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

In the Matter of
AT&T Corp.

Revisions to Tariff
F.C.C. Nos. 1 and 2

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) Tariff Transmittal No. 6179
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REPLY OF AT&T CORP.

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February 27, 1985

SUMMARY

Transmittal #179 simply clarifies that transfer of all or substantially all of the locations or 800 numbers associated with a term plan (or Contract Tariff) constitutes a transfer of the plan itself, when it will likely result in a commitment shortfall. The filing was made in response to an existing Customer's announced intent to transfer substantially all its locations (without the associated term plans) to a third party, after its initial effort to transfer the plans themselves to a different customer (which had no established credit history) resulted in a deposit request that was not honored.

AT&T filed these revisions to clarify its existing tariff rights, not to change them. AT&T already has the right to protect itself against abuse such as that being attempted here under two provisions of the General Regulations of Tariff F.C.C. Nos. 1 and 2: the prohibition against fraudulent means or schemes to avoid payment of tariffed charges, and the deposit requirement for a customer "whose financial responsibility is not a matter of record."

AT&T made these revisions now to inform customers specifically how AT&T will interpret and enforce the tariff so that customers cannot claim that they "innocently" developed business plans based on mistaken expectations of how the tariff would be enforced.

Injunction, the District Court accepted Winback & Conserve's argument that it should not be held liable because the individuals who made the misrepresentations were not employees of Winback & Conserve but "independent contractors." AT&T appealed this ruling to the Third Circuit, which reversed and remanded the District Court's denial of AT&T's request for a Preliminary Injunction.⁷

In mid-December, 1994, with its management aware that the "easy money" gained by deceptive marketing practices and corporate identity subterfuges had just about run its course, Winback & Conserve attempted to cash in on its customer base by selling off the customer list and transferring its existing plans to another reseller. When AT&T received the Transfer of Service Agreement ("TSA") forms required for such plan transfers, it was perfectly willing to complete with the transfers.

However, the transferee (CCI) was a newly formed corporation, without an established payment history with AT&T. What's more, CCI simultaneously submitted to AT&T another set of TSAs which would have transferred substantially all of the end users (i.e., 99.92% of the 10,000 or so end-users) on those CSTP II plans -- but not the lead accounts which create the plan structure -- to PSE.

⁷ See American Telephone & Telegraph Company v. Winback & Conserve Express, Inc., 42 F.3d 1421 (1994).

arrangement was developed to permit resellers to "outsource" the day-to-day management of certain of their plans, and not to provide a vehicle for frustrating AT&T's tariffs. Finally, the true intentions of the participants had been expressed to AT&T through their own previously submitted documents.

Since that time, moreover, AT&T has learned that Mr. Inga contacted AT&T's billing office in Pittsburgh (instead of his AT&T representatives in the Minneapolis aggregation center), and falsely told AT&T's billing clerks that a number of these plans had undergone a simple "name change" to CCI. When the Minneapolis center learned that AT&T's billing records had been changed based on this new misrepresentation by Mr. Inga, the billing records change was reversed.

The Transmittal Properly Clarifies AT&T's Existing Tariff Right to Prevent Fraud

As explained in its Feb. 16 Letter, AT&T filed these revisions to clarify its existing tariff rights, not to change them. AT&T already has the right to protect itself when a customer seeks to transfer the locations (but not the commitment) associated with an AT&T term plan or Contract Tariff to a third party if, as a result, the customer's net value and ability to pay tariffed charges would be significantly diminished. Thus, the purpose of the filing is not to expend AT&T's existing rights or the

effect of the pending revisions or a mischaracterization of the nature of some of the hypothetical examples.

Thus, PSE and TRA argue (PSE Petition at 6, TRA Petition at 14-15) that a customer may wish to transfer the 800 numbers or locations, but not the associated plan, because it will use other traffic to meet the commitment or will terminate the plan with or without liability. The tariff revisions would not apply under these conditions because the "anticipated result" of the transfer would not be a commitment shortfall, so long as the replacement traffic is added or the plan is terminated prior to (or concurrently with) the transfer of service.¹⁴

Others assert that the revisions should be rejected because AFT did not obtain the prior consent of every Contract Tariff customer (Tel-Save Petition at 3; TFG Petition at 3). This is absurd. Typically, Contract

¹⁴ PSE, TRA and TFG also assert the customer may choose in good faith to pay the shortfall charge (or assume the risk of doing so if it is unable to bring in sufficient replacement traffic prior to the commitment attainment date. PSE Petition at 6, TRA Petition at 14-15; TFG Petition at 7, 11 & 14. The examples used by Petitioners for the most part deal with situations where a transfer would not likely result in a shortfall, and thus are unaffected by the tariff. Moreover, while some customers may wish to create "shall" plans with no underlying traffic, that is not what term plans or CTEs are designed for, and the tariff requirement that the commitment be transferred along with the transfer of all or substantially all associated locations is perfectly reasonable.

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U. S. Bell System
Administrator - Rates and Tariffs

Room 3126
38 Corporate Drive
Bridgewater, NJ 08807
908 526-6001

February 16, 1993

Transmittal No. 8179

Secretary
Federal Communications Commission
Washington, DC 20554

ATTENTION: Common Carrier Bureau

The accompanying tariff material issued by AT&T Communications and bearing Tariff F.C.C. Nos. 1 and 2, effective March 2, 1993, is sent to you for filing in compliance with the requirements of the Communications Act of 1934, as amended. This material consists of tariff pages as indicated on the following check sheets:

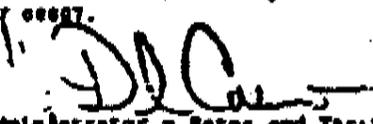
- Tariff F.C.C. No. 1 - 2126th Revised Page 1
- Tariff F.C.C. No. 1 - 276th Revised Page 1.4
- Tariff F.C.C. No. 2 - 1140th Revised Page 1

This filing modifies language pertaining to Transfer or Assignment regulations.

A continuing waiver of Section 61.74 of the Federal Communications Commission's Rules and Regulations was requested under Application No. 1528 and has been granted under Special Commission No. 93-44.

Notification to customers of rate increases is being made through advertisements scheduled to appear within the next two business days in general circulation daily newspapers in major metropolitan areas throughout the country (including USA Today and the national editions of the Wall Street Journal and The New York Times).

Acknowledgment and date of receipt of this filing are requested to the address below. A duplicate letter of transmittal is attached for this purpose. Petitions can be served either by facsimile (908-526-6360) to the attention of Mr. R. Wade or in person to Mr. W. F. DeCassino, Administrator - Rates and Tariffs, AT&T Communications, 38 Corporate Drive, Room 3126, Bridgewater, NJ 08807.


Administrator - Rates and Tariffs

Duplicate Letter

Attachment:

Tariff Pages (6)

Copy of Letter, with attachment, concurrently sent to:
Commercial Contracting
Chief, Tariff Review Branch, Public Reference Copy

CC Return Paper

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P.02

2.1.7. Limitations on the Provision of WATS (continued)

B. Restoration of Service - In the event of failure, WATS will be restored in compliance with Part 64, Subpart D, of the FCC's Rules and Regulations.

C. Hazardous Locations - An access line will not be furnished at a location the Company considers hazardous (e.g., explosive atmosphere environments). In such cases, the Company, if so requested, will estimate the access line at a mutually agreeable alternate location. The Customer will then be responsible for extension of the access line to the hazardous location.

2.1.8. Transfer or Assignment - WATS, including any associated telephone number(s), may be transferred or assigned to a new Customer, provided that:

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), including the unexpired portion of any term of service and usage or revenue commitment(s).

C. The Company acknowledges the transfer or assignment in writing. The acknowledgment will be made within 15 days of receipt of notification.

The transfer or assignment does not relieve or discharge the former Customer from remaining jointly and severally liable with the new Customer for any obligations existing at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for WATS, and (2) the unexpired portion of any applicable minimum payment period(s). When a transfer or assignment occurs, a Record Change Only Charge applies (see Record Change Only, Section 3).

Nothing herein or elsewhere in this tariff shall give any Customer, assignee, or transferee any interest or proprietary right in any 800 service telephone number.

If a Customer seeks to transfer, to one or more other Customers, all or substantially all of the 800 numbers associated with an existing AT&T 800 Service Term Plan or Contract Tariff, and the anticipated result of such a transfer would be that the usage and/or revenue from the remaining 800 numbers associated with the Term Plan or Contract Tariff (based on the past 12 months of usage) would not meet the usage and/or revenue commitment of the associated Term Plan or Contract Tariff, the transfer will be deemed a transfer of service to a group of one or more other Customers. If the transfer of the Term Plan or Contract Tariff will be that group, each Customer in the group will be jointly and severally liable for all of the obligations associated with the transferred service and Term Plan or Contract Tariff.

2.1.9. Retention of 800 Service Telephone Numbers - Customers may retain the same 800 service telephone number when moving to another location within the Mainland of Hawaii.

TR. 8179

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ISSUED BY F.C.C.

F.08

Rejected by FCC
in AT&T Substantial Cause Pleading

The following is being provided for your reading convenience
as the exhibit L is hard to read.

AT&T submission to FCC: TR 8179: Feb 14th 1995

"If a Customer seeks to transfer, to one or more other Customers, all or substantially all of the 800 numbers associated with an existing AT&T 800 Service Term Plan or Contract Tariff, and the anticipated result of such a transfer would be that the usage and/or revenue from the remaining 800 numbers associated with the term plan or Contract Tariff (based on the past 12 months of usage) would not meet the usage and/or revenue commitment of the volume or term plan or Contract Tariff, the transfer will be deemed a transfer of the associated volume or term plan or Contract Tariff to such other Customer(s), and may only be completed in accordance with this Section. If the transfer of service is to a group of two or more other Customers, the new Customer for the volume or term plan or contract tariff will be that group. Each customer in the group will be jointly and severally liable for all of the obligations associated with the transferred service and volume or term plan or Contract Tariff."