24) AT&T's erroneous position that shortfall and termination obligations should have been transferred on traffic only transfers, as in the January 1995 CCI to PSE transfer, defeats itself. AT&T records indicate that there were several traffic only transfers from these same plans for years prior to the 1995 traffic transfer at issue. Therefore, if AT&T's position is correct then shortfall and termination liability obligations would have been transferred prior to January 1995, and there wouldn't have been any shortfall and termination liability left in January 1995 – because these obligations would have already been transferred away. The fact that these obligations did not transfer prior to January 1995 is another AT&T admission that shortfall and termination liabilities obviously do not transfer on traffic only transfers.

25) As the problems continued with AT&T, it began to appear to CCI that AT&T wanted all aggregators out of business. And perhaps one way to accomplish this end, was through the use of illegal remedies that crushed most aggregators, including CCI. In fact, the FCC in its

Memorandum Opinion and Order, Internal File No. CCB/CPD 96-20, which I am only now discovering, identified that AT&T utilized an illegal tariff remedy by permanently denying the traffic only transfer instead of the prescribed tariff remedy of simply suspending service. What I also just discovered and the FCC has stated, and was not found faulty by the DC Court of Appeals, is that if a carrier uses an illegal remedy it can no longer rely upon the underlying cause for its actions.

26) Other problems initiated by AT&T continued against CCI and the Inga Companies causing them to file a supplemental complaint with the Federal District Court in 1997 due to the shortfall and termination charges that were inflicted in June of 1996 against the CSTPII/RVPP plans accounts that remained on the plan after AT&T denied the accounts to be assigned to PSE in Jan of 1995 – even though these very plans were pre June 17, 2004 plans and were able to be restructured.

27) CCI and the Inga Companies advised AT&T on many occasions that our reading of their tariffs did not allow them to inflict shortfall charges against CCI customers, let alone against the plans, due to the plans having been timely restructured/Upgraded/Discontinued Without Liability. Additionally, even if the charges could be assumed to be warranted, the tariff clearly states that for billing purposes AT&T can only apply the shortfall to "reduce the discounts" that were made available due to the aggregator. This means that on a bill of $1,000 dollars that was receiving a 20% discount and therefore $200 off its bill, AT&T could only apply shortfall up to $200 dollars. In June of 1996 AT&T applied shortfall in multiples of the entire bill, thus the $1000 customer who would net an $800 bill after the $200 discount was provided, ended up getting a bill for around $5,000. CCI now believes, based on the legal filings we are only now reviewing, that this was also a potential illegal tariff remedy that was enacted by AT&T. And, if it was, AT&T should not have been able to rely upon the shortfall charges which were applied improperly on end-user bills even though the all the plans were pre June 17, 1994 plans and had been properly restructured.. Thus, it is very likely that the AT&T shortfall charges were not only not warranted, due to this potential illegal remedy application, but, as well, AT&T should not have been able to rely upon them in any event – even if they were warranted.

28) The infliction of these improper shortfall and termination charges against CCI and Inga Companies' end-users led to mass hysteria as the end-users contacted many states Attorney Generals, the FCC, their own counsel, the US Postal Service, and various states Board of Public Utilities and other such forums claiming that CCI had posted improper charges on their bills – which, of course, CCI had nothing to do with, and advised AT&T in advance that they should not do so either. And if that was not enough, not only did AT&T ignore our pleas, but when the end-users contacted AT&T they were told that it was the aggregators fault which destroyed all goodwill.

29) AT&T did remove the improper charges off the end-users bills, thereafter placing the alleged charges on CCI's bills, which I now gather from the record may have been a continuing part of an illegal remedy. In any event, with these actions by AT&T the damage was done as many of CCI's and Inga Companies customers, now unhappy, went back to AT&T without the aggregators discounts.

30) At that point all income to CCI was ceased from its plans, as AT&T had stopped paying us. The end-users anger, which was mis-directed at CCI and Inga Companies was causing accounts to disappear by the hundreds, administrative hearings to be initiated seemingly every day, and each event requiring more resources that our company could provide or withstand.

31) Therefore, in July 1997, CCI under extreme duress settled with AT&T – and then by the end of 1997, or early 1998, completely ceased its business operations.

32) In reaching a settlement with AT&T, CCI felt it could no longer survive. None-the-less, this decision to give up the fight was not an easy one to make as we were firmly convinced as to the merits of our case against AT&T. However, I sensed our legal efforts were stalled while legal costs continued to rise. But the real killer was trying to cope with the magnitude of the alleged shortfall charges, which CCI firmly believed should not have been used by AT&T against us because we had restructured our plans. Still we recognized that at the moment AT&T had all the cards, and was acting as both the judge and the jury. In fact, our requests to them to follow their tariffs in dealing with us were simply falling on deaf ears. So without any income from our

customers, and dwindling income from other telecom activities, together with administrative hearings mounting from the shortfall being placed on the end users bills, we found ourselves literally under siege.

33) As president of CCI and therefore at the forefront dealing with all the issues involving CCI and AT&T, CCI made every effort to communicate to AT&T that it was in violation of its tariffs, however, AT&T was totally non-responsive to CCI's complaints. I felt desperate, boxed in – with no where to go. So when a settlement was initially proposed by John Andrews of AT&T to settle with AT&T I, along with my other board members agreed to accept it – leaving behind my dreams, that surely would have been realized if the accounts were transferred to PSE as allowed by AT&T Tariffs, or alternatively if AT&T had given CCI and the Inga Companies a contract tariff for which we made every effort to obtain and for which we undeniably qualified to receive.

34) This Certification is provided only for clarification purposes, and at the Inga Companies request, as it relates to their ongoing case with AT&T, and reflects my personal review of recently discovered FCC filings, recently discovered appellate rulings from the United States Court of Appeals, for the District of Columbia Circuit, as well as other legal filings, together with a recounting my of actions and recollections.

35) This certification's use shall be limited to existing legal proceedings in which CCI was at one time a co-petitioner or co-plaintiff that continue to involve the Inga Companies. In all other instances, this certification will be treated as confidential and not be used, shared or reviewed by any other person, or for any other purpose without the express written consent of Larry G Shipp Jr.

36) Use of this certification constitutes acknowledgment of the limited use provision outlined above. Therefore in the event of any misuse of this certification, I shall be entitled to injunctive relief as a cumulative and not necessarily successive or exclusive remedy to a claim for monetary damages.

37) I affirm that all the foregoing is true including the statements made upon information and belief,

which, as to those, I believe them also to be true..

Executed this date __7th______ of February 2006.

// Larry G Shipp Jr.//

Larry G. Shipp Jr.

37) I affirm that all the foregoing is true including the statements made upon information and belief, which, as to those, I believe them also to be true..

Executed this date 7th of February 2006.

Larry G. Shipp Jr.

Exhibit F

A1

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

COMBINED COMPANIES, INC., a Florida corporation, AND WINBACK & CONSERVE PROGRAM, INC., a New Jersey corporation, AND PUBLIC SERVICE ENTERPRISES OF PA. INC., a Pennsylvania corporation Plaintiffs, v. AT&T CORP., a New York corporation, Defendant.	**AFFIDAVIT OF PATRICK BELLO IN SUPPORT OF PLAINTIFFS' APPLICATION FOR AN ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINTS**

Patrick Bello, being duly sworn, deposes and says:

1. I am the Vice-President of Public Service Enterprises of Pa., Inc. ("PSE"). I make this affidavit in further support of Plaintiffs' Application for an Order to Show Cause With Temporary Restraints.

Background – PSE's Resale Business

2. PSE is engaged in the telecommunications resale business, including the resale of outbound services, 800 services, and combined outbound and 800 services offerings.

02/24/95 FRI 15:58 [TX/RX NO 5418]

3. PSE resells AT&T's services to small businesses. PSE obtains service from AT&T pursuant to AT&T's tariffs for outbound services. In particular, PSE has obtained service pursuant to a contract tariff with AT&T that combines 800 services and outbound calling services, which PSE resells to small businesses. PSE's contract tariff is AT&T's Contract Tariff F.C.C. No. 516 (" Contract Tariff 516"). PSE is a long time customer of AT&T, and has established and maintained a record of financial responsibility with AT&T for several years. PSE' monthly AT&T usage is several million dollars per month.

4. Because of the discounts PSE enjoys under Contract Tariff No. 516 and other AT&T offerings, PSE is able to resell its Contract Tariff No. 516 services to aggregators, such as CCI and Winback, and/or other resale carriers, at better rates than those that may be available directly from AT&T. Aggregators therefore enter into agreements with PSE and transfer their traffic to PSE in order to obtain higher discounts.

5. As AT&T's customer of record under Contract Tariff No. 516, PSE is also directly liable to AT&T for the charges incurred for the outbound and 800 usage of AT&T services by PSE's customers, including the traffic transferred to CCI by Winback which would have been included in the traffic CCI seeks to transfer to PSE.

6. AT&T directly provides the network facilities and services for the outbound and 800 services PSE aggregates to its end users. AT&T also bills and collects the charges for aggregated outbound and inbound services from PSE's end users and remits to PSE a portion of the charges collected according to the terms negotiated by PSE and AT&T.

7. On January 13, 1995, CCI and PSE jointly executed and submitted written orders to AT&T to transfer 800 traffic under numerous plans to PSE, as customer of record under AT&T's Contract Tariff 516. These plans included Plans Nos. 1351, 1583, 2430, 2828, 2829, 3124, 3468, 3524 and 3663, true copies of which are attached hereto as Exhibit A (hereinafter collectively the "Plans"). The purpose of this traffic transfer order was to obtain service under the more favorable terms of the PSE Contract Tariff 516 than existed under the tariff terms then covering the Plans themselves.

8. As a result of the transfer of CCI/Winback's traffic to PSE's Contract Tariff 516, PSE receives significant benefits by increasing its volume of traffic serviced under Contract Tariff 516. This opportunity is unique and fleeting. There are limited opportunities for PSE to acquire comparable traffic volumes for inclusion in its Contract Tariff 516 other than the one available from CCI's transfer of the traffic as it has proposed.

9. The monetary value of PSE's loss if AT&T blocks PSE's transaction with CCI is not readily calculable, as it includes significant harm to PSE's goodwill and reputation with respect to its independent contractor agents and the public. At a minimum, PSE will lose the revenues from each minute of traffic that AT&T provides to CCI at rates higher than those available under Contract Tariff 516.

Patrick A. Bello

Patrick A. Bello
Vice-President
Public Service Enterprises of Pa., Inc.

Subscribed and sworn to before me
this 24th day of February, 1995

Helen M. Murray
Notary Public

NOTARIAL SEAL
HELEN M. MURRAY, Notary Public
Whitpain Twp., Montgomery Co., PA
My Commission Expires Jan. 27, 1997

4 P.

PUBLIC SERVICE ENTERPRISES
OF PENNSYLVANIA, INC.

45 OWEN STREET, FORTY FORT, PA. 18704

January 13, 1994

PHONE 717/287-3161

Mrs. Ann Anderson
Minneapolis Fron End Center
10th Floor
Minneapolis, MN 55402-3233

Dear Ann:

Please find a properly executed AT&T Transfer of Service Agreements (TSA) to move all the end-user locations, except the 181 account number and 131 lead account number into PSE's CT 516 (CSTP/RVPP Plan ID # 003690).

The individual plans should each receive their own bill group as listed below:

Plan ID #	Report Group	Report Group Name
001351	038	CCI001
002828	039	CCI002
001583	040	CCI003
003124	041	CCI004
002430	042	CCI005
003663	043	CCI006
003468	044	CCI007
003524	045	CCI008
002829	046	CCI009

This order is solely to move the locations associated with these plans and not intended to in any way to discontinue the plans.

Sincerely,

Sara B. Pettigrew

Sara B. Pettigrew

\SBP

Enclosures

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