Exhibit **A**

PUBLIC SERVICE ENTERPRISES
OF PENNSYLVANIA, INC.
45 OWEN STREET, FORTY FORT, PA. 18704
PHONE 717/287-5151

P-2
End

January 16, 1995

CONFIDENTIAL
DO NOT COPY

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?1)

Mr. Larry G. Shipp
Combined Companies, Inc.
7061 W. Commercial Blvd., Suite 5K
Tamarac, FL 33319

Dear Mr. Shipp:

Please accept this letter as confirmation that Public Service Enterprises of Pennsylvania, Inc. (PSE) will provide Combined Companies, Inc. (CCI) with eighty percent (80%) of the earned credit provided PSE on its WIS Report for 800 qualified traffic placed by CCI with PSE on its Contract Tariff No. 516; and a seven percent (7%) credit for traffic placed by CCI on PSE's Contract Tariff No. 435, as appropriate. Any supplemental discount received or claimed for CPP10 is for the account of PSE.

CCI estimates this initial traffic to be approximately $4,100,000.00 monthly.

CCI's Endusers will be billed by AT&T at the prevailing AT&T Tariff 2 CSTP rates, less twenty three percent (23%) Customer Specific Term Plan (CSTP) discount, and 5.5% Revenue Volume Pricing Plan (RVPP) discount.

CCI will be paid by PSE within ten (10) days of PSE's receipt of its credits associated with Contract Tariff 516 and Contract Tariff 435 respectively.

PSE understands that CCI is not discontinuing these plans, and therefore remains responsible for any commitment associated with them. Accordingly, PSE agrees that upon 30 days written notice from CCI of a AT&T requirement that CCI meet its commitments to AT&T, PSE shall assist CCI in moving any or all of its accounts placed with PSE into any CCI plan CCI shall designate, in order for CCI to meet its commitment to AT&T.

Sincerely,

Frank G. Scardino

Accepted:

Combined Companies, Inc.

Larry G. Shipp
Its: President

AA920

Exhibit B

2.5.8. **Deposits** - The following deposit provisions are applicable to WATS. A deposit does nor relieve the Customer of the responsibility for the prompt payment of bills on presentation. If the Customer refuses to pay a deposit required under this Section, AT&T may refuse to provide new service, or restrict or deny existing service for which the deposit is required. In lieu of a cash deposit, AT&T will accept, as a deposit, irrevocable and commercially sound Bank Letters of Credit, Surety Bonds or Guarantees. C

A. **Deposit for Recurring Charges** - The Company will require a deposit from a Customer (1) who has a proven history of late payments to AT&T or (2) whose financial responsibility is not a matter of record (determined in accordance with 1., following). ATCT will hold the deposit as security for the payment of charges. The amount of this deposit will not three times the sum of the estimated average monthly usage charges and/or the monthly service charges.

1. To determine the financial responsibility of a Customer and/or the specific amount of any deposit: required, AT&T will rely upon commercially reasonable factors to access and manage the risk of non-payment, These factors may include, bur are not limited to, payment history for telecommunications service, the number of years in business, history of service with AT&T, bankruptcy history, current account treatment status, financial statement analysis, and commercial credit bureau rating.

B. **Deposit For Shortfall Charges*** - The Company will require a deposit from a Customer that meets each of the elements specified in 1. through 3., following, to be held as a guarantee for the payment of any charge that may be incurred as a result of a failure to meet revenue or volume commitments or monitoring conditions [Shortfall Charge) under an AT&T term plan, flex plan, or other discount plan with revenue or volume commitments offered under this Tariff, or a Contract Tariff under which WATS is provided (a Pricing Plan). The amount of this deposit will not exceed the estimated Shortfall Charge, to be determined in accordance with the applicable tariff provisions under which such Shortfall Charges would be assessed, based on the total annualized charges or usage calculated as specified in the applicable category under 2., following. A deposit will not be required under this Section if the amount of the estimated Shortfall Charge is less Khan $300,000. A deposit will be required when each of the three following requirements is met:

1. The Customer has subscribed to a Pricing Plan that includes a revenue or volume commitment based on charges or usage over a period of one year or longer.

2. The Customer is in one of the following categories (a) through (c). For purposes of these determinations, if any commitment under the Pricing Plan is based on charges or usage over a period of longer than one year, the commitment will be treated as an annual commitment equal to the amount of the commitment, divided by the number of months in the commitment period, multiplied by twelve.

(a) AT&T has accepted the Customer's order for service under the Pricing Plan and the Customer has identified locations or telephone numbers that are to be served under the Pricing Plan, but the total annualized charges or usage from such locations and telephone numbers art less than 50% of the annual commitments applicable during the first year of the Pricing Plan. Such total annualized charges or usage will be twelve times the greater of (i) the past month's billed usage or (ii) the average C

*Section 2.5.8.B does not apply tot any Pricing Plan that was in service as of December 9, 1995 or earlier. C
Certain material previously found on this page can now be found on Pages 28.1 and 28.1.1.

Prospective From December 9th 1995

2.5.6.B.2.(a) Deposit for Shortfall Charges - (Continued)

monthly billed usage during the preceding twelve months, or if billed usage information is not available far the preceding twelve months, then during the number of preceding months for which such billed usage information is available.

(b) The Customer has been taking service under the Pricing Plan fox at least three full billing months, and the total annualized charges or usage under the Pricing Plan are less than 80% of any currently applicable annual commitment under the Pricing Plan. Such total annualized charges or usage will be twelve limes the greater of (i) the past month's billed charges or usage or (ii) the average monthly billed charges or usage during the current commitment period.

(e) The Customer has requested that AT&T remove specified locations or telephone numbers from the Pricing Plan, and the total annualized charges or usage from the locations or telephone numbers that would remain under the Pricing Plan are less than 80% of any currently applicable commitment under ehe Pricing Plan. Such total annualized charges or usage will be determined using the same methodology as specified in (b), preceding.

3. The Customer's net assets (based on a review of an audited financial statement, if available, and other information available to AT&T) are less than three times the amount of its total commitments co AT&T under tariffed service arrangements, or the Customer's financial responsibility is not a matter of record (determined in accordance with A.1., preceding).

C. Interest on a Cash Deposit - Interest will be paid to a Customer for the period that a cash deposit is held by AT&T. The interest rate used will be as follows:

1. Simple incerest at the rate of six percent annually unless a different rate has been established by the appropriate legal authority in the state where WATS is installed, in which event that rate will apply.

2. When the Local Exchange Company's: local exchange service tariff applies a Late Payment Charge, the same interest rate applicable to that: late payment charge will apply.

D. Return of a Deposit - Any deposit for recurring charges collected under A., preceding, wall be credited to a Customer's account if applicable, when the Customer has established credit, or when the Customer has established a prompt payment record wirh AT&T for one year. Any deposit: for shortfall charges collected under B., preceding, will be credited to a Customer's account, upon demand of the Customer, when the: Customer's actual billed charges or usage under the Pricing Plan during the current commitment period divided by the number of months elapsed in the current commitment period, multiplied by twelve, are at feast 80% of each currently applicable annual commitment under the Pricing Plan, for: at least three consecutive months. AT&T may require a new deposit even after a deposit has been returned to the Customer under this Section if the conditions of Sections A. or B., preceding, are met, When the service for which the deposit has been required is discontinued, the deposit is applied to the final bill and any credit balance is refunded to the Customer with applicable interest accrued.

Certain material previously found on this page can now be found on Page 28.1.1.

Exhibit C

the FCC, and thus we would have been grandfathered! AT&T instead has tried to rely on security deposits and fraud allegations.

51. **AT&T told the Federal District Court that the exact issue that was before the court was before the FCC.** AT&T held up the Court for months before we were able to get before Judge Politan. AT&T argued to Judge Politan that he should not rule on this because the ruling was coming from the FCC very soon. It was quite clear to the court that when AT&T pulled the transmittal from the FCC that it was a tacit admission that it knew at best for AT&T our plans would have been grandfathered and at worst, totally rejected.

52. Attached as **Exhibit F** is a copy of one of the briefs submitted by the plaintiffs in reference to these transmittals. We had every right to assign our end-user accounts in accordance with the tariff, There was nothing in the tariff that prohibited us from doing these assignments. AT&T could only try to rely on a provision in their tariff that has to do with stealing WATS. The issue of these assignments being viewed as stealing WATS is absurd.

53. **AT&T would never have attempted to file that transmittal for tariff change on account assignments if it really thought it could rely on other tariff sections!** The facts are: AT&T would still be receiving the same minutes and would be still getting paid for these minutes, but AT&T refused to allow us to assign all the accounts. The tariff simply does not prohibit what we did. **In** fact the tariff and AT&T's own form, the Transfer of Service or Assignment (TSA) form, made it possible. We did an assignment of end-user accounts ~~as per the~~ tariff and what had been commonly accepted in the marketplace for years.

54. Attached as **Exhibit G** is a document produced by my office staff and sent to our attorneys showing a very small sample of a couple hundred accounts that were assigned from one corporations plan to another corporation's plan. In this document it explains that AT&T's office had approved the assignments. We did assignments in the thousands of accounts between aggregators. We assigned accounts to whatever plan we wanted. When we assigned accounts with other aggregators the aggregator receiving the accounts would fax the end-users and tell them that if they had any questions to call the new aggregator for service issues.

Exhibit D

63. **AT&T's Is in a Better Security Risk Position after Assignment.** The Court's understanding that there was no credit risk was right. The subject accounts continued to be billed by AT&T and the volume was so large that bad debt was not capable of becoming an issue. Moreover, the credit risk went with the accounts, no matter who owned them; my Companies, CCI, or PSE. Security is to protect against possible non-payment, not to protect AT&T from the complying with the law, telecommunications policy and its own tariff.

64. AT&T argued that there would be no assets in the plan once the accounts were transferred. But AT&T ignores that there also are no longer any liabilities left in the plan. AT&T doesn't need security on plans with no open accounts and therefore incapable of generating any charges that might go unpaid. Moreover, AT&T never refuted the Court's finding that the plans could be restructured continually without penalty.

65. **AT&T Deliberately Discriminated Against Aggregators in General, But My Companies in Particular.** Attached as **Exhibit H** is a solicitation from AT&T's sales rep John Slifka, an AT&T Account Team Manager. Mr. Slifka was unaware that I was an aggregator. As shown by **Exhibit H**, Mr. Slifka offered my Company a 51.3% discount with a monthly bill of but $200 a month. Thinking my Company would be a direct AT&T customer and not an aggregator, I was entitled to a discount nearly twice what my Companies actually received as an aggregator – 28%. Such discriminatory discounting had the expected effect of sharply decreasing my Companies aggregation traffic volume. Such discriminatory discounting also undercuts any argument AT&T would make that aggregators were rightfully subjected to shortfall charges because of the more favorable discount rates aggregators were provided.

66. **The June 17th Grandfathering Issue.** AT&T's Transfer of Service or Assignment (TSA) form was used for multiple purposes. 1) You would need it to take an end-user out of their term contract with AT&T with no penalties if you were in the 1st month of a brand new RVPP ID issued plan. 2) You could either transfer the entire CSTP II plan from one AT&T customer to another as was done with the transfer from my companies to Combined Companies.

3) You could merge one or more plans into another AT&T plan. 4) You could assign individual end-user accounts from one plan to another plan, which we did hundreds of times, until AT&T stopped the assignment from Combined Companies to PSE.

67. These types of transfers were bone' many times. Since this type of transfer is a significant issue attached as Exhibit I is a TSA form showing how accounts were assigned to another aggregator. The other aggregator was faxed this TSA and they signed it and sent it to AT&T to be processed. AT&T took all the accounts aff "Group 53" an my plan and assigned them to Ameritel 800 Inc's pian. There were so many thousands of accounts being assigned between aggregator plans that AT&T instituted a tariff change to institute a fee when individual accounts were assigned between CSTPII RVPP plans. That fee was in *fact* allowed by the FCC to be added to the AT&T tariff. The tariff provides for a *$50 fee* for assignments. FCC tariff page 61.16.1 at 3.3.1.Q attached as Exhibit J.

68. Then around July of 1996 AT&T went ahead and placed shortfall penalties on our end-users bills. In numerous letters, AT&T was told by both Mr. Shipp and myself that it should not put millions of dollars of shortfall penalties on our end-users accounts for several reasons:

69. **The Plans Were All Pre June17th, 1994 Issued RVPP ID Plans.** We taped several of our AT&T national account reps telling us that you always will be considered a pre June 17th, 1994 plan and no shortfall penalties can ever be assessed 'against the plans if we timely restructured the plans before the fiscal year end true up charges were inflicted. I explained that even if it was now interpreted that a restructured CSTPII RVPP plan was actually new, I would have previously been able to have enrolled over 60% of the end-users in the market place who were on LSTP term plans with AT&T *directly,* instead of walking away from them. The volume *of* accounts that I would have been able to put on my CSTPII RVPP plans in the previous years before the alleged shortfall would have made the issue in July of 1996 of whether or not we were in shortfall a non-issue. We would have easily had the volume.

70. The *issue* in July *of* 1996 was whether we were still protected as a pre June17th 1994 grandfathered plan. We knew in July of 1996 that there were some plans that were short in volume if they were interpreted as *post* June 17,1994 plans. Shortfall would never have

Exhibit E

AT&T Initial Brief to Third Circuit

responsibilities it maintained after the CCI/PSE transfer." May 19, 1995 Order at 10 (AA 1037). AT&T estimates that the Inga companies currently owe AT&T shortfall charges of approximately $20 million. See Williams 2d Supp. Cert. ¶ 4 (AA 1260). Moreover, Mr. Inga has represented to AT&T on several occasions that he might leave AT&T with a substantial financial loss and no recourse, by leaving his liabilities in companies with no assets and then having these companies file for bankruptcy. See Meade 2d Supp. Cert. ¶ 4 (AA 1266); Fitzpatrick Cert. ¶ 4 (AA 166); Umholtz Cert. ¶ 4 (AA 173).

In these circumstances, where the party from whom AT&T would be required to seek recourse would be effectively "insolvent and its assets in danger of dissipation or depletion," the law is clear that AT&T would be irreparably harmed. Hoxworth v. Blinder Robinson & Co., Inc., 903 F.2d 186, 205 (3d Cir. 1990) (quoting Deckert v. Independent Shares Corp., 311 U.S. 282, 290 (1940)).

The District Court's two reasons for its conclusion that AT&T would suffer "little or no harm" if the injunction issued were both incorrect. First, it reasoned that end users would continue to pay AT&T for the service they took regardless of whether they took service under a CSTP II plan held by CCI or Contract Tariff 516 held by PSE. In fact, AT&T is not merely at risk for nonpayment of the usage charges themselves, which are indeed paid by end users directly to AT&T, but also for plaintiffs' shortfall and termination charges, which can only be paid by plaintiffs from the revenues they would lose as a result of the transfer. Williams 2d Supp. Cert. ¶ 5 (AA 1261). Moreover, plaintiffs' proposed transfer would greatly increase the probability that plaintiffs would in fact become responsible for shortfall charges. This is because the traffic that would be shifted to PSE's Contract Tariff 516 cannot be simultaneously used to satisfy both

Exhibit F

AT&T (R. Brown) brief to District Court

question of any preliminary relief, **and** that it was incumbent on the plaintiffs to institute appropriate proceedings at the FCC. ***(Id.*** at 7-8).

In **July** 1996, the Inga Companies filed a petition with the FCC **seeking** rulings on several issues, including a finding on whether:

> [a]t the time of the attempted transfer . . . in or about January 1995, by CCI to PSE, of the end user traffic under CSTP-II plans held by CCI, neither Section 2.1.8 of AT&T's Tariff F.C.C. No. **2,** nor any other provision of AT&T's Tariff, . . prohibited CCI from transferring **the** tariff without **also** transferring the CSTP-II plans with which the traffic was associated,

(See FCC Opinion at **6** Arleo **Cert., Ex. 6).** That request describes the issue referred by the District Court on primary jurisdiction grounds.[3] In March 1997, the Court stayed this matter pending final disposition of any matters before the FCC. (March 12, 1997 Order, Brown Aff., **Ex.** B).

In the course of the proceedings before the FCC, the Inga Companies raised an **array** of **issues.** While their primary claim was that § 2.1.8 was inapplicable, they also contended that this section would not have authorized AT&T's conduct even if it did apply. First, § 2.1.8 requires assumption of "all obligations" of the former customer, "*includ[ing]*" (1) outstanding indebtedness and (2) "the unexpired portions of any minimum service period." But the Inga Companies **asserted** that only the latter obligations must be assumed and that the term and volume requirements at issue here were not matters that had to be assumed, relying on the

[3] After the May 1996 decision, **there** was a settlement between AT&T and CCI. Thereafter, the Inga Companies moved to "realign the parties" and sought to assert claims against CCI. Judge Hedges denied the motion, holding that the Inga Companies' **claims** against CCI would have to be in **a** separate action, ***(See*** March 10, 1998 Order, Arleo **Cert., Ex.** F). The Inga Companies then filed suit in this district, and AT&T was not a party to that action. Plaintiffs' statement here that "this Court" determined that their claims **were** not compromised by the AT&T/CCI settlement is misleading because the ruling (whatever it actually says) was in the Inga Companies/CCI **case,**

(irrelevant) ground that the minimum term for *other* WATS services under the tariff is one day. JA 187. **(See** Tariff No, 2, § 2.5.5, Brown **Aff., Ex.** C). Second, the Inga Companies asserted that, in any event, AT&T was in no danger of suffering unremunerated shortfall obligations because the plans **at** issue **were** somehow pre-June 1994 plans and were somehow exempt from shortfall liabilities. (See Reply Comments submitted by the Inga Companies in the FCC Proceeding at 7-11, Brown **Aff., Ex.** D). Third, the Inga Companies argued that the fact that § 3.3.1.Q of AT&T's tariff imposed a $50 per location transfer **fee** somehow supported its claims that traffic could **be** transferred without liabilities. (See Tariff No. 2, § 3.3.1.Q, Brown Aff., **Ex.** E). Fourth, the Inga Companies made arguments based on what **they** alleged to be thousands of comparable **prior** transfers. (See submission by the Inga Companies in the FCC Proceeding, Brown Aff., **Ex.** F). Finally, the Inga Companies relied on the ground that AT&T had filed and then withdrawn a tariff transmittal (No. 8179) that did no more than **codify** the existing requirements of AT&T's tariff. (See the Inga Companies' Joint Petition for Declaratory Ruling in the FCC proceeding at 19-20 and attached exhibit, Brown **Aff.,** Ex. G). **In** addition to making each of the foregoing arguments before the FCC, the Inga Companies repeated them in a filing made with the D.C. Circuit. ***(See*** the Inga Companies' submission to the D.C. Circuit, Brown Aff., Ex. H).

In the FCC proceedings, AT&T refuted all these arguments. It demonstrated that § 2.1.8 applies and required PSE to assume the volume commitments associated with the transferred traffic and that, in all events, the antifraud provisions of AT&T's tariff authorized denial of the transfers.

In its October 17, 2003 Memorandum Opinion, the FCC stated that the District Court referred "the issue of the transfer of the aforesaid plans and/or **their** traffic as between [CCI] and

Exhibit *G*

AT&T brief to FCC 2003

under the tariff provisions governing the [Revenue Volume Pricing Plan ("RVPP") and the Customer Specific Term Plans II ("CSTP II")] Plans at issue in this matter." AT&T demonstrated in its Further Comments that under the relevant tariffs Petitioners were AT&T's customers of record and that AT&T did not have any carrier relationship with Petitioners' customers (the "end users"). Petitioners do not dispute the accuracy of these statements; just to the contrary, they repeatedly concede that they, and not AT&T, had the exclusive carrier-customer relationship with the end users. Similarly, the Petitioners acknowledge that, although AT&T also rendered bills to Winback & Conserve's end users on behalf of the latter entity, the billing arrangement selected by the reseller did not create any carrier-customer relationship between AT&T and the end users.

Second, the Public Notice requested comment on the remedy that AT&T could exercise under its AT&T's Tariff F.C.C. No. 2 "if AT&T had reason to believe that its customer is violating Section 2.2.4 of that tariff by [u]sing or attempting to use [800 service] with the intent to avoid the payment, either in whole or in part, of any of [AT&T's] tariffed charges by ... [u]sing fraudulent means or devices, tricks, [or] schemes." Petitioner's Comments do not address this issue at all. Instead, they principally argue issues which were not referred to the Commission by the federal courts, and none of which were within the scope of the Commission's February 13,2003 Public Notice. Absent a Commission directive to the contrary, AT&T will not address these extraneous arguments in this filing. Moreover, with respect to the second issue framed in the Public Notice, AT&T showed in its Further Comments – and that showing now stands unrebutted – that its tariff authorized AT&T to withhold coasent to Petitioners' "fractionalization" scheme because AT&T had reason to believe that the request to

Exhibit H

locations. that you have designated for inclusion under your discount plan," emphasis in the original); Exhibit B (informing end users that when they buy from an aggregator [such as Petitioners] they are not customers of AT&T but rather customers of the aggregator; that aggregators "are not agents or employed by AT&T"). Petitioners also concede that the *liability* for all charges incurred by each location under the plan was solely that of Petitioners, not the end-users. Petitioners' Comments at 7, ¶ 11 (while AT&T did the billing, the aggregator set the rate and the aggregator was liable to the extent that the end user did not pay), ¶ 12 (although AT&T did the billing, "service on the account was done solely by the aggregator"); ¶ **13** (the end user was the "aggregator's customer") and at 8, ¶ 14 (after discussing the billing by AT&T, referred to the "lack of any customer relationship between AT&T ,and the aggregator's end user.") *see also* at 26, ¶ 79.

The undisputed record thus requires the Commission to deny Petitioners' request for declaratory relief. As AT&T's customers-of-record, the Petitioners were responsible for the tariffed shortfall and termination charges.[3] Moreover, as AT&T has already demonstrated, as AT&T's customers-of-record Petitioners were precluded under the governing tariff from transferring their CSTP II Plans to PSE unless PSE agreed to assume all of Petitioner's obligations under those same plans, including tariffed shortfall and termination charges.[4] There is no merit to Petitioners' contention that, because it had

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3 Section 3.3.1.Q of AT&T Tariff F.C.C. No. 2; *see also*, AT&T Corp. Further Comments, filed April *2,12003* ("AT&T's 2003 Further Comments") at 7-8.

4 Sections 2.1.8.B of AT&T Tariff F.C.C. No. 2; *see also*, Comments of AT&T Corp. in Opposition to Joint Petition for Declaratory Ruling and Joint Motion fur Expedited Consideration, filed August 26, 1996 ("AT&T's 1996 Initial Comments") at 10-I 1.

(footnote continued on following page)

Exhibit I

doctrine of primary jurisdiction. The court noted that the doctrine of primary jurisdiction requires a court to refer a question to an expert administrative agency where the question is outside "the conventional experience of judges," where "the exercise of administrative discretion" by the agency is required, or where the question is "entrusted to a particular agency whose resolution of the matter might best afford uniformity and consistency of conclusion." Id. at 13-14 (citing Mical v. Sprint Telemedia, 1 F.3d 1031, 1038 (10th Cir. 1993)) (AA 1040-41). Applying those standards, the court held that the dispositive legal question was "inherently within the realm of the Communications Act and its regulatory mechanisms" and "not within the conventional experience of trial courts," but rather was "uniquely within the expertise and experience of the FCC." May 19.1995 Order at 15-16 (AA 1041). Accordingly, the court stated that it would "express no opinion as to this issue" and referred the issue to the FCC for decision. Id. at 17 (AA 1044).

In so holding, the court did not specify the manner in which plaintiffs were to seek an FCC decision on the issue. In this regard, in the briefing that led to the May 19. 1995 Order, the parties had referred to the possibility that FCC proceedings on a recently-filed proposed revision to AT&T's Tariffs 1 and 2 (AT&T Tariff Transmittal 8179) could moot or directly relate to the issues raised by plaintiffs' complaint.[5] However, the District Court stated

[5] FCC Tariff Transmittal 8179 would have made explicit that an existing customer could not transfer even "substantially all 800 numbers on an existing plan" under circumstances where it would not be able to meet volume or term commitments unless the new customer agreed to assume all of the existing customer's obligations. See Meade 2d Supp. Cert. ¶ 7 (AA 1267). That tariff transmittal would have foreclosed any request for injunctive relief in this case if it had taken effect by its terms, and would have raised issues similar to those presented by plaintiffs' complaint if it had taken effect prospectively. As noted below, however, AT&T, at the FCC's request, thereafter withdrew the transmittal and substituted a new transmittal which would "achieve AT&T's specific purpose" in a different way. Id. ¶¶ 10-16 (AA 1268-70). The new transmittal was filed on October 26, 1995, after AT&T had conferred with the FCC,

Exhibit J

A. The Commission Cannot Grant Declaratory Relief Where There Is A Material issue Of Fact in Dispute

Declaratory relief under Section 1.2 of the Commission's Rules, 47 C.F.R. § 1.2, cannot be granted by the Commission "where, as in the present case, all relevant facts are not clearly developed and essentially undisputed." In the Matter of Cascade Utilities, 8 FCC Rcd 781, 782 (1993) citing to Aeronautical Radio, Inc., 5 FCC Rcd 2516 (Corn. Car. Bur. 1990) and American Network, Inc., 4 FCC Rcd 550, 551 (Corn. Car. Bur. 1989). Instead, fact-based disputes must be resolved through a complaint proceeding where the parties "through discovery, would have an opportunity to develop the factual record to resolve this dispute" Aeronautical Radio, Inc., supra, 5 FCC Rcd at 2518.

B. A Material Issue of Fact Exists As To Whether AT&T Had Reasonable Grounds For Believing That The Purpose And Effect Of The Transfer Mere To Defraud AT&T

CCI ostensibly sought to transfer the traffic -- but not the plans themselves -- to PSE under Section 2.1.8 of AT&T's Tariff F.C.C. No. 2. Section 2.1.8.B states that a customer may transfer its WATS service (in this case the relevant WATS services are the CSTP II Plans) to a "new Customer" only if the new customer confirms in writing that it "agrees to assume all obligations of the former Customer at the time of transfer or assignment." This provision, by its terms, allows a transfer of CCI's service to PSE only if PSE agreed to assume all obligations under

CASE involves traffic transfer not plans

Exhibit K

plaintiffs if the Court denies injunctive relief now in the event a later judgment is awarded plaintiffs. But. whether these plaintiffs can satisfy the full amount of their tariffed liabilities to AT&T if *the* Court erroneously grants their relief is, stated generously, highly uncertain. The equities also favor AT&T because it is plaintiffs, not AT&T, who seek to evade the obligations of the tariff,

The public interest, moreover, is served by denying the plaintiffs' motion and referring this matter to the FCC on the grounds of primary jurisdiction. With the core issue regarding plaintiffs' second proposed transfer already before the FCC in the form of Tariff Transmittal No. 8179, and with AT&T's right to demand security plainly in the tariff, the risk of inconsistent judgments between this Court and the FCC is clear. The public interest favors clear, uniform enforcement of national telecommunications regulatory policy. The public interest thus favors denying plaintiffs' motion.

Plaintiffs' requested relief, moreover, if granted, would effectively end the case. As AT&T demonstrated in its earlier briefs, the sweeping relief of the sort plaintiffs seek --- radically altering, not preserving the status quo --- is granted in the interim only in rare instances in which the facts and law clearly favor the moving party, especially if the relief would be, in effect, the main relief sought. *Miami Beach Fed. Sav. & Loan Ass'n v. Callander*, 256 F.2d 410 (5th Cir. 1958). The plaintiffs