

May 18th, 2007
Commission's Secretary
Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554
Deena Shetler: deena.shetler@fcc.gov
FCC Contractor: fcc@bcpiweb.com

Re: WC Docket No. 06-210
CCB/CPD 96-20

Ex-Parte Comments of 800 Discounts, Inc., One Stop Financial, Inc.,
Winback & Conserve Program, Inc. and Group Discounts, Inc

**The Following Addresses Petitioners' Declaratory Ruling Requests
Referred by Judge Bassler as well as Requested by Petitioners**

Petitioners have provided at exhibits LL and MM within its 9/27/06 filing evidence showing that AT&T clearly discriminated against petitioner's efforts to obtain a contract tariff.

The following supplements the record with several additional exhibits showing petitioners request to obtain a contract tariff created for it or obtain an existing CT open during the 90 day public window.

Attached as Exhibit A is petitioners June 9th 1993 request.
Attached as Exhibit B is petitioners June 23th 1993 request.
Attached as Exhibit C is petitioners June 28th 1993 request.
Attached as Exhibit D is petitioners Nov 19th 1993 request.
Attached as Exhibit E is petitioners Jan 4th 1994 request.
Attached as Exhibit F is petitioners Feb 15th 1994 request.
Attached as Exhibit G is petitioners March 7th 1994 request.
Attached as Exhibit H is petitioners Jan 9th 1995 request.

Above are just some of the requests that were put in writing. Additionally, dozens of phone conversations also took place with petitioners AT&T account managers regarding both obtaining a new Contract Tariff as well as requesting CT's that were available within the 90 day public window.

Petitioners could simply regurgitate what is in these exhibits but the record is already briefed and AT&T has to concede that it obviously did not provide the requested contract that petitioners obviously qualified for, nor allowed petitioners to take advantage of the 90 day window periods on several CT's.

Here are a few excerpts regarding AT&T's discrimination from oral argument before the NJ District Court:

March 8th 1995 Oral argument transcript produced by...

Stanley B. Rizman
Official Court Reporter

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CIVIL NO. 95-908

COMBINED COMPANIES, INC. ,	:	
A Florida corporation,	:	
	:	TRANSCRIPT OF PROCEEDINGS
And	:	
	:	
WINBACK & CONSERVE PROGRAM,	:	
INC. , ONE STOP FINANCIAL, INC.,	:	
GROUP DISCOUNTS, INC.,	:	
800 DISCOUNTS, INC., and	:	
New Jersey corporations,	:	
And	:	
PUBLIC SERVICE ENTERPRISES	:	
OF PENNSYLVANIA, INC.,	:	
A Pennsylvania corporation,	:	
	:	
Plaintiffs,	:	
	:	
-vs-	:	
	:	
AT&T CORP., a New York	:	
Corporation,	:	
Defendant.	:	

Newark, New Jersey
March 8, 1995

B E F O R E:

THE HONORABLE NICHOLAS H. POLITAN,
UNITED STATES DISTRICT JUDGE

Pursuant to Section 753 Title 28 United States
Code, the following transcript is certified to be an
Accurate record as taken stenographically in the
Above-entitled proceedings.

Stanley B. Rizman

Official Court Reporter

Curtis Meanor was petitioners counsel:
Charles Helein was petitioners counsel
Edward Barrillari was AT&T's counsel
Fred Whitmer was AT&T's counsel

Page 69 Excerpts on Discrimination:

Meanor: One more thing, your Honor. **AT&T has denied to our clients a contract tariff.** If AT&T will give us Contract Tariff 516, which Public Service has and was lucky enough and smart enough to get, we'll drop the case, take our customers back and pursue Contract Tariff 516. If we can put on the same economic basis as Public Service with respect to our customers, we'll accept that as a compromise of this case.

MR. WHITMER: Contract Tariff 516 - - first of all, contract tariffs are a fairly new development in the Federal Communications Act regulatory scheme. What they

are is a file tariff which embodies and effects, gives effect to terms and conditions that have been agreed upon between a carrier and subscriber.

Part of the contract tariff is qualification for the contract tariff. The filed contract tariff. It provides that people who are similarly situated - - is that the phrase, Mr. B? **Similarly situated?**

MR. BARILLARI: Yes.

MR. WHITMER: That is not technically correct.

THE COURT: The concept.

MR. WHITMER: Substantively, that is the concept.

If people can meet the qualifications of the contract tariff. They can ask for the contract tariff and they can take service under the contract tariff if they qualify.

I'm not aware of whether Winback & Conserve or Mr. Meanor talks about us and PSE. He's representing all of them here. I assume the "us" was **Mr. Inga's companies.**

I'm not aware of whether Contract Tariff 516 was requested by Mr. Inga within the so-called open period, the period during which other people can seek to subscribe to it . What is clear is - - whether AT&T passed on it - - I don't know whether Mr. Barillari knows that, either.

THE COURT: What do you know, Mr. B?

MR. BARILLARI: Your Honor, as I stand here now, we have no record of one stop or Winback, either company's - -

THE COURT: Is the window you - -

MR. BARILLARI: The window on 516 has been closed

for over a year and a half.

THE COURT: Can you open up the window? Can you open up 516 again?

MR. WHITMER: No.

THE COURT: **Can you file a similar to 516 contract tariff?** I'm not suggesting you do it. What I'm saying to you is in the spirit of cooperation Mr. Meanor has said: if you'll give me a 516 tariff, I'll drop the lawsuit. There will be no more litigation. **As long as I'm treated the same as PSE.**

I don't know what that means, Mr. Whitmer. I'm not going to judge it.

What I'm saying to you is I think you should take under advisement why you can't give him a 516. If there is some reason why he shouldn't have it, then, of course, he shouldn't have it., or it wasn't.

MR. HELEIN: That is not true.

MR. WHITMER: A business negotiation is always open. AT&T does not have unlisted numbers.

MR. HELEIN: Your Honor, can I speak to the contract?

THE COURT: You get an automatic dial.

MR. HELEIN: On the contract tariff issue very briefly.

The contract tariffs, they're under an obligation to - - open window and closed windows is a means of discrimination. CCI, Combined Companies, request a contract tariff promising AT&T \$200 million in revenue, 100 million of which would be Winback. They would gather

from their competitors.

AT&T stonewalled Combined Communications and wouldn't give them a contract tariff. We could have filed a 406 for Combined Communications asking they be ordered to issue a contract tariff to us under the same thing they have denied service. That was the Commission's notice of apparent liability against AT&T that they find them \$1 million back in January, which we provided you a decision on. **The bottom line is these contract tariffs must be allowed to be resold. That is how AT&T persuaded them to give the permission to do the contract tariffs.**

They are in violation of that. They are stonewalling resale attempts by any customers which the notice of current liability also addresses.

MR. WHITMER: That was aggregators who had contract tariffs is quite considerable, your Honor.

MR. MEANOR: There 2,000 about contract tariffs outstanding with AT&T. Another thing in the business we'll show is Public Service Enterprises, a plaintiff in this case, is a subsidiary, basically, of General Electric.

THE COURT: I'm going to see you on Tuesday, March 21st.

MR. MEANOR: May I just finish one thing? The majority of Public Service is owned by General Electric. Hertz Technologies, a subsidiary of Hertz, is in the telephone reselling business as an independent, not an adjunct business.

Formally, Hertz subscribed to the tariff that

gave it the maximum discount. Couldn't use it all. It was in the side business of three or 400 reselling customers.

The business is lucrative. The big companies are going into it. Hertz Technologies has subscribed to Tariff 12. We can't get tariff - - if my clients except from Public Service, can't get Tariff 516. **We'll take Tariff 12.**

THE COURT: How about Tariff 12? Going once, going twice.

MR. BARILLARI: PSE has a Tariff 12.

MR. MEANOR: PSE.

THE COURT: **What about Conserve?**

MR. BARILLARI: **They have to qualify for it.**

THE COURT: **What do they have to do**

MR. BARILLARI: **They have to have the same traffic patterns that the services are designed to accommodate. Currently, they don't have those traffic patterns.**

MR. HELEIN: No, your Honor. That is not true.

We have gone to AT&T.

THE COURT: We'll see all you gentlemen, nine o'clock on Tuesday, March - -

MR. HELEIN: Mr. Whitmer - -

THE COURT: I'm not going to hear any more of this quibbling. Tuesday, March 21st, 9 a.m.

AT&T counsel Mr. Barrillari amazingly stated that petitioners didn't qualify because it did not appropriate traffic patterns! Petitioners were by far the largest aggregator controlling 15,000 accounts and owned 25% of the entire toll free industry----- as AT&T's own Revenue at Risk

Report indicates (see exhibit HH in petitioners 9/27/06 filing).

Given the fact that AT&T's TSA allowed the transfer of accounts from petitioners plans, there was no conceivable----- so called "traffic pattern" -----that petitioners could not have qualified for. This was simply AT&T's coined phrase --- you're not "similarly situated".

Over 14,000 CT's were issued by AT&T in the 1990's--- not including the ones copied within the 90 day public window, which were denied petitioners. Were there 14,000 different traffic patterns? Have you ever heard such nonsense in your life? The FCC knows better!

The following is another excerpt on discrimination from the oral argument before Judge Politan on March 21st 1995 page 58:

1 MR. YESKOO: No. We don't. Our goal here is to reunite them and CCI with a contract tariff with AT&T.

2 THE COURT: That got to be by negotiation and not by --

3 MR. YESKOO: **It will be by litigation.**

Negotiations have been fruitless. The only way one got a contract as a reseller is by litigation.

4 THE COURT: How do you do it through litigation?

5 MR. YESKOO: Two ways.

6 Number one is go to the FCC. The FCC will block their latest filing, tariff filing, and jawbone them into giving you some.

7 The other way is suing them. People have gotten them both ways. It has never been achieved -- **when I say a good --a commercial tariff has never been achieved through negotiation.**

8 **For a reseller --**

9 THE COURT: **Mr. Whitmer, you laughed very well with your eyes.**

Yes AT&T is still laughing behind the FCC's back as AT&T ignored the FCC stance on resale.

Yes Judge Politan's laughing eyes comment recognized that AT&T was clearly discriminating against petitioners.

PSE and Tel-Save were not 'lucky' to get CT -516 or any other CT. they sued AT&T to obtain the contracts. The fact that petitioners discrimination claims have gotten caught up with the rest of its claims does not make petitioners claims any less discriminatory.

11 MR. YESKOO: We put -- AT&T did put in the
12 affidavit of Mr. Higginson. We wanted to cross-examine
13 him very much.

14 Could you direct AT&T bring him here?

15 MR. WHITMER: Mr. Higginson's purpose was to say
16 there were 30 contract tariffs held by people. Only
17 testimony. It is a matter of no contest.

18 MR. YESKOO: He didn't identify which ones. That
19 is the big problem.

20 THE COURT: Is it possible to get him here or
21 possible to supply the information?

22 MR. WHITMER: We can supply the information.
23 That is easy.

24 THE COURT: If your point of cross-examination is
25 to get a piece of information, it would seem to me that --

1 MR. WHITMER: That is easy. We'll do that.

2 MR. YESKOO: Mr. Fitzpatrick, also. Mr. Helein
3 is particularly interested in cross-examining Mr.
4 Fitzpatrick, who is also another witness.

5 MR. HELEIN: Mr. Fitzpatrick was involved with
6 Mr. Inga with respect to Mr. Inga's request for 516. Mr.
7 Fitzpatrick told Mr. Inga AT&T will never give him 516.
8 The purpose of Mr. Fitzpatrick's testimony is to show that
9 AT&T is stonewalling Mr. Inga.

10 THE COURT: I can't hear you.

11 MR. HELEIN: Had a policy of stonewalling Mr.
12 Inga.

13 Also, with respect to Mr. Higginson -- the
14 statement seems so bland -- these are resellers who have
15 30 contracts. I'm not sure what that proves. It is
16 aggregators.

17 I believe that the resellers that they have
18 included in that, which we'd like to examine Mr. Higginson
19 on, includes corporate business users who are reselling
20 some of their plans as opposed to the type of plaintiffs
21 before you, which is an element of the discrimination, how
22 AT&T treats aggregators and how they treat their corporate
23 customers, your Honor.

24 MR. WHITMER: Your Honor, it is admitted they
25 didn't ask for 516 within the subscription period. That
1 is admitted. I don't understand why that is an issue. It
2 is admitted they didn't ask for it within the subscription
3 period.

Mr. Whitmer however was wrong. Petitioners did ask its account manager for CT 516 within the 90 day window as it testified to follow. AT&T's account manager you was asked for CT516 within the 90 day window never refuted this fact....

18 BY MR. MEANOR:

19 Q Mr. Inga, when did you become aware of Contract Tariff
20 516?

21 A On a filing service from Washington, D.C. firm, we get
22 a copy of all the contract tariffs that AT&T issues to the
23 public.

24 Contract Tariff 516 was issued late 1993. We
25 found out it was issued to a company called Thompson
1 Financial Corporation. We had within 90 days to ask AT&T
2 for that particular contract.

3 Q When you say you got the contract tariff, did you get
4 the entire tariff, or some preces or synopsis of it?

5 A We got a copy of most of the contract. I say "most of
6 the contract" because the way I understand, there are
7 usually pages initially -- the first eight to ten pages
8 which are usually under nondisclosure between AT&T and the
9 actual customer who negotiated that contract.

10 **Q When you first became aware of Contract Tariff 516,**
11 **was it within the 90-day window for contract subscription**
12 **to 516?**

13 **A Yes. Absolutely.**

14 **Q Did you discuss Contract Tariff 516 with any AT&T**
15 **employee or executive?**

16 **A Yes. I talked not only 516. I asked regarding**
17 **several contracts that were open at the time.**

18 Mr. Fitzpatrick was –

19 Q Hold it. Who is Mr. Fitzpatrick?

20 A Mr. fits is one of my account managers I was using
21 along with a Maria Nessamento.

22 I talked to Tom Ulmholtz. All AT&T people I had
23 dealt with.

24 Q Where is Mr. Fitzpatrick located and what is his
25 position with AT&T?

1 A His exact title I'm not sure of. I think it is
2 account manager. Specialized Market Division. He's
3 located in South Plainfield, New Jersey.

4 Q His name is Joseph Fitzpatrick?

5 A Joseph Fitzpatrick.

6 **Q How soon after you became aware of Contract Tariff 516**
7 **did you discuss that contract tariff with Mr. Fitzpatrick?**

8 **A I discussed it with Mr. Fitzpatrick several times**
9 **while it was available.**

10 I also talked to other aggregators because I knew
11 AT&T wanted me out of business. So me going to AT&T was
12 of no use.

13 I asked a couple of other aggregators about this.

14 They said --
15 MR. WHITMER: Your Honor --
16 THE COURT: Don't tell us that. Keep going..
17 Q Tell us what you said to Mr. Fitzpatrick and what he
18 said to you about Contract Tariff 516.
19 THE COURT: I've now learned to separate hearsay
20 an inadmissible admissible testimony in non-jury
21 proceedings. I'm not too good at it with a jury.
22 MR. WHITMER: The only problem I have, your
23 Honor, is what happens with the record. That is my only
24 problem.
25 THE COURT: The record is full of hearsay. That
1 is what happened to the record.
2 Now, if some judge somewhere is not astute as the
3 lawyers here and relies upon hearsay, it is a pity.
4 MR. WHITMER: It is a greater pity if the record
5 is not protected. That is why I object.
6 THE COURT: You protect the record.
7 You can object to hearsay. I recognize what part
8 of it -- I quickly recognized it is hearsay. That should
9 be picked up by an appellate judge as an indication that
10 this Court is well aware it is disregarding that
11 testimony. If you want me to do it formally, I bet I
12 could do it. Do you want to try me?
13 MR. MEANOR: I have no doubt about.
14 THE COURT: If you want it formally, I'll accept
15 objections to questions, too. Then we'll start really
16 getting to it. We'll be here a month of Sundays.
17 Go ahead. Finish up. Let him spew out the venom
18 that he wants to spew out. We will get on to the next
19 question.
20 Q Just recite --
21 THE COURT: I'll not base the case on the fact
22 that he feels that AT&T wanted to put him out of business.
23 Whether it is true or not, I don't care.
24 Q Just tell us what you said to Mr. Fitzpatrick and what
25 he said to you about Contract Tariff 516.
1 A I told him I'd like to take out 516. I asked him
2 regarding what would happen with different promotions that
3 were coming to me, et cetera.
4 He said, "Well, I don't think you're going to be
5 able to get that, anyway."
6 I said, "Why? I understand I can get it within
7 90 days."
8 I called up the FCC and verified it was still
9 open. I talked to Farrell Smith and talked to Deborah
10 Sabourin.
11 Q Who are they?
12 A FCC tariff people. **I confirmed it was still open.**

13 They said I have a right to order it. Therefore, I did
14 talk to them about it.
15 **Mr. Fitzpatrick basically said: Al, look, you're**
16 **not going to get that contract. You'll have to pursue**
17 **other means. Basically meaning, look, AT&T is not going**
18 **to give it to you. You'll have to get it by -- basically,**
19 **you're not going to get it.**
20 THE COURT: Were you aware of Section 406 of the
21 Act?
22 THE WITNESS: Of course not.
23 THE COURT: Next question.
24 That is another case. Another day.
25 Let's get on with this case. Even if he was
1 wrongfully denied, it doesn't help this case one iota
2 here.
3 MR. MEANOR: How about estoppel, your Honor?
4 THE COURT: Estoppel of what? He had an absolute
5 legal right to bring a proceeding in this Court under
6 Section 406 that is now being argued by counsel, or
7 whatever section it IS. He had the right to bring the
8 action. If he was wrongfully denied, he had the right to
9 sue.
10 MR. MEANOR: He was misled into saying he
11 couldn't get it.
12 THE COURT: That is not before me.
13 MR. MEANOR: I'd like to make that argument.
14 THE COURT: In the next case.
15 BY MR. MEANOR:
16 **Q Did you discuss Contract Tariff 516 with Mr.**
17 **Fitzpatrick on only one occasion, or more than one**
18 **occasion?**
19 **A Several times. Along with others.**
20 Q Other what?
21 **A Other contract tariffs.**
22 Q What did Mr. Fitzpatrick tell you about the other
23 contract tariffs?
24 A The other ones I mentioned, some of the ones I
25 mentioned, I mentioned that there were qualifications in
1 there which I couldn't meet. There were location caps on
2 it. I couldn't obtain it.
3 516 doesn't have a location cap on it. That one
4 would be available for me.
5 Q What do you mean by "location cap"?
6 A AT&T does -- what they do with all their contract
7 tariffs except for the mistake they made on 516 was they
8 put a cap on the amount of locations that could be entered
9 on to a contract tariff. This way, no aggregator can pick
10 it up for resale.
11 Q Why can't an aggregator pick it up for resale?

12 A Obviously, at this point we would have maybe 15,000
13 accounts. If the contract says you can't have more than
14 50 locations on a plan, obviously, you can't take -- the
15 only way to do that would be 400 different corporations.
16 THE COURT: That's not beyond the pale of
17 imagination, is it?
18 MR. MEANOR: It will keep the Secretary of State
19 happy, anyway.

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24 Q **Mr. Shipp, at the time that PSE subscribed to 516, did**
25 **you know of anyone else who sought subscription to that**
1 **contract tariff?**

2 A **Yes, I did.**

3 Q Who was that?

4 A A company called Tel-Save.

5 Q Did they obtain a subscription to Contract Tariff 516?

6 A After some fight, yes.

7 Q **Did anyone else seek to subscribe, to your knowledge?**

8 A **Yes. I had understood from talking to people in the**
9 **industry that numerous people had done so. I have no copy**
10 **of that. I've heard that people did subscribe to it.**

There are no disputed facts. Petitioners clearly pleaded with AT&T not to discriminate but AT&T clearly did.

Judge Politan recognized early on that AT&T wanted all aggregators out of business. March 8th 1995 statement from judge Politan at page 37:

THE COURT: There is no question there is a war going on between the aggregators and AT&T. To not recognize that is to close your eyes to the facts. The facts are there is a war. I think **AT&T would be just as happy if there were no aggregators.**

Not providing the CT forced us to transfer the accounts to PSE. Petitioners did not want to do this---- AT&T forced petitioners to do this.

Respectfully Submitted,
Winback & Conserve Program, Inc.
Group Discounts, Inc.
800 Discounts, Inc

/s/ Al Inga
Al Inga President