"substantial cause" for the proposed changes.[4] In the RCA Americom Decisions, the Commission recognized the "unfairness of allowing a dominant carrier to freely change the terms of . . . a [long-term service] tariff at any time without cause, even though customers would remain bound by all provisions until the end of the service term." "In balancing the carrier's right to adjust its tariff in accordance with its business needs and objectives against the legitimate expectations of customers for stability in term arrangements," the Commission developed and applied the "substantial cause" test.[6] As described by the Commission, the "substantial cause" test is "a tool for defining the appropriate zone of reasonableness applicable to changes to long-term tariffs under Section 201(b) of the Communications Act, 47 U.S.C. §201(b)."[7]

The elements which necessitate a "substantial cause" showing are all present in the Transmittal No. 8179 proposed tariff revisions. The tariff changes directly effect long-term service arrangements both under Tariff F.C.C. Nos. 1 and 2 and the thousands of Contract Tariffs which incorporate by reference the terms of these tariffs. Moreover, the multitude of customers who take service under these long-term service arrangements obviously entered into these term commitments with a "legitimate expectation[] . . . for stability in [the] term

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[4] See AT&T Communications: Revisions to Tariff F.C.C. No. 2, 5 FCC Rcd. 6777 (1990); RCA American Communications, Inc.: Revisions to Tariff F.C.C. Nos. 1 and 2, 84 F.C.C.2d 353 (1980) ("RCA Investigation Order"), 86 F.C.C.2d 1197 (1981) ("RCA Rejection Order"), 2 FCC Rcd. 2336 (1987) ("RCA Reconsideration Order"), Showtime Networks, Inc. v. FCC, 932 F.2d 1 (D.C.Cir. 1991) ("RCA Americom Decisions").

[5] RCA Rejection Order, 86 F.C.C.2d at ¶¶7 & 8.

[6] Id at ¶13.

[7] Id. at ¶4.

arrangement[]."[8] And in CCI's view, the changes AT&T proposes are not only material, but, if allowed to become effective, would have a materially adverse impact on many of those customers.

In its "'substantial cause' showing," AT&T asserts that the revisions Transmittal No. 8179 would work in the existing transfer of service requirements are a mere "clarification of existing tariff provisions rather than a substantive change."[9] This is not the first time that AT&T has attempted such a subterfuge. In 1990, AT&T characterized proposals to alter the means by which customers could terminate "800" Service Customer Specific and Location Specific Term Plans without liability as "'clarifying' its existing tariff without changing it."[10] The Bureau summarily rejected this contention and ruled that AT&T had to "meet the substantial cause for change test adopted in the RCA Americom Decisions."[11]

Applying here the verbiage used by the Commission there, the Transmittal No. 8179 tariff revisions "would establish additional restrictions" on the ability of Custom Network Service and "800" Service term plan holders to port "800" numbers and locations to other IXCs. The

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[8] RCA Reconsideration Order, 86 F.C.C.2d at ¶13.

[9] Letter to David Nall, Deputy Chief, Tariff Division, Common Carrier Bureau, Federal Commissions Commission from Richard R. Meade, Senior Attorney, AT&T, dated February 16, 1995. It is noteworthy that the purported "substantial cause" showing offered by AT&T applies only to the additional limitations on the movement of "800" numbers and locations associated with term plans and not to the new definition of "the unexpired portion of any applicable minimum payment period(s)." Thus, to the extent that the latter change requires a showing of "substantial cause," it should be summarily dismissed.

[10] AT&T Communications: Revisions to Tariff F.C.C. No. 2, 5 FCC Rcd. 6777, ¶3 (1990).

[11] Id. at ¶¶14 & 16.

existing tariff language that AT&T seeks to modify with Transmittal No. 8179 imposes no such restrictions. The ability to port "800" numbers and locations to other IXCs "are significant aspects of a long-term service plan and cannot be changed without impact on the customer."

AT&T opines that its general tariff prohibitions against fraudulent means or schemes to avoid payment of tariffed charges subsume the Transmittal No. 8179 proposed tariff revisions, rendering these revisions mere clarifications. As AT&T is well aware, there are many reasons for porting all or substantially all of the "800" numbers or locations on a term plan to another IXC which are neither fraudulent or designed to avoid payment. AT&T's assertion that a transfer of all or substantially all of the "800" numbers or locations on a term plan to another IXC would justify imposition of a deposit has no bearing on whether or not the proposed Transmittal No. 8179 tariff revisions would effect material changes in long-term service arrangements. And AT&T's lame contention that its current requirement that the transferee of a term plan must "agree to assume all obligations of the former Customer" could be read expansively to require the transferee of individual "800" numbers or locations to assume full term plan obligations is disingenuous and almost laughable. Not only has AT&T never interpreted its tariffs in this manner, but if this were a legitimate reading of current tariff requirements, the transfer to another IXC of a single "800" number which had been associated with a term plan would trigger the assumption by that carrier of all term and volume commitments associated with the term plan. Obviously, this is a painfully absurd result that was neither intended nor can be read into current tariff language.

AT&T's "substantial cause" showing in support of its proposed Transmittal No. 8179 tariff revisions can be charitably described as half-hearted at best. Essentially, AT&T argues

that its proposed tariff changes are necessary to protect it from CCI. Even if true -- which they are not -- the allegations AT&T has directed against CCI cannot justify imposition of a material change in the long-term service arrangements of hundreds of thousands, perhaps millions, of other customers. And AT&T's unsupported, undocumented assertions that the "grandfathering" of existing requirements would generate massive costs and burdens simply cannot be lent any credence.

As AT&T has acknowledged, the Commission, when applying the "substantial cause" test, has held that changes in tariffed long-term service arrangements will be allowed only when the business needs and objectives of the carrier clearly outweigh the interests of the customers whose contractual rights are being unilaterally altered. AT&T is proposing to strip from existing customers important rights to which they are currently entitled. And in support of that proposal it has suggested only that it desires to defeat a single transaction and that it will be inconvenienced by any "grandfathering" of existing customers. The Bureau should summarily reject this painfully inadequate showing and reject the Transmittal No. 8179 for failure to demonstrate "substantial cause" for the changes proposed in therein.

**B. The Transmittal No. 8179 Tariff Revisions Are Unlawful.**

As TRA has pointed out, the Commission has long recognized that the ability to "port" numbers and locations to other carriers is a prerequisite to a competitive telecommunications environment. For example, before the implementation of data base access for "800" services, the Commission found that "the lack of 800 number portability . . . [was]

an impediment to full competition in 800 services."[12] And more recently, the Commission has recognized "the importance of local number portability to the promotion of competition in the local exchange market."[13] The Commission has thus made clear that no carrier "should be able to deny . . . [its] customers the benefits of number portability."[14]

CCI agrees with TRA that the Transmittal No. 8179 tariff revisions, while not prohibiting the movement of "800" numbers and locations, would have a chilling effect on their portability. Certainly, if every time traffic migrates from an AT&T term plan to another IXC, the receiving carrier is potentially exposed to the full liability associated with the plan, that carrier will undoubtedly be somewhat less eager to accept the traffic. And this is particularly so where the accepting IXC would receive only a small portion of the "800" numbers or locations on an AT&T term plan, but nonetheless be saddled with the entirety of the term plan obligation.

Moreover, the Transmittal No. 8179 tariff revisions, in addition to dampening competition by hindering the movement of traffic among competing IXCs, will introduce complications into transactions in which telecommunications services may be only a small component. AT&T should not, in its over zealous efforts to safeguard its financial interests, be able to intrude into the business affairs of its customers in such an invasive manner . AT&T, like everyone else, has access to the courts (and to the Commission) in the event that it is

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[12] Competition in the Interstate Interexchange Marketplace, 6 FCC Rcd 5880, ¶146 (1991), recon. 6 FCC Rcd. 7569 (1991), further recon. 7 FCC Rcd. 2677 (1992).

[13] Administration of North American Numbering Plan, 9 FCC Rcd. 2068, ¶42 (1994).

[14] 800 Presubscription Rules for 800 Providers and Responsible Organizations, 8 FCC Rcd. 7315, ¶16 (1993).

damaged, and AT&T, like everyone else must accept some measure of business risk. AT&T's interests should not prevail over those of its customers or, more critically, over the public policy judgments of the Commission.

Similarly, AT&T should not be permitted to undermine the Commission's resale policies through tariff changes which incrementally, but no less effectively, hinder the ability of resale carriers to compete effectively. As the Commission has recently reaffirmed, resale of interexchange telecommunications services generates "numerous public benefits," chief among which are the downward pressure resale exerts on long distance rates and charges and the enhancements resale produces in the diversity and quality of long distance service offerings.[15]

To obtain and preserve these public benefits for consumers, the Commission long ago adopted, and continues to enforce, policies which require that "all common carriers . . . permit unlimited resale of their services."[16] To this end, the Commission affirmatively deems unjust and unreasonable, and prohibits, restrictions on resale.[17] Indeed, the Commission has recently declared that "[a]ctions taken by a carrier that effectively obstruct the Commission's resale requirements are inherently suspect."[18]

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[15] AT&T Communications: Apparent Liability for Forfeiture and Order to Show Cause, FCC 94-359, ¶12 (January 4, 1995) (citing Resale and Shared Use of Common Carrier Services, 60 F.C.C.2d 261 (1976) ("Resale and Shared Use Order"), recon. 62 F.C.C.2d 588 (1977), aff'd sub nom. American Tel. & Tel. Co. v. FCC, 572 F.2d 17 (2d Cir.), cert. denied, 439 U.S. 875 (1978); Resale and Shared Use of Common Carrier Services, 83 F.C.C.2d 167 (1980), recon. 86 F.C.C.2d 820 (1981)) ("AT&T Forfeiture Order").

[16] AT&T Forfeiture Order, FCC 94-359 at ¶2.

[17] Resale and Shared Use Order, 60 F.C.C.2d at 298-99.

[18] AT&T Forfeiture Order, FCC 94-359 at ¶13.

AT&T should not be permitted to chip away at those elements of a resale carrier's business which are critical to its continued success. One of these elements is the ability to flexibly move traffic to meet commitments and realize higher margins, either individually or in conjunction with other resellers. Such movements of traffic are not undertaken with fraudulent intent; they are a normal and accepted aspect of the provision of interexchange service. They are also an essential element of survival for small IXCs that must compete in a market dominated by a single carrier and in which that carrier and two others derive more than 85 percent of customer revenues.

AT&T has already cut into this flexibility by curtailing the right of resale carriers who were not otherwise "grandfathered" to "restructure" their "800" term plans. In Transmittal No. 8179, AT&T is taking the next logical step and will continue undertaking such incremental assaults until it is stopped by the Bureau. Certainly, there is no better proof that the Transmittal No. 8179 tariff revisions are targeted at the resale community than the fact that the entire focus of AT&T's purported "substantial cause" showing is directed against CCI.

### C. Transmittal No. 8179 Should Be Rejected As Ambiguous And Subject to Strategic Manipulation.

Sections 61.2 and 61.54(j) of the Commission's Rules, 47 C.F.R. §61.2 & 61.54(j), require that all tariff provisions must be clear, explicit and definitive. Ambiguous tariff provisions violate these rule sections and Section 203 of the Communications Act of 1934, as amended, 47 U.S.C. §203, and hence are unlawful.[19]

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[19] See MCI Telecom. Corp. v. American Tel. & Tel. Co., 71 Rad. Reg.2d (P&F) 419, ¶¶20-21 (1992).

CCI agrees with TRA that the Transmittal No. 8179 tariff revisions are ambiguous in two critical respects and as a result of these ambiguities, the resultant tariff provisions would be subject to strategic manipulation by AT&T, potentially to the deriment of customers in general and resale customers in particular. First, reference is made to the "anticipated result of such a transfer" being a failure to meet the usage and/or revenue commitment under the plan from which "800" numbers or locations are being transferred. Despite the associated parenthetical that such anticipated result will be based on "the past 12 months of usage," customers would not know, and could not know, from the tariff when AT&T would perceive that a shortfall might result from a transfer. Will AT&T (or must AT&T) (or may AT&T) consider seasonality, usage trends, customer representations or like information in "anticipating the result of a transfer." Similarly, the reference to "substantially all" of the "800" numbers or locations associated with a term plan leaves AT&T wide discretion in enforcing the Transmittal No. 8179 tariff revisions. Does "substantially all" mean 99%, 98%, 95%, 90%, 80%, 75%? Because ambiguity of this nature invites discrimination, it should not be permitted .

## III.

## CONCLUSION

By reason of the foregoing, CCI urges the Bureau to reject as unlawful AT&T's Transmittal No. 8179 tariff revisions or, at an absolute minimum, to allow the Transmittal No. 8179 tariff revisions to become effective on a prospective basis only.

Respectfully submitted,

COMBINED COMPANIES, INC.

By: Charles C. Hunter

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February 22, 1995

Its Attorneys

CERTIFICATE OF SERVICE

I, Penny L. Sublett, do hereby certify that on this 22th day of February, 1995, copies of the foregoing Petition to Reject of Combined Companies Inc. were mailed, by United States mail, postage prepaid to the following:

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| AT&T Communications | ) | Tariff Transmittal No. 8179 |
| Revisions to | ) | |
| Tariff F.C.C. Nos. 1 and 2 | ) | |

**Petition to Reject or Suspend and Investigate**

## I. SUMMARY

Public Service Enterprises, Inc. ("PSE") urges the Commission to reject or suspend and investigate the tariff transmittal captioned above. The transmittal substantially changes the terms and conditions of virtually all of AT&T's long-term offerings but AT&T fails to demonstrate substantial cause for the change, as required by the RCA Americom Decisions.[1] In addition, the transmittal introduces tariff language that is vague and ambiguous in violation of the Commission's Rules, 47 C.F.R. § 61.2. Finally, the revision is unreasonably overbroad and anti-competitive on its face and thus violates § 201 of the Communications Act which prohibits unreasonable practices.

In essence, AT&T has decided to swing a meat cleaver at a splinter, rather than use existing remedies, and (by sheer coincidence of course) would

[1] RCA American Communications, Inc., Revisions to Tariff F.C.C. Nos 1 and 2, Mem. Op. & Order, 84 F.C.C.2d 363 (1980) (order designating issues for investigation), 86 F.C.C.2d 1197 (1981) (order rejecting tariff revisions), on reconsideration, 2 FCC Rcd 2363 (1987) (RCA Americom Decisions), aff'd sub nom. RCA American Communications, Inc. v. FCC, Mem. Op., D.C. Cir. No. 81-1568 (Mar. 8, 1984). See also, Showtime Networks Inc. v. FCC, 932 F.2d 1 (D.C. Cir. 1991).

thereby chop off a long-standing, legitimate, tariffed business practice that is essential to the survival of resellers.

## II. DESCRIPTION OF FILING

AT&T offers long-term discounts through a variety of term plans in its generic tariffs (Tariff Nos. 1 and 2) and through its contract tariffs. By ordering these discounted services and reselling them (unchanged or in combination with additional services AT&T may not provide) to customers who would not otherwise qualify for them individually, resellers play a crucial role in ensuring that end users benefit from rate reductions and that AT&T does not discriminate unreasonably among customers.

AT&T occasionally revises its existing offerings or introduces new discounted offerings targeted to different customer types or traffic profiles. In order to stay competitive, resellers will order new offerings and move traffic among new and old plans or among resellers to achieve the requisite traffic profile and obtain the lowest possible rate under AT&T's tariffs.

AT&T's tariffs contain a limited number of provisions that enable resellers to optimize their service mix (and thereby extend lower rates to users). Chief among these is the Transfer or Assignment provisions in Tariffs 1 and 2, which AT&T seeks to modify with Transmittal Number 8179 ("Tr. No. 8179"). These provisions enable resellers to move traffic among themselves in response to changes in end user traffic patterns or in AT&T's tariffs. By doing so, resellers can match differences in term plans' service mix, vintage, minimum revenue or

volume requirements, traffic distribution requirements, etc., with changes in the traffic patterns at different locations to obtain the lowest possible effective rate. Without these provisions, the ability of resellers to take advantage of newly-tariffed discounts would be drastically curtailed.

Transmittal No. 8179 would terminate this procedure. The transmittal adds language to the Transfer or Assignment provisions in Tariffs 1 and 2 (which also apply by cross-reference to AT&T's Contract Tariffs) that severely limits the circumstances in which resellers could shift traffic among long-term offerings. The new language would allow customers to transfer locations out of a long-term offering only if the locations remaining in the offering generated sufficient usage in the previous year to satisfy the offering's minimums. If they did not, the customer may only transfer the whole plan to another customer, even if the customer could add new locations or increase traffic from the remaining locations to satisfy its minimum commitment.

## III. DISCUSSION

This transmittal is patently unlawful and must be rejected for any one of the reasons discussed below.

### 1. AT&T's Substantial Cause Showing is Patently Inadequate and Unpersuasive

AT&T has failed to demonstrate substantial cause for these revisions as required under the Commission's RCA Americom decisions [2] before a carrier may change the terms and conditions of a long-term offering. In those decisions,

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[2] Id.

the *Commission balanced the customers' legitimate expectations* of rate and service stability against the carrier's business needs and concluded that a carrier must demonstrate substantial cause for change if it seeks to modify long-term offerings. Applying that test to the tariff revisions under investigation in that docket, the Commission concluded that RCA Americom had demonstrated substantial cause and therefore permitted the carrier to raise its rates.

The Bureau addressed the applicability of the substantial cause test to AT&T's price caps filings when it rejected a previous AT&T attempt to change the termination liability charges for CSTPs. In AT&T Communications, Revisions to Tariff F.C.C. No. 2, Order, 5 FCC Rcd 6777 (1990), the Bureau granted petitions to reject or suspend and investigate Transmittal Nos. 2404 and 2535 on the grounds that AT&T was required to make a substantial cause showing before it could change the terms and conditions for long-term service contracts. The Bureau concluded that AT&T had failed to make a showing that satisfied the test. In its Order, the Bureau stated:

> The *RCA Americom Decisions* establish that a carrier must demonstrate substantial cause for changes in long-term service arrangements. This special showing for changes in long-term agreements was not changed by the Price Cap Rules. . . . AT&T has failed to provide a persuasive showing of substantial cause for the instant changes. Therefore, . . . these tariff transmittals are rejected for this reason.

5 FCC Rcd at 6778 (footnotes omitted).

In this case, AT&T has provided a perfunctory and unpersuasive showing of substantial cause. AT&T's showing consists of a two and a half page letter

that doesn't *even reach substantial cause* until the last page.[3] The showing consists of two sentences. First, AT&T states that it is filing Tr. No. 8179 to prevent a single transaction that elevates form over substance to avoid shortfall charges. Second, AT&T claims that no customer has a legitimate expectation that it could transfer locations out of a plan without transferring the plan.

AT&T's substantial cause showing is unpersuasive for three reasons. First, if AT&T's real concern is with a particular individual customer who is seeking to render itself "an assetless shell, unable either to fulfill its commitments or to pay its shortfall or termination charges,"[4] AT&T already has far more powerful remedies than Tr. No. 8179 to address that concern. AT&T itself notes in its letter that it has already tariffed provisions that protect it from the very problem that it now claims requires Tr. No. 8179. The letter notes that Sections 2.2.4.B.2. of AT&T's Tariff No. 1 and 2.2.4.A.2. of Tariff No. 2 prohibit "fraudulent means or schemes to avoid payment of tariffed charges."[5] Moreover, AT&T has extensive rights and remedies through the bankruptcy courts and traditional creditors' remedies that adequately protect its interests and dwarf the remedies

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[3] The first part of AT&T's showing is an argument that no substantial cause showing is required because Tr. No. 8179 is only a "clarification." This section includes two paragraphs advancing new and novel interpretations of unrelated tariff language. Because this discussion is irrelevant to the lawfulness of Tr. No. 8179, PSE will not address it other than to note that the interpretations advanced in the Meade letter are so untenable (i.e., interpreting the deposit requirement provision to mean that a customer transferring traffic can be required to pay a deposit as a condition of processing the transfer; interpreting the transfer section to require customers to whom *locations* are transferred to assume *plan* obligations) are fully consistent with the unreasonable lengths to which AT&T is apparently willing to go to impede resale.

[4] Letter from Richard R. Meade, Senior Attorney, AT&T, to David Nall, Deputy Chief, Tariff Division, FCC, at p. 2 (February 16, 1995).

[5] *Id.*

available from the FCC with its limited jurisdiction. *AT&T hardly needs to disrupt* every contract tariff it has filed (and it has filed more than two thousand of them) and all of its term plans, when its rights as a creditor are already well protected.

Second, AT&T claims in its substantial cause showing that customers have no legitimate expectation that they can transfer traffic and not plans. In fact, AT&T itself has created that expectation by routinely processing such transfers. Moreover, such transfers, and the *expectation* that they will continue, serve quite legitimate and pro-competitive business purposes. Here are just a few examples of the *circumstances* under which customers would quite legitimately want to transfer locations and not plans, each of which would be frustrated by the changes in Tr. No. 8179:

A customer transfers substantially all of the locations in a plan to another reseller (who then qualifies for a new contract tariff with better rates for those locations, for example) and simultaneously transfers into the plan replacement traffic that exceeds its commitment levels.

A customer transfers locations as above and has excess traffic in other plans that can be moved in if the remaining locations don't generate sufficient traffic.

A customer transfers locations as above and adds new replacement locations over a two or three month period with sufficient traffic to meet the plan's minimums.

A customer transfers locations as above and knows that the traffic at the remaining locations will increase because the end user at those locations previously was splitting traffic between suppliers and now picks the reseller as its sole supplier going forward.

A customer transfers locations as above and exercises its rights under AT&T's tariffed discontinuance provisions to terminate the plan without liability, extinguishing any traffic commitment.

None of these cases would be exempted from the Draconian effect of Tr. No. 8179 because the revisions proposed therein sweep together legitimate traffic transfers and transfers for a fraudulent purpose. But there is nothing inherently sinister, and more important, there is nothing *unusual* about transfers of substantially all locations in a plan. AT&T has received and processed many such transfer requests in the past.

Third, AT&T has no substantial cause to implement the change in Tr. No. 8179 because the problem it identifies in its substantial cause showing as a justification for the transmittal isn't corrected by the revisions. AT&T's concern supposedly is that a plan holder will strip itself of assets by transferring locations to another reseller. AT&T's solution in Tr. No. 8179 is to force those locations to stay in the old plan. But AT&T cannot stop end users from presubscribing to another AT&T reseller or another facility-based IXC. Thus, a reseller can lose all of its locations even if Tr. No. 8179 takes effect. Indeed, by preventing a reseller from transferring locations to another term offering that may have a better rate, AT&T may stimulate end users to abandon its network altogether. Perhaps it hopes only that it will be able to solicit the locations as direct customers of its own service. In either case, the "solution" in Tr. No. 8179 will not accomplish the purpose AT&T claims to be serving and that purpose therefore does not justify the disruption to customers of long-term offerings.

Because AT&T has therefore failed to demonstrate substantial cause for the disruption of long-term service arrangements that it seeks to introduce through the instant filing, the Bureau must reject Tr. No. 8179.[5]

2. Tr. No. 8179 is Vague and Ambiguous

The second basis for rejecting Tr. No. 8179 is that the filing is vague and ambiguous in violation of § 61.2 of the Commission's Rules which requires tariffs to contain clear and explicit explanatory statements of the rates and regulations. As noted above, the new provision in Transmittal No. 8179 applies when "the anticipated result" of a transfer of locations would be that the remaining locations, based on usage in the preceding year, would fail to meet the minimum commitment for the offering.

AT&T does not explain what an "anticipated result" is. Whose anticipation will govern? If a reseller anticipates that it will exercise its right to discontinue an offering without liability after transferring locations and AT&T anticipates that it will not honour its tariff but will instead try to prevent a reseller from discontinuing, which anticipated result governs?

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[5] On previous occasions, AT&T has avoided rejection on substantial cause grounds by including provisions that "vintage" or "grandfather" existing plans, thus preserving the rights of current term plan customers and obviating the need for a substantial cause showing. In the instant transmittal, AT&T failed to grandfather existing plans. Moreover, in its supporting letter, AT&T complains that doing so would create "needless regulatory complexity." Apparently, this "complexity" is one that AT&T usually can handle since it has itself created innumerable vintages of contract tariffs by using (and re-opening) 90-day ordering windows. But grandfathering is no solution here in any case because the provision is so patently unreasonable. Grandfathering existing customers or offerings would only delay the disastrous injury to competition, unless AT&T is assuming that resellers will not order any offerings in the future.

Thus, the provision as drafted creates numerous problems of interpretation and application. A customer cannot ascertain from reading the tariff whether its transfer will be subject to the provision.

3. Tr. No. 8179 Introduces an Unreasonable Practice That On Its Face Violates Section 201 of the Act

Tr. No. 8179 is unjust and unreasonable on its face, and therefore unlawful, because it is unreasonably overbroad and anti-competitive on its face and thus violates § 201 of the Communications Act which prohibits unreasonable practices.

AT&T claims that the purpose of the filing is to prevent a particular transaction in which a reseller is attempting to insulate its assets from AT&T's legitimate claims for payment under tariff by "selling" its "service" to a third party and leaving itself with little or no remaining assets. But, as described in Section III.1, above, the revisions in Tr. No. 8179 would address not only this single case but *all* substantial transfers of locations *from all* plans regardless of the reseller's status or purpose. By sweeping so broadly, Tr. No. 8179 would have an anti-competitive effect on the interexchange *marketplace* by discouraging resale and denying access to AT&T's newest discounted *offerings*. Moreover, access is denied not only to resellers but to their end users as well who would be denied access to newer discounts.

Moreover, by pegging permissible transfers to past traffic levels from the remaining locations in an offering, Tr. No. 8179 effectively guts other provisions in AT&T's long-term offerings that establish *annual* commitments. Most of

AT&T's term plans and contract tariffs establish percentage discounts on the rates for generic services in return for minimum annual commitments. A minimum annual commitment ought to mean what it says; a customer has one year to generate sufficient traffic to meet its minimum. Thus, if a customer with an annual commitment transfers substantially all of the locations in the offering to another AT&T service in month two or three, for example, it has nine or ten months to generate replacement traffic under the tariff. But Tr. No. 8179 would short circuit this aspect of the offerings. Rather than give customers the annual period they bargained for, the new provision would strip the customer of its plan whenever the customer seeks to transfer substantially all of its locations, even if it is transferring *into* the plan sufficient traffic to meet its commitment. If that customer is in month two or three, "substantially all" of its locations may not yet be a large number of customer accounts.

Thus, customers with seasonal traffic spikes or those whose traffic is starting off at low levels but is growing rapidly – neither of whom would have trouble meeting their minimums after a year – would have to give up their plan if they tried to re-align their service mix by transferring some locations out and transferring others in. By thus gutting the minimum annual period that is central to the rationale for long-term offerings, Tr. No. 8179 introduces provisions that are unreasonable on their face and the Bureau should reject it.[7]

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[7] Alternatively, the Bureau could suspend and investigate the Transmittal. If it chooses to do so, the Bureau should investigate AT&T's actual practices with respect to transfers of locations and the specific transfer it cites in its pleading. The Bureau should direct AT&T to answer specific questions and produce documents related to the circumstances of this filing. In particular, the

## CONCLUSION

*AT&T's Tr. No. 8179 fails to demonstrate* substantial cause to justify the changes to long-term service arrangements proposed therein. Moreover, the proposed revision is vague, ambiguous and unreasonable on its face. Therefore, the Bureau must reject the transmittal.

Respectfully submitted,

Colleen Boothby /cgm

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Counsel for Public Service Enterprises of Pennsylvania, Inc.

Dated: February 22, 1995

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Bureau should investigate how many transfers of substantially all locations AT&T has honoured in the past; the number and frequency of discontinuances requested (and implemented) in the wake of such transfer requests; the incidence of location transfers by customers who subsequently defaulted on their term commitments; and, with respect to the particular transaction cited by AT&T in its pleading, the evidence available to AT&T regarding the likelihood that the transferring customer would default on its term commitment and the timing and extent of AT&T's knowledge regarding PSE's role in the transaction. In particular, AT&T should explain why it was willing to transfer two of the plans without controversy but refused to transfer the others once a TSA to PSE was submitted.

Exhibit S

AT&T COMMUNICATIONS
Adm. Rates and Tariffs
Bridgewater, NJ 08807
Issued: July 28, 1993

TARIFF F.C.C. No. 2
4th Revised Page 61.16.1
Cancels 3rd Revised Page 61.16.1
Effective: July 28, 1993

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

- The 800 CSTP II will commence on the first of the billing month following the Customer subscribing to the Term Plan.
- The Customer must subscribe to a new Revenue Volume Pricing Plan (see Section 3.3.1.M.). Customers ordering a CSTP II must also order an RVPP to cover all the same AT&T 800 Services. RVPP discounts apply after the Term Plan discounts.
- If the Customer terminates the CSTP II within the first year, the 1/2% credit must be repaid and will be added to the term plan cancellation penalty.
- There is a $50.00 per location charge to move a CSTP II location from an existing CSTP II to a new CSTP II or to another existing CSTP II. This charge is not applicable to the first 10 locations moved between plans in each calendar year, when the original plan is not discontinued. Sx Sx Cy Cy
- There is a $50.00 charge when an existing CSTP II is discontinued and all of its locations are concurrently moved to a new or existing CSTP II with a revenue commitment equal to or greater than the original plan being discontinued. Ny Ny

TRAFFIC TRANSFER

PLAN TRANSFER

NO CAP ON THE Amount of Accounts that CAN be transferred, or ANY kind of percentage CAP.

Sx Applicable after August 14, 1993.

Material filed under Transmittal Nos. 5318, 5384 and 5447 is deferred to July 29, 1993 under authority of Special Permission No. 93-603.
Issued on same day's notice under authority of Special Permission No. 93-627.

AT&T

December 10, 1990

One Stop Financial
198 Colonial Dr.
Little Falls, NJ 07424

Dear Sir:

AT&T is announcing procedural revisions in serving Aggregators that will take effect January 1, 1991. As the holder of a Multi-Location WATS (MLW) service plan, and/or 800 Revenue Volume Pricing Plan (RVPP)/Customer Specific Term (CSTP) you are the AT&T customer for all locations that you have designated for inclusion under your discount plan. The purpose of this package is to explain these changes and clarify your role in interacting with AT&T.

Once a location signs up for service under your plan, you have assumed responsibility to AT&T for that location. As a result, that end-user loses his status as a customer of AT&T, giving control of the aggregated BTN (Billing Telephone Number) to you, the Aggregator, including the authority to add, delete, or change service for that BTN. Accordingly, AT&T will honor all order activity related to a BTN included in your discount plan only from you --the service plan holder.

As part of these changes, AT&T has created a dedicated organization to process orders for you. Starting January 1, 1991, all requests for service under your plan should be directed through this organization. It is our belief that these changes will allow you to better serve the needs of your customers.

Add + Delete is under 3.3.1.Q bullet 4

change Service is 2.1.8.

NO CAP on how many can be transferred.

The enclosed package provides detailed information of the revisions that are being implemented. Included is important information on:

- Policy Guidelines
- Order Processing
- Tariff Information
- Use of the AT&T Name and Trademark
- Billing and Collections

An AT&T Representative will contact you to discuss how to request service for an end-user location, and the correct way to fill out and process the required forms.

If you have any questions, you can contact us at 1-800-233-6667.

Annette McChaffey

Annette Mchaffey, Manager
Marketing Delivery Center