

June 27th, 2007  
Commission's Secretary  
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Office of the Secretary  
Federal Communications Commission  
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Room TW-A325  
Washington, DC 20554  
Deena Shetler: deena.shetler@fcc.gov  
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Re: WC Docket No. 06-210  
CCB/CPD 96-20

**Opposition to AT&T Motion for Sanctions**  
**Against Alfonse Inga and Petitioners**  
**& Motion for Sanctions Against AT&T for Frivolous Request for Sanctions**

**Comments of 4 Petitioners in Case 06-210:**  
**800 Discounts, Inc., One Stop Financial, Inc.,**  
**Winback & Conserve Program, Inc. and Group Discounts, Inc**  
**&**  
**Tips Marketing Services, Corp**

Dear FCC

Petitioners were expecting such AT&T tactics. AT&T recognized that its defenses have been totally destroyed and has now resorted to attacking petitioner's pursuit of justice by trumping up alleged misconduct and presenting false allegations months after AT&T's alleged misconduct occurred.

Tips Marketing Services Corp. (Tips) and the 4 petitioners will refute all AT&T claims with “evidence.” All facts that AT&T has presented are strongly disputed.

Despite the fact that Mr. Inga has always represented his 4 telecom companies and the non telecom company Tips Marketing Services, Corp. as each company’s president, AT&T seeks to name Mr. Inga personally for alleged misconduct. Mr. Inga has always represented his corporations before the FCC. There has never been an FCC filing from Mr. Inga personally and AT&T provides no evidence of any.

Petitioners and Tips will now turn its attention to AT&T’s attack on the 4 Petitioners telecom companies and Tips Marketing Services, Corp. (Tips) We will take AT&T’s arguments chronologically through its 6/18/07 brief and address each and every AT&T assertion.

The length of this brief is again necessary due to the many inaccurate statements made by AT&T’s battalion of counsel. As the Commission is aware there is always one truth and many misrepresentations to the history of events. Over the years petitioners have thoroughly defeated each and every AT&T defense created many years after the Jan 1995 “traffic only” transfer. Petitioners and Tips will again thoroughly counter AT&T’s latest creation.

AT&T’s position that petitioners are forum shopping is far from the truth. It is AT&T who has engaged in forum shopping and intentionally delaying of adjudicating the issues in each court it is before.

AT&T states on page 1:

Twelve months ago Mr. Inga fought desperately to avoid returning to the Commission for a ruling on whether the phrase "all obligations" in an AT&T tariff meant "all obligations" or as Mr. Inga implausibly claims, "fewer than all obligations."

First of all petitioner's consistent statement has always been that "all obligations" relate to "all obligations" on that which is transferred between the parties—Para B of 2.1.8 relates to what is exchanged within Para A of 2.1.8. ("traffic only" or the entire plan).

AT&T's previous filing stated the opening of 2.1.8 then used a **DOT DOT DOT ...** routine to bypass para A of 2.1.8 altogether then picked 2.1.8 up again at para B after the DOT DOT DOT.

Such a ploy is easily pulled over the eyes of a Court but the FCC tariff experts can not be expected to fall for this AT&T "style of quoting". The FCC fully understands what AT&T was attempting to pull off in its quote of section 2.1.8.

As AT&T counsel Mr. Carpenter explained to the DC Circuit: ( See exhibit W in 9/27/06 filing)

Mr. Carpenter: Yes, but what it means to assume all the obligations. What obligations apply may vary depending on what's transferred.

Mr. Carpenter: Now what obligations they are going to end up assuming will vary depending on what service is being transferred.

David Carpenter supporting petitioners during Third Circuit Oral Argument: (exhibit V in petitioners 9/27 06 filing Pg 15 line 9)

We point out in our brief that there's a distinction between transfers of entire plans, and transfers of individual end-users locations. That when the "plan" is transferred, "all the obligations" have to go along with it.

AT&T's attempt to place words in the mouth of petitioners stating that petitioners "implausibly claim fewer than all obligations" finds no evidence in the record and that is why AT&T evidences none. AT&T simply twists petitioner's words to make AT&T's statement sound plausible.

AT&T is absolutely correct that prior to the referral to the FCC, petitioners wanted to have the NJ District Court lift the stay and have the District Court resolve the issues—why wouldn't petitioners want this? After all the DC Circuit correctly understood that 2.1.8 allows "traffic only" transfers and the DC Circuit passed on the obligations issue that was already decided by the NJ District Court ( Politan non vacated Decision) and the FCC ( under the 2.1.8 heading) that S&T obligations do not transfer on "traffic only" transfers. Petitioners had every right to ask to lift the stay and resolve all issues. AT&T cites this as forum shopping? AT&T cites this as misconduct of the severest form? AT&T is simply trying to make weight.

It was AT&T that wished to get all the issues referred to the FCC, warranting to District Court Judge Bassler that all these issues were open issues and the FCC must decide them. This was obviously done to delay the case and send it to the FCC.

AT&T argued to Judge Basslers' District Court that all issues plaintiffs raised were **open issues** in the FCC and the DC Circuit and specifically mentioned the shortfall and discrimination issues were open issues:

See here as **Exhibit A** is AT&T's District Court brief of AT&T (June 13<sup>th</sup> 2005 at Pg 2 para 3)

Rather than reinstitute the proceedings at the FCC, the Inga Companies have now asked this Court to resolve the **open issues** and to rule on a series of technical

issues of tariff interpretation. Under their view, the Court should now determine such matters as whether the phrase "all obligations" in Section 2.1.8 somehow excludes minimum volume/term commitments; **whether these commitments are part of the "minimum payment periods"** within the meaning of 2.1.8; **whether the plans in question are "pre1994" plans to which "shortfall" charges allegedly could not apply;** and what significance was of AT&T's withdrawal of a subsequent tariff transmittal-- and to resolve these tariff issues in a manner consistent with the **nondiscrimination requirements** of 47 U.S. C. Section 202(a) and of the FCC's implementing regulations. **"All" these issues were previously raised in the FCC and the DC Circuit proceedings, and all these issues can be efficiently decided by the FCC now--under the DC Circuit Decision.** In light of the DC Circuits decision, it is understandable that the Inga Companies would want to try to shift forums mid-stream and to re-litigate these technical tariff and other issues in a Court outside the DC Circuit. But this forum shopping is not only itself illicit; it is barred by the terms of this Courts stay, by the Third Circuit's earlier mandate and by the doctrine of primary jurisdiction.

(Above AT&T italicized the word "All" to emphasize all issues were open.)

Here as **Exhibit B** is AT&T's position to the District Court of 6/13/05 Page 12 para 2:

In this regard, the Inga Companies' motion is vivid proof that it is asking the Court now to decide **issues that were previously referred to the FCC by this Court and the Third Circuit alike.** For the arguments that it is now asking the Court to resolve are, without exception, technical claims of tariff interpretation and communications policy that the **Inga Companies previously submitted to the FCC.** In particular, before it made these precise claims in its motion to lift the stay, the Inga Companies had argued both before the FCC and the DC Circuit that:

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(6) **that other transfers that occurred in the past also support the Inga Companies' positions.** Obviously, the Inga Companies made these claims to the FCC because they knew full well that these issues were encompassed within this Court's and the Third Circuit's primary jurisdiction referrals, and these epitomize the technical issues of tariff interpretation and communications policy that fall within the FCC's primary jurisdiction. That confirms that the **issues** cannot be adjudicated in this Court under its prior order and the Third Circuit's mandate.

Clearly AT&T is admitting that there are multiple open issues and number 6 is the discrimination issue of other aggregators being able to transfer "traffic only" without any S&T obligations transferring---which is a discrimination claim of petitioners.

AT&T did not want Judge Bassler to lift the stay and continue the case in NJ so AT&T argued that all issues were encompassed within the initial referral. **It was AT&T which sought to leave the NJ District Court and forum shop not petitioners.**

AT&T again arguing to the District Court that the FCC must decide the issues:

Here as Exhibit C is AT&T's May 22<sup>nd</sup> 2006 letter to the NJ District Court page 1:

Plaintiffs made the same arguments to the FCC that they are now raising in this Court. Their prior submissions to the agency confirm that **the issues they ask this Court to decide are "all" encompassed within this Court's primary jurisdictional referral. And "all" of these issues and arguments are best decided by the agency.**

AT&T counsel Mr. Guerra wishing to keep the entire case stayed and send it to the FCC to address the issues argued were **still open** understood:

A) that the District Court would not decide cases involving the interpretation of telecom laws and that...

B) the FCC only issues declaratory rulings based upon non disputed facts; thus AT&T counsel made the following statement to push the District Court to refer the issues to the FCC:

District Court Transcript pg. 20 line 9:

Mr. Guerra: First of all, firstly, **everything counsel said was in fact a question of interpretation.**

AT&T in 1996 also pressed the FCC to resolve the shortfall issues:

Here as **Exhibit D** is AT&T's **1996** Joint Petition for Declaratory Ruling Page 3 para 1

As to this issue, **which does not require any findings as to disputed facts**, the Commission should rule that shortfall charges may be imposed where, as here, post **June -17<sup>th</sup> 1994** CSTPII replacement plans are discontinued or reach an anniversary date.

Here is exhibit E is AT&T's 1996 Joint Petition for Declaratory Ruling Page 14 para 2

**Petitioners have identified an issue which is currently “ripe” for a declaratory ruling; i.e., whether "pre-June 17th, 1994 CSTPII plans, as are involved here, may never have shortfall charges imposed, as long as the plans are restructured prior to each one-year anniversary. “No factual questions surround this question”**

AT&T clearly states that the shortfall issues are “ripe” because there are **no disputed facts.**

AT&T's 2003 FURTHER REPLY COMMENTS TO FCC Page 3 para 1:

Accordingly, the Commission should deny the Joint Petition, **and should instead issue the ruling requested by AT&T in its Comments filed in 1996 that shortfall charges** may be imposed where, as here, post-June 17, 1994 CSTP II replacement plans are discontinued or reach an anniversary date.

Despite the fact that AT&T in 1996 and 2003 urged the FCC to adjudicate all issues and all issues were **“ripe”** to be decided---i.e. **no disputed facts**--- AT&T's Dec 20<sup>th</sup> 2006 and Jan 31<sup>st</sup> 2007 brief claimed to the FCC that there were “disputed facts” **but evidenced none**, so as to try and stop the FCC from ruling on the shortfall issues and the discrimination issues.

Here is an example of one of many AT&T claims in which AT&T did a switcheroo and decided to now assert to the FCC that there were disputed facts but of course provided no such evidence.

AT&T's Dec 20<sup>th</sup>, 2006 at page 6:

One reason petitioners' discrimination and "illegal shortfall remedy" issues are not properly before the Commission is because they involve **factual disputes** that cannot be resolved in a declaratory ruling proceeding.

AT&T discovered that the plans were all pre June 17<sup>th</sup> 1994 grandfathered and thus immune from shortfall and termination (S&T) liabilities and now AT&T no longer wished to have the

shortfall issues decided. Additionally petitioners evidenced the FCC's Oct 23<sup>rd</sup> 1995 Order against AT&T which extended the grandfather provision through Oct 1996, such evidence was not presented in 1996. ( FCC's Oct 23<sup>rd</sup> 1995 Order exhibit DD in petitioner's 9/27/06 filing)

Petitioners are anxious to have the FCC resolve all issues or the District Court. Petitioners want someone to resolve all issues—it doesn't matter who! No one is forum shopping. Petitioners will gladly have either the FCC or the District Court resolve all issues.

The fact that AT&T finally conceded in its Dec 20<sup>th</sup> 2006 filing that the plans were pre June 17<sup>th</sup> 1994 grandfathered through at least June of 1996 coupled with the fact that the FCC made AT&T on Oct 23<sup>rd</sup> 1995 extend the grandfather provision till Oct 1996 made the June 1996 infliction an easy decision for the District Court to decide---it is all contractual-no interpretation.

Therefore petitioners requested the District Court to set up a briefing schedule to address clear facts that required no interpretation. Petitioners asked the District Court for a briefing schedule to modify Judge Bassler's Order to make it explicit as the parties are arguing over what Judge Bassler meant when he said "as well as any other open issues."

Due to the fact that several additional briefs, certifications, and oral argument transcripts of 1995 and 1996 were discovered----- which District Court Judge Bassler never saw----- led petitioners to request a briefing schedule with Judge Bassler's replacement, Judge Wigenton.

Furthermore, petitioners have pointed out that Judge Bassler made a critical error when stating in Judge Bassler's 6/1/06 Decision Footnote 5:

Plaintiffs argue that the FCC already addressed whether shortfall and termination obligations were to be assumed by PSE. Pls. Mem. at 11-12. **The FCC “only” discussed shortfall and termination charges in the context of the fraudulent use provision, § 2.2.4, in Tariff No. 2.**

Petitioners have clearly shown within its FCC filing of 5/9/07 on page 47 that the FCC 2003 Decision interpreted precisely which obligations transfer under the Heading: 2.1.8 ----not the Fraudulent Use heading as Judge Bassler believed.

Thus given the fact that there has been so many explicit AT&T concessions discovered while the parties have been before the FCC, and a clear misreading of the FCC 2003 Decision by Judge Bassler, it was more than appropriate for petitioners to inform new District Court Judge Wigenton of all these finding since petitioners initial 9/27/06 filing, and ask to modify Judge Bassler’s referral to make it explicit that all issues are to be resolved--- and stay at the FCC not “forum shop.”

The evidence clearly shows that it has been AT&T that has changed its position regarding whether the facts are disputed or not in an attempt first prevent the District Court from ruling and now again is seeking to prevent the FCC from ruling. AT&T is clearly the party that is forum shopping ---playing with the legal process, delaying each Court or the FCC that it is before.

### **Tips Interaction With the IRS and the FCC**

AT&T grossly misrepresents Tips interaction with the IRS and the FCC because AT&T simply did not know what was going on behind the scene.

Tips Marketing Corp’s (Tips) is **not** a petitioner in case 06-210. Any sanctions actions against

Tips Marketing Services, Corp are not warranted against Tips and in no way is Tips interests the same as the 4 telecom petitioners. Tips gains if the shortfall charges are permissible, whereas the 4 petitioners gain if the shortfall charges are **not** permissible—totally opposite interests. **They are legally separate corporations with separate interests and AT&T provides no evidence to pierce the corporate veil.**

Petitioners were led to believe that the shortfall issues were already before the FCC as petitioners asked for Declaratory Rulings on these issues within its September 27<sup>th</sup> 2006 FCC filing. The FCC's general counsel Mr. Schlick was asked a procedural question regarding whether or not petitioners could request specific Declaratory Rulings if the District Court did not. The FCC General Counsel Mr. Schlick confirmed it was procedurally permissible for petitioners to define any issue it wanted---the 3/14/07 and 4/3/07 IRS letters were Tips procurement from the IRS not petitioners. The IRS letters were not to initiate what was already before the FCC—as petitioner's already put the shortfall issues before the FCC on 9/27/06.

See page 3 of Exhibit A to petitioners 9/27/06 filing for the FCC's General Counsel Mr. Schlick's statement:

You can define the issue which you seek a Commission Ruling

Tips wanted the referral sent to the FCC **in case the petitioners settled its case with AT&T,** the Tips pursuit of tax rewards would hopefully still enable the shortfall issues resolved by the FCC on behalf of Tips and the IRS.

As Ms Shetler is aware she was asked to provide procedural guidance as to what the FCC's position would be if AT&T settled the telecom case with petitioners-----Would the FCC continue

to adjudicate the shortfall issues? AT&T was copied on an email regarding this also.

Ms Shetler stated that until an AT&T-Petitioner settlement occurred the FCC could not speculate on what the FCC would do. Therefore AT&T's problem that Tips was attempting to get the FCC to issue a decision on shortfall issues is misguided for several reasons:

- 1) The shortfall issues were already before the FCC due to petitioners 9/27/06 filing.
- 2) Tips tax claims and potential 15% of the taxes collected by the IRS from AT&T give Tips standing to have the IRS issue a request for a Declaratory Ruling. The IRS is Tips partner in an effort to collect possibly millions in taxes owed by AT&T.

**AT&T Misrepresents that there was Misconduct In Obtaining the 3/14/07 IRS Letter**

It was recommended by the Utah IRS Investigations /Reward Dept to contact the National Taxpayer Advocate Service to resolve the IRS/Tips impasse on shortfall permissibility. The IRS Investigations/Rewards Dept gave Tips the phone number to call the National Taxpayer Advocate Service and was advised by the Investigations/Rewards Dept that it would note the Tips file with the recommendation.

Tips called The National Taxpayer Advocate Service and explained the impasse issue and was advised to contact the local NJ Springfield Taxpayer Advocate office and a case ID was issued by the National Toll Free Line.

Tips had called the Springfield NJ Advocate office and it had a recording stating that you could walk-in. Tips went to the Taxpayer Advocate Service in Springfield NJ the next day with the

case ID instead of waiting three days or more to get a call because Tips wanted to get it done faster. When Tips got to Springfield an IRS employee in the Springfield lobby was asked where in the building do you go to get assistance with a letter from the IRS to the FCC to resolve an impasse. Tips advised the IRS employee that a case ID was already issued from the National Taxpayer Advocate Service Call Center.

The IRS employee in the main lobby said that walk-ins were out of Mountainside NJ, not Springfield, NJ and they can help you there. He gave Tips directions to Mountainside and Tips went there.

At that point Tips believed it was in the proper office. A woman ( Ms Lee) was in the hallway fixing the IRS forms on the wall and Tips went up to her and explained that it had just been referred to the Mountainside NJ office by an IRS employee in Springfield NJ Taxpayer Advocate Office because Tips did not have an appointment and was instead sent to her Mountainside office as a walk-in. The woman was provided a **detailed explanation letter of the impasse** in addition to the proposed FCC referral letter.

The detailed explanation letter explained what Tips and the IRS Investigation/Rewards Dept impasse issue was regarding the telecom issue that would resolve tax issues. Ms Lee said to give her the documents and she read them. She said go over to the window while she reviews this.

Ms Lee went to her cubicle for a several minutes and Tips did not see her and Tips thought she was doing her due diligence verifying the information on the detailed explanation letter that included on it the names, phone numbers of the Investigation/Rewards Dept. and both the Investigation/Rewards case ID as well as the Taxpayer Advocate case ID.

It was assumed that while she was in her cubicle she was bringing up in the computer system the case ID's that were provided to her by Mr. Inga and possibly calling the IRS Rewards/Investigation office in Utah to confirm that there was an impasse and the an active investigation.

Ms. Lee came out of her cubicle and then proceeded to stamp, and fax the letter<sup>1</sup> that was addressed to the FCC. After she faxed it she then, in front of Mr Inga, stamped it with her IRS name stamp, initialed it, added her badge number, and added the words "Sent Ok" in reference to the fax she sent.

AT&T questioned why the 3/14/07 was not placed upon the IRS letterhead and **Tips also asked Ms Lee the same question.** Ms Lee said "that's the way we do it". Who was Mr. Inga to tell her how she should do her job? **Tips can not be held responsible to know what Ms Lee can and can not do, or how she does her job as AT&T asserts to the FCC.**

### **Further Important Discovery Recently Made as Tips Prepared this Brief**

Ms Lee used the IRS stamp and stamped page 2 of her two page fax and then faxed the document from the IRS fax machine to indicate the fax came from the IRS office.

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<sup>1</sup> The FCC's Ms. Shetler will find in her email box a day or two before the 3/14/07 IRS letter that Mr. Inga contacted Deena Shetler and asked for the FCC fax number but did not get a response. A few days latter Deena Shetler confirmed via read receipt that she got the fax number request before the 3/14/07 letter but she missed the email. This is why the IRS sent the initial 3/14/07 fax to Tips fax machine. So Tips can then forward to the FCC rather than have the IRS send the IRS letter itself directly to the FCC as the IRS did for the second IRS referral letter sent April 3<sup>rd</sup> 2007 by the Taxpayer Advocate Service.

**After the fax went** through to Tips fax machine, Ms Lee then stamped the cover page of the 2 page document with the IRS stamp and then added her own personal name stamp to the lower right hand corner that included her name M. Lee; which she then initialed. She then added her badge number 22-05988 under her personal name stamp. She also wrote the words “Sent Ok” on the bottom of the Cover Letter in reference to the fax sent.

**When Tips president Mr. Inga went back to his office he mistakenly uploaded to the FCC server what was faxed by Ms Lee to his office instead of the final product which was handed to Mr. Inga after faxing.**

It was simply a mistake that the fax was uploaded and not the final documentation product. There is absolutely no reason that Tips wouldn't have wanted to use the final documented product that included **all the additional documentation** including the name of the IRS agent Ms. Lee and her badge number. See the fax document and compare with the final product here at **Exhibit F.**

However, even evaluating just what was faxed by Ms Lee AT&T's comments would have the FCC believe that Mr. Inga broke into the IRS office during the day while everyone was there and stole the approved stamp from the IRS employee and then faxed it from the IRS fax machine to show it came from the IRS! AT&T's assertions of fabrication and forgery are totally baseless even evaluating what was faxed by the IRS—without the additional Ms Lee post faxed documentation added.

It was later discovered that AT&T in an effort not to have the **Tips** tax issues resolved---- unbeknownst to Tips went to the IRS and made baseless false allegations---as AT&T made in its

FCC comments--- that the IRS employee **“knew”** Mr Inga and that is why she did the 3/14/07 letter addressed from the IRS to the FCC.

AT&T was given a letter by Roy Schwarmann dated March 23<sup>rd</sup> 2007 but petitioners did not learn of the letter until April 2<sup>nd</sup> 2007 when AT&T filed it with the District Court as an exhibit. AT&T had the letter since March 23<sup>rd</sup> 2007 but **failed to provide Tips or the FCC** with the letter after AT&T received the letter from Mr. Schwarmann. AT&T of course now waits until 6/18/07 to show the 3/23/07 Roy Schwarmann letter addressing the 3/14//07 IRS fax that has already been withdrawn since April 12<sup>th</sup> by Tips. Incredible!

AT&T’s allegations of “Mr Inga’s IRS friends helping Mr. Inga out” is absurd. AT&T of course was not involved and neither was Mr. Schwarmann who wrote the 3/23/07 letter and **who did not fully investigate what happened.**

Mr. Schwarmann did not ask for any documentation leading up to why Tips was there and why the IRS Rewards Department gave Tips the phone number to resolve the shortfall permissibility impasse. Mr. Schwarmann did not see the full detailed explanation that Ms. Lee had of why Tips was getting the IRS letter to the FCC and how Tips mistakenly got to Mountainside NJ when it was suppose to be serviced in Springfield NJ.

Additionally, Mr. Schwarmann was given by AT&T the 3/14/07 fax that was on the FCC server, that was faxed by the IRS, and **not the finished product with the IRS agents stamped name, initialization, IRS badge number, and marked Sent Ok.**

Therefore Tips now understands why Mr Schwarmann may have written the March 23<sup>rd</sup> 2007 letter in such a fashion as saying it was fabricated---- –because the IRS document lacked Ms Lee’s name, initialization, and IRS badge number!

Only later when the IRS Internal Affairs Department fully investigated what happened and asked Tips to submit a detailed chronological history with all IRS employees involved, as well as conduct an interview with Tips, was everything finally resolved satisfactorily for Tips. The IRS investigation ended favorably to Tips on June 11<sup>th</sup> 2007 when the IRS informed Tips after the submission of all facts and after the interview of Mr. Inga by two IRS internal affairs people. AT&T’s allegations of Ms Lee doing a “favor” for Mr. Inga because AT&T asserted that Mr. Inga probably “knew her” was found completely false.

**Immediately** upon receipt of the Mr. Schwarmann letter dated 3/23/07 ----that was initially provided to Mr. Inga as an exhibit within AT&T’s **4/2/07** in a brief to Judge Wigenton----- Tips immediately called with CCI’s president Larry Shipp to the National Taxpayer Advocate Service toll free number to find out why Roy Schwarmann wrote that 3/23/07 letter.

Tips called the same toll free number that was initially provided to Tips by the IRS Rewards/Investigation Department due to the shortfall permissibility impasse that had set up the case in their system. Tips advised the National Taxpayer Advocate Hotline IRS employee Mr. Cain, that the 3/14/07 IRS letter addressed to the FCC faxed from the IRS Mountainside NJ office was being stated as a fabricated letter by an IRS employee named Roy Schwarmann who would not return Tips phone calls.

Mr Schwarmann had called Tips office a few days after Tips received the 3/14/07 letter. He simply identified himself as working for the IRS out of Mountainside, gave Tips his phone number, and asked if the fax number that was used by the IRS to send the letter was to Tips; which Mr. Inga confirmed it was. Mr. Schwarmann then said “that’s all I need to know” and hung up the phone without saying goodbye.

Tips did not understand who Mr. Schwarman was and the number that he gave Tips was not a Mountainside NJ number. Mr. Schwarmann was called at least 5 times over a 2 week period and never returned the phone calls. Mr Shipp was conferenced in on a call made to Mr Schwarmann’s voicemail box to verify as a witness that Tips was anxiously wanting to know why he hung up and was there an issue and to please call Tips.

Mr. Cain at the National Taxpayer Advocate Hotline pulled up the Taxpayer Advocate case ID previously issued when the case was set up and advised Tips and Mr. Shipp that Tips was **erroneously sent to the wrong IRS Mountainside NJ office by the IRS employee in Springfield NJ.**

Tips contacted the IRS Mountainside NJ office and eventually got a call back from Alise around April 11<sup>th</sup> 2007. Tips asked to if Mr Schwarmann was there and she said she never heard of Mr Schwarmann working in Mountainside—despite Mr Schwarmann stating he worked out of Mountainside on the brief call that he hung up on Tips.

Alise was asked by Tips to speak to the Mountainside office manager and Alise then transferred Tips to the manager Ms. Rosalyn Russell. The Mountainside office manager Ms. Russell was told about the Roy Schwarmann letter and how Tips was misdirected to Mountainside.

Ms Russell sympathized that Tips got misdirected to her office by mistake and told Tips that Tips request is more geared to be handled by the Taxpayer Advocate Service and not her Mountainside IRS taxpayer walk-in office. **Ms. Russell agreed with Tips that there was no way that Tips would know what Ms Lee could or couldn't do as part of her job description.**

Tips had believed that it was in the right place having been recommended by the IRS Investigations/Rewards Dept then sent from Springfield to Mountainside as a “walk-in Taxpayer Advocate case”.

After confirming with the Mountainside NJ office manager Ms Russell on April 11<sup>th</sup> 2007 that the 3/14/07 letter was best handled by the Taxpayer Advocate office Tips immediately advised the FCC on April 12<sup>th</sup> 2007 that Tips would not rely upon the 3/14/07 IRS letter.

After Mr. Inga explained the comments made by Mr Schwarmann in his letter and the fact that Mr Schwarmann represented himself as working out of her Mountainside office when he did not, **Ms Russell was very apologetic.** Ms Russell said that she was sorry that Mr Schwarmann wrote the letter condemning Tips because of her staff person Ms Lee, who should have directed Tips back to Springfield NJ Taxpayer Advocate Center. Ms Russell said it appears that Tips was misled by Springfield to come here to Mountainside NJ because Tips was a walk-in.

The IRS employee Mr. Cain at the National Taxpayer Hotline –who was contacted immediately with Mr Shipp upon receipt of the Roy Schwarmann letter ----looked up Tips Taxpayer Advocate case ID number in the IRS system and gave Tips all the contact information for its designated IRS Taxpayer Advocate Service person in Springfield NJ---the office Mr Cain stated was suppose to have serviced Tips before it erroneously advised Tips to go to the Mountainside NJ walk-in office.

Tips called the Springfield NJ Taxpayer Advocate and right up front advised its designated IRS Advocate **to please involve his office manager** ---due to the problem Tips just incurred with the 3/14/07 referral from the IRS Mountainside NJ office, of being questioned by the IRS employee Mr. Schwarmann.

Tips believed that AT&T would again make false allegations towards Tips and question the IRS management as to whether its IRS employee had a “relationship with Mr Inga”, so Tips immediately requested that the taxpayer Advocate manager to get involved right up-front.

Both IRS employees Nick Acquino and Keith Gardiner of the Springfield NJ Taxpayer Advocate Service confirmed that their Taxpayer Advocate office was authorized to issue the FCC the April 3<sup>rd</sup> 2007 letter **to resolve the impasse** in the IRS tax investigation of AT&T.

Additionally, before the letter was even issued by the IRS Taxpayer Advocate Service to the FCC, Keith Gardiner **participated in a conference call with an IRS Investigations/Rewards Department manager and Tips president Mr. Inga.**

The IRS Investigations/Rewards Department Conversation centered on several issues but two major issues:

- 1) That there was an actual impasse as to whether or not the AT&T shortfall charges were permissible in the first place--- as these charges would constitute the taxable base to apply multiple IRS tax rates if the shortfall charges were found by the FCC as permissible, and that:
- 2) the Tips reward applications that were applied for by utilizing IRS Form 211 were still active

before the IRS Investigations/Rewards Department as the IRS was still pursuing AT&T.

The IRS Investigations/Rewards Department faxed to Mr Gardiner an active status statement confirming that the IRS investigation of AT&T was still pending. See here as **exhibit G** ----Tips copy of the IRS active status letter that the IRS Investigations/Rewards Department sent to both Tips and Keith Gardiner after the three way conference call.

After hanging up with the IRS Investigation/Rewards Dept the Taxpayer Advocate Mr. Gardiner stayed on the phone with Mr. Inga and Mr. Gardiner stated that he understands the FCC has to resolve the shortfall charges -----regarding whether the charges were permissible or not----- but he did not of course understand the specific FCC tariffed shortfall questions that have to be resolved by the FCC---- and therefore asked that Mr. Inga email him the questions that the IRS would need to ask the FCC to resolve the impasse of the telecom issues ---so as to then resolve the IRS/Tips tax investigation.

Mr. Gardiner explained that he and Mr. Acquino reserved the right to modify the Tips proposed letter in any way the Taxpayer Advocate Service wished before being placed on his IRS letterhead, have the IRS sign the letter, and have the IRS fax the letter from the IRS fax machine directly to the FCC--and **Mr. Inga of course agreed** and the FCC questions on shortfall issues were emailed to Keith Gardiner by Tips.

After the conference call between Tips, the IRS Taxpayer Advocate, and the IRS Investigation Rewards Dept having fully understood that there was an impasse and an active IRS investigation the IRS Taxpayer Advocate Service FCC referral letter of April 3<sup>rd</sup> 2007 was approved to be sent directly to the FCC.

## The IRS Case Status Letter

As the FCC can see the IRS letter ( exhibit G) is addressed to Tips Marketing not Mr. Inga personally. Additionally, the very first line states:

### **Your claim is still open and under active investigation.**

Therefore AT&T's claim that the Taxpayer Advocate never verified that there was an active investigation was false.

Additionally, as you can see the April 3<sup>rd</sup> 2007 IRS referral letter to the FCC states:

**I have confirmed with the IRS Rewards/Investigation Department that the taxpayer has an active tax rewards case before the IRS.**

Here is the relevant part of the IRS taxpayer Advocate letter (exhibit 4 to AT&T's June 18<sup>th</sup> 2007 brief) states:

I am the office manager for the IRS Taxpayer Advocate Center for the State of NJ. **I have confirmed with the IRS Rewards/Investigation Department that the taxpayer has an active tax rewards case before the IRS.**

The IRS tax rewards/investigation department **recommended taxpayer contact TAC for the FCC referral to resolve an IRS impasse.** Under the IRS rewards program ( IRS Form 211) the taxpayer has **standing** involving the outcome of the IRS's ability to collect taxes that may be owed by AT&T. The Taxpayer Advocate Center **is indeed authorized to resolve issues that are at an impasse at the IRS, as this one.**

**Determining the telecom issues to determine the tax base will solve the IRS impasse.** Therefore, please resolve all declaratory ruling requests on shortfall issues made by petitioners vs. AT&T within case 06-210 currently before the FCC, involving both the permissibility and proper method of infliction of shortfall and termination phone service charges.

The IRS referral clearly covers the key points: 1) Active IRS investigation, 2) Resolving an IRS Impasse---Determining the telecom issue determines the tax base. 3) Tips has standing on the IRS's ability collect from AT&T. 4) Recommended by IRS Investigations Dept. 5) It was indeed authorized to send the FCC the primary jurisdiction referral letter.

The IRS referral could be no clearer despite AT&T's false claims.

Despite the IRS letter stating that the Taxpayer Advocate Service confirmed that the case was active AT&T asserts "the IRS never checked to see if the tax Rewards Issue was pending or whether there was an actual investigation at all". The IRS Taxpayer Advocate Service agent did indeed check and received the fax confirmation from the IRS when on the conference call very early on April 3<sup>rd</sup> 2007.

The Taxpayer Advocate did the letter because they believed it **was within their job description to do such a letter** to resolve the IRS/Tips impasse. Despite AT&T's assertion---no one paid or pressured or had prior relationships with Mr Inga as has AT&T falsely asserted. The Taxpayer Advocate Service employees who issued the letter understood the request explicitly; it was not a difficult situation to understand that there was an IRS/Tips impasse and it could be resolved by the FCC.

Tips fully disclosed to the IRS, that the IRS could not seek the taxes from AT&T until the shortfall issues were resolved. Tips did not misrepresent that there was definitely taxes owed because if the FCC found that the pre June 17<sup>th</sup> 1994 grandfather provision went until the end of the three year CSTPII/RVPP plan end, then the CSTPII/RVPP plans would have never been hit

with shortfall and termination charges---so there wouldn't be any taxable base.

It wasn't until explaining the shortfall permissibility impasse to a different person within the Utah IRS Investigation/Rewards Dept that Tips was advised that it should contact the Taxpayer Advocate Service to resolve the shortfall impasse.

If Tips didn't tell the IRS that there was an issue as to whether the shortfall charges were permissible in the first place, the IRS would have simply went after AT&T. Tips was completely honest with the IRS and explained that there is still the shortfall impasse that needs to be addressed by the FCC before it could possibly collect its reward.

#### **Disclosure to the FCC of the Legitimacy of the Tax Case**

Additionally, prior to either of the IRS letters of 3/14/07 or 4/3/07 Tips on 1/17/07 filed with the FCC at Para 25 the contact information of the IRS Investigation Rewards Department. **Tips did this so the FCC would know that there was a perfectly legitimate tax case being investigated by the IRS against AT&T and Tips had standing due to the rewards application—IRS form 211—Florida Form DR-55**

Tips wrote:

Additionally the IRS says that AT&T is welcomed to provide whatever information it has to the IRS Service Center to defend itself on these tax issues.

However the IRS has stated that it would like a copy of the AT&T and CCI non disclosure settlement agreement. I have been given the following information by the IRS so that AT&T can send the information to:

IRS: Marilee Smuin

M/S 4110 ICE, 1973 N RULON WHITE BLVD. OGDEN, UT  
84404

Tips believed that at anytime the FCC could have easily check the veracity that the IRS is pursuing AT&T.

AT&T also was given the ability to freely send to the IRS any documentation it wanted to explain to the IRS why it did not pay federal excise taxes on shortfall and why it buried the shortfall charges in a few aggregators non disclosure agreements –therefore AT&T got compensated –but did not compensate Uncle Sam-

AT&T's 6/18/07 brief states that shortfall charges are not taxable, but AT&T provides no legal finding of AT&T's position. The evidence show that it is taxable.

AT&T's assertion that Tips actually had no investigation and the "IRS had no interest" in AT&T is simply false. AT&T's assertion that Tips was misrepresenting to the FCC that it had an IRS claim in an attempt to get the FCC to address the shortfall permissibility issues is **obviously false**. AT&T operated on pure speculation and had no evidence to base its claims. The submission to the FCC is totally frivolous.

AT&T is absolutely correct that Tips advised the FCC that it did not want the FCC to rely upon the IRS 3/14/07 letter to the FCC. After it was confirmed that Mr. Inga was initially sent to the wrong IRS office by the IRS Springfield Taxpayer Advocate office and that Ms Lee's Mountainside Office was not an IRS office that would issue such a letter the FCC was indeed told by Tips not to rely on the 3/14/07 IRS letter.

When Tips notified the FCC's Deena Shetler on 4/12/07 not to rely upon the 3/14/07 IRS letter AT&T already had the Roy Schwarmann letter in its possession as of 3/23/07 but failed to show the FCC and complain to the FCC what AT&T "believed" was misconduct by Tips—that the IRS Investigators found was no misconduct at all.

Mr. Inga specifically asked Ms. Shetler around April 2<sup>nd</sup> 2007 if she had seen a filing of an IRS letter from an IRS employee Mr. Schwarmann. Ms. Shetler advised Mr. Inga that she did not see such a letter. Tips thought that maybe the FCC had not yet had the chance to put the letter up on its server, but had received the Roy Schwarmann letter. **Most importantly Tips took it upon itself to inform the FCC not to rely on the 3/14/07 IRS letter.**

When the April 3<sup>rd</sup> 2007 letter was issued by the IRS and the FCC put it up on the FCC server AT&T went back to work again lobbying the IRS internal affairs department to check into the second IRS referral of April 3<sup>rd</sup> 2007.

**Based upon the questions that the IRS investigators asked Mr Inga** it was obvious that AT&T claimed to the IRS the same type of allegations as AT&T has claimed in its 6/18/07 brief ---that the IRS agents may have had a previous relationship between Mr. Inga and were doing a special favor or being paid.

AT&T's allegations of course also **questioned the IRS employees impartiality** and the investigators explained that it was questioning both Tips and the IRS employees.

Yes, the IRS Internal Affairs department got involved---- **based upon AT&T's false allegations**--- and Tips provided extensive documentation showing who at the IRS it spoke with from the time Tips was recommended by the IRS Investigation/Rewards Department to call the Taxpayer Advocate Service to resolve the impasse---through the time it received the second IRS referral to the FCC. All IRS people were provided ---contact numbers, badge numbers, everything.

Two IRS investigators interviewed Mr. Inga **based upon AT&T's false allegations**. AT&T had obviously had made so many bogus accusations that it forced the IRS to look into whether the IRS people were paid off, or possibly “doing a favor for an old tax friend” as AT&T's current brief alleges.

Obviously these AT&T accusations not only were false as to Mr. Inga but what about IRS employees who were questioned about their own objectivity. Imagine the IRS Internal Affairs questioning the manager of the NJ State office Taxpayer Advocate Service if he was involved in what AT&T alleged as a “favor for a friend.” Mr Inga never knew these people!

This is the length that AT&T has gone to, so as not to have the IRS shortfall charge impasse be addressed by the FCC. Not only doesn't AT&T have any regard for making false accusations against Mr. Inga but never thought twice about making baseless accusations against Federal IRS agents.

Tips recount of the history of events and the IRS statements submitted to the IRS obviously showed there was no payoffs or “use of friends” as AT&T asserted to the IRS---- and now asserts to the FCC----- as Tips was advised on Monday June 11<sup>th</sup> 2007 that the IRS would **not**

pursue Mr. Inga for any of AT&T's baseless allegations of: "forgery", "he knew people"  
"just short of bribery," etc.

AT&T claims on page 2:

AT&T caught Mr. Inga red-handed in this falsehood.

**The evidence shows AT&T's statement is complete nonsense!!!** The letter from Roy Schwarmann was written prior to the IRS's full investigation. Roy Schwarmann never even returned a phone call to Tips--- let alone gathered evidence from Tips--- and his 3/23/07 letter was based upon the IRS fax that was given to him by AT&T from the FCC server, and not the final document which included Ms. Lee's name, initials, badge number, and the statement "Sent OK: in reference to the fax.

AT&T simply trumped up the entire IRS picture. It should be noted: **The IRS Internal Affairs actually did their complete investigation without ever seeing the final added documentation that Ms Lee added after the faxing---- and still did not agree with AT&T's allegations of "forgery", "fabrication" or that Mr. Inga "knew IRS people" that were doing Mr Inga a "special favor."**

AT&T's nonsense continues on page 2:

This "referral" is a letter from the Taxpayer Advocate Center ("TAC"), which does not even speak for the IRS

The Taxpayer Advocate Service is an IRS department. Look at the logo on the letter---it says **Internal Revenue Service**. Where does AT&T come up with this nonsense that the IRS Taxpayer Advocate Service --an IRS Department --does not speak for the IRS.

**The Taxpayer Advocate Service does speak for the IRS—“particularly in this case”. In**

**Tips case the IRS will get 85% of the tax money and Tips gets 15%.** The IRS will benefit much greater than Tips from the IRS pursuit of possibly tens of millions of dollars in AT&T taxes that AT&T may owe the IRS. The impasse that the FCC is being asked to resolve benefits both the IRS and Tips.

Tips believed that the IRS Investigation/Rewards Department wouldn't have recommended Tips to go to the Taxpayer Advocate Service and provided Tips with the phone number to resolve the shortfall permissibility issue if the IRS Investigations/Reward Dept. didn't believe that AT&T was probably evading paying taxes.

Knowing that AT&T losses whether the shortfall is deemed permissible or not AT&T is so desperate that it will say anything—including alleging misconduct against IRS employees.

AT&T simply went overboard with false accusations to the IRS so as not to have possible tax evasion issues resolved---and now is going way overboard with the FCC to trump up misconduct primarily about Tips ---not even a petitioner in case 06-210--which is not warranted.

The IRS investigations manager who oversees the two IRS investigators understood that Tips took it upon itself to instruct the FCC not to rely upon the 3/14/07 IRS referral to the FCC. That letter was not relied upon by Tips due to the fact that it was the wrong IRS department according to Ms. Russell. Tips should have been serviced by the Springfield NJ office according to IRS employee **Mr Cain** and **Ms Russell** as that was the proper IRS Department recommended by the **IRS Utah Investigations/Rewards Dept** to go to.

Regarding the second IRS letter of April 3<sup>rd</sup> 2007 --- as of this date---- the IRS has not rescinded that primary jurisdiction referral letter to the FCC **despite AT&T's protest** to the IRS that the IRS Taxpayer Advocate Service should not request the FCC to resolve the shortfall permissibility impasse. If the IRS does rescind its April 3<sup>rd</sup> 2007 primary jurisdiction referral letter to the FCC Tips may challenge it in Court because the IRS website clearly does not prohibit the Taxpayer Advocate Service from taking such actions to resolve the clear impasse. In fact the IRS website regarding the Taxpayer Advocate Service explicitly states that the Taxpayer Advocate Service can resolve impasses as is the case here with Tips and the IRS.

When the IRS Utah Investigations/Rewards Dept recommended Tips contact the Taxpayer Advocate Service, --and so noted their file---Tips could only believe that the Utah Investigations/Rewards Dept had done the same for similar IRS/Taxpayer impasses.

AT&T again seeks to rewrite history on page 2:

Mr. Inga has since sought to terminate the proceedings before he could be sanctioned for his misconduct

This AT&T statement would have one believe that AT&T filed its trumped up sanction motion **prior to** petitioners advising the FCC that it believed it had more than ample evidence to have the District Court decide if it wishes to be briefed on making the Judge Bassler referral explicit.

AT&T wants the FCC to falsely believe that AT&T asked for it bogus sanction request which then caused petitioners to go back to the District Court. That of course did not happen.

AT&T continues on page 2:

The central tactic Mr. Inga has employed in this "exit strategy" is to take 10 year-old statements from AT&T briefs

Imagine, AT&T is actually saying that because the statements from AT&T's briefs were **10 years old** that they can not be relied up! Instead AT&T wants the FCC to rely upon AT&T's new nonsense because 10 years ago AT&T did not realize that the question of precisely which obligations transfer was going to be the focus. AT&T inadvertently gave away the obligations transfer answer back then because it did not realize back then what the case focus would be.

It's not just the newly discovered AT&T briefs (**THAT AT&T OF COURSE REFUSED TO PROVIDE PETITIONERS BECAUSE AT&T KNEW WHAT IN THERE!**) that motivated petitioners to have the District Court look at the issues again. It is the 1995 and 1996 oral argument transcripts and the critical Judge Bassler error in which he stated that FCC 2003 Decision only discussed obligations in terms of the fraudulent use heading. Petitioners clearly showed the Commission where the previous District Court Judge Bassler made an error.

Additionally, petitioners did not ask the District Court to solely evaluate summary judgment. Petitioners explained to new District Court Judge Wigenton that AT&T is playing the system by stating there are disputed facts but evidencing none. Therefore asking the District Court to resolve AT&T's alleged disputed facts on the shortfall and discrimination issues and send the case back to the FCC was an option petitioners proposed to Judge Wigenton.

The Order from Judge Wigenton that was posted 6/21/07 on the FCC server shows that Judge Wigenton did not wish to modify the Judge Bassler order **back to the FCC**. AT&T's assertion

that petitioners were seeking an exit strategy from the FCC is obviously false.

Petitioners simply want all issues resolved and AT&T obviously wants no issues resolved. Given the fact that AT&T's defenses have been totally destroyed, AT&T now resorts to asking that the FCC dismiss the "traffic only" transfer case based upon AT&T's trumped up allegations of misconduct so as not to face the inevitable.

AT&T continues on page 3:

Indeed, Mr. Inga has openly bragged about his willfully vexatious and burdensome conduct, telling AT&T's lawyers that "[y]ou guys should love me. I keep you going with lots of billable hours. I should be on your Christmas present list." Email of Mr. Inga to Mr. Guerra and Mr. Brown et al. (May 11, 2007) (attached hereto as Exh. 5).

AT&T takes these statements totally out of context and is playing reverse psychology. AT&T counsel had been arguing to the FCC about how much work he had to do because of the overwhelming evidence petitioner's filed against AT&T.

AT&T counsel was told that his argument to the FCC about being overburdened was highly suspect as he was sitting there making \$500 an hour and petitioners and the FCC certainly weren't.

AT&T Counsel knows petitioners are not getting paid to file these briefs as AT&T counsel was. AT&T counsel wishes the case would go on forever and it could continue charging AT&T Corp for what amounts to absolute peanuts for AT&T Corp.

While AT&T counsel argues that it is overburdened, it has always been AT&T's strategy to use

its vast resources to play legal games, going round and round the legal system playing each Court with its nonsense. If AT&T did not want to incur costs it would have let Judge Bassler adjudicate all issues. AT&T wants to run up costs—don't believe AT&T's reverse argument. Tips was not bragging or taunting. Tips was pointing out that AT&T's argument was not believable.

The only parties that are suffering from this case load are petitioners and the FCC. The FCC however is not suffering due to petitioners; it has to read this case load due to 12 years of AT&T misrepresentations. Petitioners have advised the FCC that it has now discovered all evidence and there will be no more filings from petitioners unless AT&T responds with more fabrications.

The reason for the amount of submissions by petitioners have been solely due to the changing defenses AT&T has provided the Commission. Each time AT&T conjures up a new defense and petitioners expose it as a farce, AT&T makes up another one which must be dealt with.

Petitioners, working out of its home office, **would never brag about not having the same recourses as AT&T.** Petitioners are in fact envious of AT&T's position.

AT&T's attempt to twist the connotation of petitioner's statements is again an attempt to trump up misconduct that is simply not evident. The single most frivolous filing in these proceeding has been this AT&T motion for sanctions, which itself must be sanctioned by the FCC for its trumped up allegations.

**AT&T Attempts to Re-write History**  
**AT&T's Attempt to Re-frame the Issue**

See AT&T Page 4:

**1. The Initial Primary Jurisdiction Referral and Proceedings Thereon.** Petitioners subscribed to certain volume discount plans, offered under AT&T Tariff No. 2, that required them to satisfy prescribed minimum revenue commitments on each plan. In 1995, **petitioners sought to evade the minimum revenue commitments** by transferring their plans to Combined Companies, Inc. ("CCI"), which would then transfer all of the revenue producing locations and virtually all of the traffic associated with those plans, but not the associated obligations, to Public Service Enterprises of Pennsylvania, Inc. ("PSE"). **AT&T refused to process this transfer because PSE, the new customer in the second transfer, did not assume all of the obligations of the old customer, CCI, as required by § 2.1.8 of the tariff.**

**Point One:**

How were the petitioners seeking to "**evade the minimum revenue commitments**" when the record clearly shows AT&T counsel (Whitmer) agreeing that the Inga Company petitioners continued to be jointly and severally liable for these revenue commitments after the plan transfers to CCI and after the "traffic only" transfer from CCI to PSE ? AT&T simply argues against itself.

**Point Two:**

AT&T did **not** refuse to process the transfer because PSE was not accepting all obligations on a "traffic only" transfer. AT&T refused to process the transaction because:

A) CCI was not transferring the plan which, only then, would transfer the revenue commitment with associated S&T obligations as per Tr. 8179. AT&T was arguing that it had the right to mandate that the plan must transfer on substantial "traffic only" transfers. (Tr. 8179 Exhibit L in petitioners 9/27/06 filing)

B) AT&T permanently denied the “traffic only” transfer because of AT&T’s so called belief that there was no way that the CSTPII/RVPP plans would meet their commitment—AT&T’s Fraudulent Use Defense. AT&T actually conceded to Judge Politan that plan commitments do not transfer on “traffic only” transfers. AT&T counsel Mr Whitmer confirmed the Meade certification was correct when Judge Politan read out loud AT&T counsel Meade’s November 1995 certification at para 15. (see Richard Meade’s November 1995 Certification at Exhibit N in petitioners 9/27/06 filing) AT&T counsel Mr. Barillari again confirmed to Judge Politan in March 1996 during oral argument that shortfall and termination obligations under the tariff stay with CCI.

AT&T simply seeks to rewrite history to re-frame the issue to make the FCC believe that the case was about not assuming plan obligations on a “traffic only” transfer—an animal that never existed--- **an that is why AT&T has no evidence to support its bogus revisionist history theory** that S&T obligations transfer on “traffic only “ transfers. Additionally the FCC will notice that AT&T has never addressed exhibit J in petitioners 9/27/06 filing showing shortfall obligations “MAY” transfer---not MUST transfer.

AT&T continues page 4:

Following litigation in federal district court, AT&T was ordered to process the transfer of petitioners’ plans to CCI, but the court found that the proposed transfer from CCI to PSE presented tariff construction issues within the primary jurisdiction of the Commission. The court therefore ordered that “the issue of the transfer of [petitioners’ CSTP II] plans and/or their traffic as between [CCI] and [PSE] and **its compliance or not with the terms of the governing tariff be referred to the [Commission] for adjudication under the doctrine of primary jurisdiction.**”

AT&T made the same argument to Judge Wigenton in its April 2<sup>nd</sup> 2007 letter to her NJ District

Court. Unfortunately Judge Wigenton did not give petitioners the opportunity to brief her and expose this AT&T subterfuge. There is no possible way that AT&T is not deliberately misleading the FCC with the above quote of Judge Politan's decision.

**AT&T wants the FCC to believe that the above AT&T excerpt from Judge Politan's Decision ----"compliance or not with the terms of the governing tariff"----refers to transferring plan obligations on "traffic only" transfers.**

AT&T's quote of Judge Politan's statement did not have to do with Judge Politan deciding whether plan obligations transferred on "traffic only" transfers

Furthermore look at this segment of AT&T's quote of Judge Politan:

[petitioners' CSTP II] **plans and/or their traffic** as between [CCI] and [PSE]

Not plan obligations. Judge Politan's Decision focused on whether AT&T could force petitioners to do a **plan transfer** when it transferred substantial accounts. Judge Politan also focused on AT&T's fraudulent Use provisions. Judge Politan understood it was never about whether AT&T was demanding plan obligations transferring on a "traffic only" transfer; such a transaction was never permissible under the tariff.

As Politan stated it is either plans or traffic. AT&T counsel Richard Meade explicitly explained to Judge Politan in AT&T's Counsel Meade's November 28<sup>th</sup> 1995 brief at para 15 ( exhibit N in petitioners 9/27/06 filing) that S&T obligation do not transfer on "traffic only" transfers.

See exhibit B in petitioners Jan 31<sup>st</sup> 2007 filing (Judge Politan's March 1996 Decision page 3☺

When the Court issued the Opinion and Order in this matter in May 1995, there was pending before the FCC a request by AT&T that the Commission determine the very issue outlined above. **AT&T had filed Tariff Transmittal 8179 with the FCC seeking guidance on whether Tariff FCC No. 2 contemplated the transfers at issue herein.** The opinion deferred to the FCC's primary jurisdiction **on that matter.** Specifically, the Court's Order of that date stated:

Ordered that the issue of the transfer of the aforesaid plans and or their traffic as between Combined Companies. Inc. and Public Services Enterprises of Pennsylvania, Inc. and its compliance or not with the terms of the governing tariff be referred to the Federal Communications Commission for adjudication under the doctrine of primary jurisdiction

As Judge Politan stated the **matter** that he referred was the outcome of Tr. 8179 which is exhibit L in petitioner's 9/27/06 filing. As the FCC can see Tr.8179 **mandated that on a substantial "traffic only" transfer the PLAN must transfer *not just* the plan obligations which AT&T asserts today.**

AT&T's attempt to reframe what the actual case issues were is an egregious misrepresentation.

AT&T's "problem" as AT&T counsel Richard Meade stated in his certification ( exhibit N in petitioners 9/27/06 filing) was "**the segregation of assets (locations) from liabilities (plan commitments).**" AT&T conceded to Judge Politan that revenue commitments and their associated S&T obligations do not transfer on "traffic only" transfers.

Here is Judge Politan addressing AT&T's actual issue:

District Court March 1996 Decision page 17 para 1. Exhibit Reply B in petitioners 1/31/07 filing:

Thirdly, AT&T **has little or no danger of being harmed should the sought-for relief be granted. Its economic risk, if any, would arguably be covered by an anticipated excess over commitment under Contract No. 516, [FOOTNOTED HERE ]** and/or by its increase in revenue by dint of acquiring plaintiffs' customers as they are siphoned into Contract No. 516 by alternative avenues. **Indeed the Court notes that the services provided by AT&T are billed directly to the end user who in turn remits payment directly to AT&T. The instant injunction does not change that, nor does it increase the risk that the end user shall not pay.** Other interested parties --among them, end users themselves --face no threat of harm should the relief sought be granted **[FOOTNOTE FROM ABOVE]**

As previously referenced, **AT&T's counsel represented** that AT&T has initiated suit against PSE for shortfalls. In analyzing the instant motion, however, and in light of the fact that that suit was for the first time referenced orally at the hearing on this motion, the Court is not deterred by such litigation. **Indeed, AT&T's own counsel focused the issue by indicating that the tariffed obligations involved herein "are all tariffed obligations, for which "CCI, not PSE" would be obligated.**

The District Court, in its non vacated May 1995 Decision made these relevant statements.

In answer to the court's questions at the hearing in this matter, Mr. Inga set forth certain methods for restructuring or refinancing by which resellers can and do escape termination and also shortfall charges through renegotiating their plans with AT&T.

Suffice it to say that, with regard to pre-June, 1994 plans, methods exist for defraying or erasing liability on one plan by transferring or subsuming outstanding commitments into new and better plans pursuant to AT&T's own tariff.

Judge Politan clearly understood based upon AT&T's own position to the Court by AT&T's team: Mr. Whitmer, Mr. Barillari, Mr. Williams, and Mr. Meade that S&T obligations do not transfer on "traffic only" transfers. Later AT&T counsel Mr. Carpenter was added to the AT&T team and also conceded to both the Third Circuit and the DC Circuit that S&T obligations do not transfer on traffic only transfers. The reason why AT&T has replaced the above counsels with a new AT&T team of counsels is so the old counsels can not be directly questioned by the Court. This is what defense counsels do from large firms when they get snagged. Rotate in the next crew with newly created defenses.

As the FCC is aware when it issued its Public Notice in 2003 the central question the FCC asked was:

Comment on the remedy that AT&T's Tariff FCC No. 2 specifies that AT&T may exercise if AT&T has reason to believe that its customer is violating section 2.2.4A.2 of that tariff by using or attempting to use WATS with the intent to avoid the payment, either in whole or in part, of any of the Company's tariffed charges by using fraudulent means or devices, tricks, or schemes.

AT&T's defense was its Fraudulent Use claim---- **which is a concession in and of itself that plan obligations do not transfer on "traffic only" transfers. That was the issue---Not whether S&T obligations transfer on a "traffic only" transfer. Judge Politan's statement was short quoted and then the meaning changed by AT&T to re-frame the issue.**

AT&T "makes believe" that Judge Politan's concern under the tariff was that **AT&T was not getting S&T obligations transferred on a "traffic only" transfer.** No such animal ever existed to transfer plan obligations on a "traffic only" transfer. This is why despite AT&T counsels ---Whitmer and Barillari---- asserting to Judge Politan during oral argument in March 1995 that AT&T has done thousands of "traffic only" transfers, just from aggregators, there is no evidence to support AT&T's assertion that S&T obligations transfer on a "traffic only" transfer. AT&T's re-framing of the issue puts it in a position that it can't provide evidence for because none exists!

**AT&T Totally Bypasses AT&T's Arguments to the Third Circuit  
In Its Attempt to Re-Write History**

AT&T asserts on page 4:

Following further **skirmishing** in the district court and **Third Circuit**, petitioners sought a declaratory ruling from the Commission in July 1996

AT&T simply wishes the Commission to totally forget what AT&T's position was before the Third Circuit. AT&T just states there was "**further skirmishing**" but does not wish to explain what its position was to the Third Circuit. Why?

AT&T having conceded to the Judge Politan's District Court that the only way that S&T obligations transfer is on a **plan transfer** ---and despite the 15 day statute of limitations within 2.1.8---conjured up a new defense before the Third Circuit and simply misrepresented plaintiff's "traffic only" transfer was a **Plan transfer not a "traffic only" transfer**:

The FCC, Judge Bassler, nor the DC Circuit had the following AT&T reply brief to the Third Circuit 1996 Page 17 para 2:

CCI notes that a transfer of service can apply either to individual end user locations or to entire plans. See CCI Br. at 31-32 & n.13. CCI then, incongruously, seeks to defend the District Court by citing "**record evidence**" that addressed transfers of (**not entire plan's liabilities**), and showed that the only "obligation" transferred to the "new customer" in **that event** is the unpaid liability associated with the individual end user location that is transferred. **But that is self-evident under the tariff.** By contrast, when "**all" the plan's traffic and locations are being transferred** to a new customer and when the "plan" would then exist only as an "**empty shell**", then the "new customer" **would not** be assuming "all" the associated "obligations" unless it assumed the "**existing customer's" shortfall and termination commitments.** **Otherwise, all the plan's traffic is separated from liability,** and AT&T loses control over traffic that effectively requires the liabilities under the plan.

AT&T agrees with CCI's position that S&T obligations do not transfer on a "traffic only" transfer as AT&T stated that it is **self evident under the tariff** that plan obligations don't transfer on "traffic only" transfers, but then AT&T contrasts that to S&T obligations transferring under an entire plan transfer as **AT&T misrepresents that plaintiffs transferred 100% of the account and AT&T asserted that was a plan transfer.**

This AT&T ploy however is useful in that it is yet another AT&T concession--- (self evident)--- that S&T obligations do not transfer on a "traffic only" transfer. AT&T intentionally misrepresented plaintiffs "traffic only" transfer as a plan transfer because as AT&T conceded there is a **distinction** between a plan transfer and a "traffic only" transfer due to the obligations that are transferred.

Only because there is a distinction between a plan transfer and a "traffic only" transfer did AT&T make the above intentional misrepresentation to the Third Circuit—which AT&T referred to as a "skirmish."

AT&T's counsel David Carpenter explained the distinction between a plan transfer and a "traffic only" transfer to the Third Circuit at Oral Argument:

See here exhibit V in petitioners 9/27/06 filing Oral Argument Pg 15 line 9

We point out in our brief that there's a **distinction** between transfers of entire plans, and transfers of individual end-users locations. That when the "**plan**" is transferred, "**all the obligations**" have to go along with it.

Mr. Carpenter again at exhibit V in petitioners 9/27/06 filing Oral Argument Pg 15 line 23:

When you're transferring **all the traffic**, you're transferring the **plan**. That is –

and the obligations have to go with it, shortfall and termination liability.

So AT&T's new ploy to the Third Circuit was to accurately state section 2.1.8's interpretation but to **misrepresent plaintiff's transaction as a plan transfer instead of a "traffic only" transfer.**

AT&T continued to argue its Fraudulent Use defense to the Third Circuit ----again conceding plan obligations do not transfer on "traffic only" transfers:

AT&T brief in 1996 to Third Circuit Page 32 para 2 more "Frudulent Use" claims:

The court also incorrectly concluded that "AT&T has little or no danger of being harmed should the sought-for relief be granted." March 5, 1996 Order at 17 (AA 1389). CCI, the company **which now has the obligation to pay AT&T for any shortfall or termination charges for the nine plans,** has no apparent assets, no credit history of record with AT&T or otherwise, and no apparent means of meeting its obligations outside of its revenue stream generated by the traffic on its CSTP II plans. See Williams Cert. ¶ 21-24 (AA 641-42).

It is obvious why AT&T's creative revisionist history lesson totally skipped its position to the Third Circuit. AT&T's 'skirmishes' before the Third Circuit were:

A) misrepresenting the transaction as a plan transfer because AT&T knew that's the only way that S&T obligations transfer and

B) continued its fraudulent use assertion that conceded S&T do not transfer on a "traffic only" transfer.

No wonder why AT&T did not want explain what its position was before the Third Circuit.

AT&T's intention was to represent that the issue was—from day one---about transferring **plan obligations** on a "traffic only" transfer. The record clearly shows AT&T is wrong.

Another misleading statement AT&T page 5:

The court did not refer these shortfall and discrimination issues to the Commission; instead, it stayed litigation of these claims pending final disposition of the matters already before the Commission.

The District Court did not refer these issues because the shortfall occurred in June 1996 which was 3 months after Judge Politan's second Decision in March 1996. However, the FCC itself asked the parties to address these additional issues due to the numerous complaints received by the Commission when AT&T illegally applied shortfall and termination obligations to the end-users in June of 1996.

These are the facts:

FCC 2003 Decision Page 14 footnote 94 (Exhibit B to petitioners 9/27/06 filing)

After receiving AT&T's bills for shortfall charges, 190 of CCI's end users sent letters to the Commission in June and early July of 1996. The Consumer Protection Branch of the Enforcement Division of the Common Carrier Bureau informed these end users that their letters would be treated as **informal comments in this declaratory ruling proceeding.**

Furthermore, the FCC Decision clearly states that both parties addressed the June 1996 shortfall infliction issue in separate filings with the FCC that were added to the FCC proceedings. The FCC's 2003 Decision clearly shows that the dates of the FCC filings by AT&T and petitioners are respectively **August 26, 1996,** and **September 23, 1996:**

FCC 2003 Decision Page 4 para 7 (Exhibit B to petitioners 9/27/06 filing)

On July 15, 1996, the aggregators filed a petition with the Commission in which, "based on established Commission practice, policies, and precedents, the plain language of § 203 of the Communications Act of 1934, as amended, F.C.C. Rule 61.54(j), and Sections 201 and 202 of the Act," they sought declaratory rulings on four issues. **By separate cover motion,** the aggregators **also sought expedited consideration** of their petition for declaratory ruling because, they alleged, AT&T was **unlawfully billing certain charges to the aggregators' end-users.** AT&T filed Comments in Opposition on **August 26, 1996,** and Petitioners filed Reply **Comments on September 23, 1996.**

AT&T's statement that "litigation of these claims were pending final disposition of the matters already before the Commission" is simply not altogether true. The shortfall issues were clearly being argued before the FCC and discrimination claims were also asked for in the petitioner Joint Petition for Declaratory ruling as the FCC's 2003 Decision indicates.

All the issues as AT&T itself asserted to Judge Bassler in June 2005 (here as exhibit A, B and C) are already before the FCC and DC Circuit.

**AT&T "Confuses" Movement of Accounts with  
Which Obligations Transfer On a Traffic Only Transfer**

AT&T page 5:

In October 2003, the Commission held that AT&T's refusal to process the transfers violated the tariff. The Commission held that "section 2.1.8 of AT&T's Tariff did not address— and therefore did not preclude or otherwise govern—**the movement of end-user traffic from one aggregator to another**, as CCI and PSE sought to effect." *See* Exh. B to Petitioners' Request for Declaratory Rulings, Commission Mem. Op. and Order (Oct. 17, 2003) 1 } 9. **The D.C. Circuit, however, reversed.**

What the DC Circuit reversed was the FCC's decision that 2.1.8 did not allow "traffic only" transfers, as the FCC used section 3.3.1.Q bullet 4's delete and add capability to reason how "traffic only" could move.

**The movement of end-user traffic was reversed not the FCC's obligations allocation interpretation for 2.1.8.** The FCC's correct position that S&T obligations do not transfer (under the heading 2.1.8 in the 2003 decision) was not reversed by the DC Circuit, and thus can not be reversed based upon the same facts, as are here, as per the Law of the Case. ( see Law of Case in petitioners 1/31/07 filing page 120 para 308)

AT&T attempts to re-write history again on page 5:

**2. Petitioners' Attempt to Avoid Further Proceedings Before the Commission** Following their victory before the Commission, petitioners inundated the district court with submissions seeking a new primary jurisdiction referral of the shortfall and discrimination issues raised in their Supplemental Complaint. *See, e.g.*, Exh. 21 to AT&T Comments, proposed Order filed Oct. 8, 2004. But they abruptly changed tactics after the D.C. Circuit's January 2005 decision overturning the Commission's ruling. In May 2005, the district court ordered petitioners to file a single motion setting forth all of the relief they were seeking. Exh. 22 to AT&T Comments, May 5, 2005 Letter Order. In response to this order, petitioners *abandoned* their efforts to have their shortfall and discrimination issues referred to the Commission; indeed, they sought to avoid returning to the Commission even to resolve the "all obligations" issue the D.C. Circuit had left open.

After the FCC's 2003 Decision petitioners filed extensive briefs in 2004 with the NJ District Court Judge Bassler in regards addressing the stay of the shortfall and discrimination issues. Judge Hedges stay dictated that the stay of the shortfall and discrimination issues would be over when the FCC ruled which occurred in Oct 2003.

Therefore petitioners requested that Judge Bassler either

- A) separate the shortfall and discrimination issues from the "traffic only" transfer issue and resolve them in the District Court or to
- B) issue another primary jurisdiction referral to the FCC to address the shortfall and discrimination issues that the FCC did not address in its 2003 decision, which petitioners had expected to be resolved due to the FCC's asking the parties to supplement the declaratory ruling proceedings. The addressing of the shortfall and discrimination issues was to be done while AT&T appealed the "traffic only" transfer issue to the DC Circuit. This request by petitioners to Judge Bassler obviously was not as AT&T asserts above an "attempt to Avoid Further

Proceedings Before the Commission”—as Judge Bassler was asked to send it to the Commission.

It was simply making good use of time while petitioners had to wait an unknown amount of time for the DC Circuit to decide. Lawyers who did appeals work gave petitioners time estimates for the DC Circuit to rule on AT&T’s appeal of the FCC Decision of up to three years! AT&T’s statement that petitioners wished to avoid the FCC is obviously false as this was clearly an option given to Judge Bassler in 2004.

After the DC Circuit ruled petitioners counsel inquired with the FCC as to whether or not the FCC was treating the DC Circuits Decision as a remand due to statements made within the DC Circuit Decision that also led AT&T to tell Judge Bassler that it was a remand.

The FCC’s Mr. De Laurentis stated that the FCC was **not** treating the DC Circuit Decision as a remand. At that point petitioners filed to lift the stay in the NJ District Court around March of 2005.

Judge Bassler had already been given **extensive** briefing on the shortfall and discrimination issues in 2004. **Judge Bassler did not tell petitioners in 2005 that he was not going to consider what petitioners had already extensively briefed in 2004 that remains on the District Courts Pacer Server today.**

Judge Bassler would have believed it was absurd to resubmit the exact same brief as it did in 2004. AT&T’s assertion that petitioners actually abandoned its claims on shortfall and termination issues is a complete farce. Likewise petitioners never claimed that AT&T abandoned its shortfall counter claims that AT&T filed against petitioners in 1997. AT&T’s statement that petitioners abandoned the claims is a complete farce.

**The objective in 2005 was simply to get the stay lifted and then proceed with all the issues.**

After petitioner's 2004 submission to Judge Bassler's District Court on the shortfall issues petitioners **initially** focused the District Courts attention in 2005 to the DC Circuits decision that 2.1.8 allowed both "traffic only" transfers as well as plan transfers.

Petitioners never gave up its shortfall and discrimination claims. Because the FCC did not rule on the shortfall and discrimination issues, petitioners initially believed that the District Court would focus mainly on the "traffic only" transfer issue that was addressed by the DC Circuit.

However after the briefing in NJ started and lasted well over a year with several hundred pages filed, petitioners introduced the shortfall and discrimination issues into many of its filings. Petitioners have already documented in previous FCC filings dozens of pages where the pre June 19<sup>th</sup> 1994 issue was argued as well as the shortfall application illegal remedy and the discrimination issues.

The shortfall issues were argued by petitioners with respect to not only the "traffic only" transfer issue to show AT&T's fraudulent use assertions were bogus but in reference to the application upon the end-users in June of 1996. Petitioners in fact filed with the District Court the Oct 23<sup>rd</sup> 1995 FCC order which AT&T agreed to extend the June 1994 grandfather provision through Oct 23<sup>rd</sup> 1996.

Petitioners 01/12/07 FCC filing at Exhibit B shows that on page 8 of petitioners June 30th 2005 brief to the NJ District Court that petitioner's clearly argued the shortfall application illegal remedy despite AT&T's false assertion that petitioners abandoned its claims.

In June of 1996, 18 months after AT&T's denial of the traffic transfer, AT&T initially placed millions of dollars of shortfall and termination penalties directly on plaintiffs' end-users even though the tariff required the penalties to initially be placed on plaintiffs' master compensation account. The infliction of these penalties by AT&T directly against the end-users owned by the plaintiff companies was an illegal remedy and this Court had previously found that the plans were immune from such penalties in any event.

More petitioner arguments to the DC Circuit:

Petitioners 2/27/07 FCC filing page 15 para 21

Petitioners not only argued before the District Court the June 17th 1994 issue and the shortfall application illegal remedy BUT it also argued many times that the plans should have had all S&T obligations waived under section 2.5.7. which waives all obligations "Due to Circumstances Beyond the Customers Control".

To follow is just one of many statements petitioners made to Judge Bassler: See petitioners 1/12/07 FCC filing Exhibit E page 52

Additionally, these plans were immune from S&T liabilities due to the fact that tariff section "2.5.7", was enacted which waives actual S&T obligations; Exhibit F.

**AT&T's abandoned argument is a complete farce** as petitioners clearly argued shortfall and discrimination issues to Judge Bassler. Regarding AT&T's asking for sanctions for misconduct, what here before Judge Bassler was "misconduct of the severest form?" AT&T is actually asking the FCC for misconduct for petitioner's alleged misconduct at the District Court? Is AT&T serious? There is no misconduct here in any event, let alone the fact that it was before the District Court.

According to AT&T were petitioners not allowed in 2004 to ask the Judge to lift the stay only as to the shortfall and discrimination issues and continue the stay as to the "traffic only" transfer? This is what AT&T offers the FCC as petitioner misconduct?!!! Petitioners were suppose to resubmit an extensive brief in 2005 that were already on the server since 2004?

This is what AT&T offers the FCC as petitioner misconduct before the District Court?!!! Why didn't AT&T bring this up to the District Court at the time? Why is AT&T bothering the FCC with this very old alleged District Court misconduct? Talk about trying to make something out of nothing!!!

AT&T states on page 6:

In response to this order, petitioners *abandoned* their efforts to have their shortfall and discrimination issues referred to the Commission

Again total AT&T nonsense. Petitioners had already confirmed with the FCC General Counsel that petitioners would be able to “define whatever issues it wanted” before the FCC if Judge Bassler did not specifically refer them. Petitioners briefed its case in the District Court based upon the representations made by the FCC’s General Counsel, (See page 3 of exhibit A in petitioners 9/27/06 FCC filing) that petitioners could define its own Declaratory Rulings. The FCC’s General Counsel Schlick’s statements occurred in April 2005 which was the same time petitioner’s were just starting to brief the District Court; this is the reason why petitioner’s initially told Judge Bassler in 2005 that it would initially focus on the “traffic only” transfer issue; however that soon changed as the evidence shows petitioners argued all of its claims. AT&T in fact at exhibits A, B, and C argued all issues were already before the FCC and DC Circuit.

Reliance on the FCC’s General Counsel’s statement regarding the procedural avenues the FCC has to offer to define and adjudicate issues led petitioners to believe that the shortfall and discrimination issues could be decided by a petitioner request even if they were not referred by the District Court.

Is AT&T actually citing petitioner's reliance upon the FCC's General Counsel procedural confirmation that it could define the issue before the Commission as petitioner "misconduct of the severest form"? The FCC's General Counsel's procedural confirmation to adjudicate the issues should not have been relied upon by petitioners? This is "misconduct of the severest form?" Why does AT&T wait until now – over two years since Mr. Schlick's statement to bring this up as alleged misconduct? Petitioner's reliance on the April 2005 procedural statement made by the FCC's GC is not misconduct by petitioner's in any event.

The facts show petitioners did not abandoned its shortfall and discrimination claims. It argued in the District Court for them.

It also argued to the FCC in 2003 for them, and went to the FCC to confirm the proper procedure to make sure it could define any claim it wished. If AT&T submitted this as misconduct to the District Court it would get hit with a Rule 11 in a second. <sup>2</sup>

AT&T page 6:

After extensive briefing and argument, the court issued an order on May 31, 2006 denying petitioners' request to vacate the stay and ordering them "to initiate an administrative proceeding to resolve the issue of precisely which obligations should have been transferred under § 2.1.8 of Tariff No. 2 **as well as any other issues left open** by the D.C. Circuit's Opinion in *AT&T Corp. v. Federal Communications Commission*, 394 F.3d 933 (D.C. Cir. 2005)." Exh. A to Petitioners' Request for Declaratory Rulings. **The order did not refer the June 1996 shortfall issue or petitioners' discrimination claims, as those issues were not before the court.**

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<sup>2</sup> SANCTIONS, RULE 11 - Federal Rule of Civil Procedure 11 provides that a District Court may sanction attorneys or parties who submit pleadings for an improper purpose or that contain frivolous arguments or arguments that have no evidentiary support. Rule 11.

How does AT&T definitively know that Judge Bassler did not refer all issues to the FCC? The issues were not only brought up to the District Court but all the issues as AT&T conceded were already open issues before the FCC and DC Circuit as AT&T stated to Judge Bassler here as exhibits A, B and C.

The statement from Judge Bassler “**as well as any other issues left open**” would not have been said if the “traffic only” transfer was the only issue to be resolved.

AT&T clearly conceded to Judge Bassler that petitioners were raising all issues before Judge Bassler's NJ District Court. Again AT&T's reliance upon this as “misconduct of the severest form” is absolutely amazing when the evidence shows AT&T is the party that completely changed its position when it got to the FCC as to what issues were before the FCC.

**AT&T Misrepresents Charles Helein's Statements**  
**And the Intent of His AT&T Request**

AT&T's trumped up misconduct claims continued at page 7 as AT&T attempts to limit Mr. Helein's statement to just the “traffic only” transfer issue. **Mr. Helein did not say that there are no other issues to be addressed before the FCC.**

As the evidence shows Mr. Helein's reason for inquiry to AT&T was whether or not AT&T agreed that petitioners were going to use the Declaratory Ruling process as opposed to the Formal Complaint process. Mr Helein was not seeking to debate what issues were to be decided. Review AT&T's exhibit 7 and the focus of the letter was the use of the Declaratory Ruling process. Mr Helein states in the beginning of the letter in AT&T number 7 exhibit:

**The issue you are being contacted about is to determine if AT&T will agree to using a declaratory ruling proceeding by which to obtain the FCC's decision. The alternative is to proceed by formal complaint.**

and at the end Mr Helein states:

**This email seeks AT&T's agreement that the proper proceeding to file with the FCC is a petition for Declaratory Ruling.**

Mr Helein's instruction from petitioners was simply to confirm with AT&T that the process would be done via the Declaratory Ruling process. Petitioners followed up with the issues it was to address soon afterwards.

What occurred was that AT&T counsel not only confirmed Mr Helein's position that Judge Bassler's referral should be done via the Declaratory Ruling process, Mr. Jacoby attempted to re-frame the "traffic only" transfer question of Judge Bassler in an entirely different manner. Here as exhibit H is the email from Mr. Jacoby.

I am writing in response to your email message to Eric Einhorn of AT&T's Federal Regulatory group, **requesting AT&T's agreement that a petition for declaratory ruling is the proper procedural vehicle** for the Federal Communications Commission to resolve the issue referred to the Commission under the doctrine of primary jurisdiction for the reasons stated in the federal district court's May 31, 2006 order (copy attached). AT&T agrees that the referred issue arises from the D.C. Circuit's decision holding that Section 2.1.8 of ATT's Tariff F.C.C No. 2 applies to "traffic-only" transfers. The issue the D.C. Circuit left for FCC resolution was whether Section 2.1.8's requirement that a transferee "assume all obligations of the former Customer **at the time of transfer** or assignment" includes the obligations to **pay** any applicable shortfall and termination charges. **We agree that this issue is properly resolved by way of a declaratory ruling.**

As you can see Mr Jacoby both opens and closes his statement confirming the request of Mr Helein as to use of the Declaratory Ruling process.

In the middle Mr. Jacoby's statement that transferors had to **"pay" shortfall and termination charges "at the time of the transfer" obviously does not have to do with precisely which obligations transfer.**

Mr. Helien certainly was not acquiescing that there were no other issues before the FCC. Petitioners went to the FCC's Mr. De Laurentis after the Judge Bassler referral and stated that it believed that the adjudication of the issues should be done by the Declaratory Ruling Process.

Mr. De Laurentis advised that before petitioners file the FCC encourages the parties to decide if there would be a Declaratory Ruling or a Formal Complaint.

As the exhibits at H evidences, petitioners Mr Inga reached out to AT&T prior to its 9/27/06 filing to advise AT&T what Declaratory Ruling requests it would be seeking. Although AT&T asserted to Judge Bassler that all issues were before the FCC (see exhibits A, B, C) and the FCC was the place to resolve "all the issues"; once the parties got to the FCC----AT&T completely changed its position.

Once at the FCC AT&T argued all facts were disputed, and the issues are not before the FCC and the General Counsels position that petitioners could define any issue it wished meant nothing according to AT&T.

Exhibit H clearly shows that prior to petitioners 9/27/06 filing of the Declaratory Ruling

Requests, petitioners clearly let AT&T understand that there were several Declaratory Ruling requests that petitioners were seeking. There certainly was no misconduct by petitioner's. **AT&T attempts to completely change the *only focus* of Mr Helein's letter-----to proceed by Declaratory Ruling OR Formal Complaint.**

AT&T knew that if these issues were resolved it would lose so AT&T threatened that if petitioners went back to the District Court to inform the Court of AT&T's change in position it would seek sanctions:

AT&T page 7:

AT&T made clear that petitioners had no conceivable basis for demanding that these issues be resolved at the Commission and that any attempt to move to lift the stay at the district court on the basis of these claims would be frivolous and **sanctionable**. Exh. 2 to AT&T's Reply to Petitioners' Request for Extension of Time, Sept. 22, 2006 letter at 2-3. **Tacitly** conceding the untenable nature of his demand, Mr. Inga did not return to the court (where his attorney faced the prospect of sanctions).

There was no concession from petitioners that Judge Basslers referral did not envision all issues being resolved nor was it petitioner's concession that it did not have justification to inform Judge Wigenton of AT&T's switcheroo on what issues are before the FCC.

Although AT&T attempted to threaten sanctions to try and persuade petitioners not to go back to the District Court such AT&T water gun tactics had no effect as **AT&T has multiple times** threatened and has actually requested sanctions **without any justification, and of course the Court has denied AT&T's request.**

The obvious reason why AT&T has both threatened and filed for sanctions in the past is to scare

petitioners into settlement and to dissuade petitioners from pursuing AT&T.

As the FCC is aware petitioners did not initially go back to the District Court—not because of AT&T sanction threats,----- but petitioners chose to seek a motion to the FCC to declare whether or not the Judge Bassler referral encompassed the shortfall and discrimination issues due to the ambiguity of Judge Bassler’s referral.

When the FCC declared on Jan 12<sup>th</sup> 2007 that it did not believe that the referral encompassed these additional shortfall and discrimination issues, petitioners still had not even completed its reply brief which was filed 1/31/07.

Petitioners then sought to reconsider the Jan 12<sup>th</sup> 2007 FCC Order and sent the FCC a few additional filings ( understanding it was a permit but disclose proceeding) showing several pages in which petitioners argued to the District Court for its shortfall and discrimination claims and AT&T agreed petitioners claims were already before the FCC and DC Circuit as exhibits A, B, and C clearly show.

After waiting months for an FCC decision on petitioners request to reconsider its Jan 12<sup>th</sup> 2007 Order petitioners contacted the new District Court Judge Wigenton and advised Judge Wigenton that AT&T was up to its usual tricks before the FCC---claiming there were disputed facts--- despite showing no evidence of any actual disputes, and claiming that no issues were before the FCC other than the “traffic only” issue, no matter what the FCC’s General Counsel said.

Petitioners went to Judge Wigenton to address AT&T’s change in position asserting that the issues were no longer all before the FCC and DC Circuit; **however this was in response to**

**AT&T having first contacted Judge Wigenton.**

In an effort to stop the District Court from issuing a briefing schedule to resolve the scope of what is before the FCC, AT&T argued that petitioners had a motion for reconsideration before the FCC. Therefore AT&T asserted that Judge Wigenton should not address petitioner's issue of AT&T's playing the District Court to get the case to the FCC then doing a switcheroo in an attempt to prevent the FCC from ruling on all issues.

Petitioners therefore asked the FCC to dismiss petitioners request to reconsider whether the Judge Bassler referral encompassed shortfall and discrimination issues---relying upon its 9/27/06 request to answer the shortfall and discrimination issues.

At that point Tips also alerted the Commission that it had secured a primary jurisdiction referral on the shortfall issues so if the FCC was giving no weight to the FCC's General Counsels statements that petitioners could define the issues for the FCC to resolve, Tips believed that the FCC would give the IRS consideration of its primary jurisdictional referral on shortfall issues.

The IRS referral to the FCC was based upon Tips standing and was a suggestion from the IRS Investigation/Rewards department and was added to ensure that if a settlement was done between AT&T and petitioners, the FCC would still continue to resolve the shortfall issues that would resolve the IRS and Florida tax ramifications---- that are based upon the legitimacy of the shortfall charges---- that establishes the taxable base.

As Ms Shetler will recall Tips question (which AT&T was copied on) regarding what the FCC's stance would be in regards to the adjudication of shortfall issues for Tips after a possible

petitioner-AT&T settlement. Ms. Shetler stated the FCC could not comment until the situation actually presented itself. The question to Ms Shetler obviously indicates that **Tips had its own interests** to get its tax reward from the IRS for the money AT&T owes the IRS. Tips wants to resolve the IRS/Tips impasse no matter if petitioners settle with AT&T.

Tips claims at the IRS are not only regarding the 06-210 case. If the FCC decides that the shortfall was not permissible in case 06-210 that does not mean that Tips will lose totally, as Tips has other aggregator IRS claims which those aggregator's scenarios may still warrant shortfall charges as permissible and thus taxable base would be established for Tips.

Tips accepted that FCC's position on what the FCC would do if petitioners and AT&T settled and moved on and has never raised this issue again.

AT&T's statement that Tips and the Petitioners were seeking an exit from the FCC is absolutely false, and the parties' dispute AT&T's facts. In fact Tips was seeking to make sure that the **FCC would rule** on the shortfall issues even after a petitioner/AT&T settlement which of course is just the **opposite** of what AT&T asserts.

AT&T page 8 & 9

In a precursor to his later submission of fabricated "evidence," Mr. Inga purported to quote an email that he claimed had been sent to him by an official in the Florida Department of Revenue. But Mr. Inga did not attach a copy of the email and redacted the name of this official in his "transcription" of the message, thereby preventing AT&T from contacting the official directly to confirm that he actually sent a message. Mr. Inga offered no explanation for why it was necessary to shield the identity of a public official commenting on a supposedly official matter.

The email that was sent was indeed from the Florida Department of Revenue which the case against AT&T is still pending outcome due to the shortfall permissibility impasse at Florida as well.

The name of the so called Florida public official was not necessary for AT&T to know. AT&T was told it was a Florida senior counsel who was not making a public statement on an official matter, as if AT&T asserts.

AT&T could have easily contacted Florida tax reward Dept anyway as but a few people are in the Investigation /rewards Department. There was no secret. The Florida official advised Tips that he did not want to be personally harassed by AT&T, however AT&T was more than welcomed to submit its position to Florida which it still can do today. How this involves the FCC, Tips does not even understand as **Florida has not even issued a primary jurisdiction referral to the FCC.** How this Tips issue in Florida affects petitioner's case ID 06-210, AT&T does not explain.

Petitioners stated in its March 16 filing on page 2

Here is an opinion from **one Florida senior counsel** which is the Florida Statute that confirms shortfall charges are taxable in Florida and CCI was a Florida Domiciled Company.

“charges about which we have been speaking appear to constitute taxable services under the law prior to October 1, 2001 (essentially, sales tax upon telecommunication services under Chapters 203 and 212, Florida Statutes [F.S.]), and current law (tax upon "communications services" under Chapter 202, F.S.)”

A senior Florida counsel made the above statements and he has confirmed AT&T has already been in touch with Florida Dept of Revenue so AT&T's statement that obstacles were placed in its way by Tips not including the name of the Florida Counsel is again suspect.

In addition when AT&T argued that Florida's claim was outside the 5 year statute of limitations the same Florida Department of Revenue senior counsel emailed Tips and advised Tips that in **presence of fraud** there is no five year statute of limitations; that email was additionally sent to AT&T.

This same Florida senior counsel also sent the following excerpt from Florida's tax law regarding statute of limitations, which AT&T falsely asserted to the FCC that the statute of limitations was only open for 5 years.

Petitioners cited to the FCC on March 16th 2007 Page 2-3

Re the statement regarding a 5 yr. statute of limitation on taxes collected before July 1, 1997, that is found in Section 95.091(3)(a)1.a, Florida Statutes. However, later subparagraphs of Section 95.091(3)(a), F.S., provide that the Department may determine and assess tax, penalty, and interest due: (i) subparagraph 4. - for taxes due before July 1, 1999, at any time after the taxpayer has filed a grossly false return; or (ii) subparagraph 5. - **at any time** for failure to pay, failure to file, or filed a **fraudulent** return.

The Florida Department of Revenue senior counsel who sent the emails to Tips and Tips provided the relevant excerpts of such emails to AT&T with the counsels' name redacted **has confirmed that AT&T has been in touch with the Florida Department of Revenue many months ago**—because Tips gave AT&T significant knowledge to confirm the investigation was being done by Florida. Tips was not required to advise AT&T that there was any investigation going on against AT&T.

AT&T's statement that "Mr. Inga purported to quote an email" by Florida was indeed verified by AT&T as having come from the Florida Department of Revenue. Thus AT&T's assertion

that these email excerpts were fabricated by Tips is again false.

AT&T was given more than enough information to contact Florida directly which Florida has confirmed AT&T has done months ago. AT&T's claim that the redaction of the Florida counsels name would not allow AT&T to contact Florida is comical. All AT&T had to do is ask for the Florida Department of Investigation/Rewards Department and request to provide info on the case that Tips has a rewards claim against AT&T.

It would take that department all of a minute to pull it up in Florida's system. AT&T doesn't know what to possibly argue next against petitioners so it is creating obstacles that it says Tips enacted that aren't even obstacles. If AT&T is correct and it does not have pay Florida then AT&T can file all it wants to Florida.

AT&T stated that "the IRS itself had decided not to collect tax on long distance telephone charges" and filed with the FCC a document that supposedly supported its position. However the document cited by AT&T ----actually supported Tips---- as it showed that the IRS ruling **was applicable** to FET charges such as these that were incurred prior March 1<sup>st</sup> 2003 when the IRS stopped collecting FET taxes on charges that involved the criteria of both call duration and distance banded applicable.

Petitioners indeed have already addressed AT&T erroneous statement as to IRS statute of limitations on Federal Excise Taxes: Posted on the FCC Server 01/17/07

AT&T's own exhibits on Jan 11th 2007 show on page 14 (2) of their exhibit that the FET still **applied prior to March 1, 2003** This section stressed that there will be no refunds from the IRS from FET prior to this March 1, 2003 date. **So AT&T's statement that the FET did not apply is obviously bogus.**

As AT&T is aware there is no statute of limitations due to fraud at either the IRS or the Florida Department of Revenue, so AT&T is again misleading the FCC.

Additionally, the possibility of tax evasion by Tips is not just limited to state sales taxes in Florida's case nor just Federal excise taxes in the IRS case. AT&T is well aware that it entered into non disclosed settlement agreements with aggregators and used its shortfall charges as an offset to the claims against it by AT&T aggregator customers. An exchange of value for value constitutes barter under the IRS law and thus AT&T's transactions appear to be taxable as barter.

Tips has already provided the FCC and AT&T on 1/17/07 PAGE 4 the information regarding AT&T burying the shortfall charges:

AT&T did not follow its tariffed remedy at any time with The Furst Group. The Furst Group plans all were in huge shortfall as seen by **exhibit HH in the petitioners 9/27/06 initial filing**. However AT&T and the Furst Group had four settlements with AT&T, and AT&T did not apply alleged shortfall and termination charges to either the Furst Groups end-users or The Furst Groups master account. **AT&T simply buried the alleged shortfall and termination charges in the settlement agreements as offsets against the claims that the Furst Group had against AT&T for not providing certain contract tariffs.**

Tips has also provided the names of other AT&T customers to the IRS who have confirmed to Tips that AT&T used the shortfall charges as offsets against the aggregators legal claims against AT&T, that were buried in non disclosure agreements.

AT&T was thus compensated "in kind" for its shortfall charges but it possible that the IRS was not compensated as AT&T's stance in its 6/18/06 brief is that taxes are not due on shortfall charges. Tips wants to know where in the IRS code AT&T found this exemption,

because Tips hasn't found it.

AT&T may have also been compensated for its shortfall charges without paying taxes by exchanging AT&T's shortfall phone service charges in exchange for the aggregator's **defensive aid consulting services** to help AT&T defend itself against aggregator lawsuits. An exchange of AT&T phone service shortfall charges for defensive aid consulting services to help AT&T also constitutes a taxable service for service barter transaction according to an IRS's senior examiner.

Since the shortfall charges were a contractual obligation,----- which AT&T buried in non disclosure agreements, -----it was virtually impossible for auditors--- both governmental and AT&T's own auditors----to detect because there was **no cash flow or invoicing---** **or services rendered because it was shortfall service**. Shortfall by definition is for services not rendered.

When the shortfall charges allegedly came due AT&T in some cases did not place the charges on the end-users bills as it did with petitioners and 800 Services, Inc, nor did AT&T place the shortfall charges on the aggregator master account as it was suppose to do if permissible. What AT&T incredibly did was take its alleged shortfall charges and bury them into non disclosed settlement agreements with aggregators and used them as offsets against the claims aggregators had against AT&T—thus AT&T was compensated for its shortfall charges in kind, i.e. (taxable barter).

The Furst Group is one particular aggregator which confirmed over the phone with Tips that its shortfall charges were buried in non disclosure agreements and used by AT&T as offsets against the Furst Groups claims. The following are the relevant excerpts of emails regarding

a recap of the phone conversation:

----- Original Message -----

**From:** Mr. Inga  
**To:** HughStreep@aol.com

Have you found your non disclosure settlement agreements? You said you remember the shortfall liabilities used by AT&T as offsets against your claims in at least one or two of your 4 AT&T settlements. Who has all your AT&T settlement agreements?  
Al

----- Original Message -----

**From:** HughStreep@aol.com  
**To:** freerecdeptsrv@optonline.net

The attorneys have most everything. I am still trying to get my hands on.

----- Original Message -----

**From:** HughStreep@aol.com  
**To:** freerecdeptsrv@optonline.net

Al,

I am sorry I have not been more responsive. The problem stems from the fact that the old Furst Group company was put into a bankruptcy in 2002 by the new owners and I need to get our legal advisors to tell me what our rights (if any) are to any recoverable assets.

With that said, we would certainly be interested in the progress on the shortfall issue and others.

Thanks for keeping us apprised on your progress. We'd love to see you prevail!

***Hugh Streep***

Even the auditors could not catch these AT&T buried shortfall charges---due to the fact that no evidence showed up anywhere! No invoices, no long distance time logged—purely contractual—possibly a perfect tax evasion fraud on the IRS and Florida if it hadn't been for AT&T aggregators who willingly disclosed the contents of their non disclosed settlement agreements to Tips. The FCC can clearly see from the above emails that Tips is not making this up as AT&T asserts.

The Tips IRS Form211 applications cover not only the petitioner's transactions but other

aggregators transactions. Therefore, the FCC was asked to decide the duration period of the June 17<sup>th</sup> 1994 grandfather clause (i.e. how many years grandfathered) not only for petitioners transaction in case 06-210 but for the shortfall law FCC interpretation in general to be applied for several other aggregator situations.

**Tips** as of this filing still has the ability to pursue AT&T before the IRS and the Florida Department of Revenue---but **Tips** is at an impasse due to shortfall permissibility and must wait until the FCC decides on shortfall law under AT&T's tariff No.2. These are the same shortfall laws that were requested by petitioners to be interpreted on 9/27/06, in accordance with the FCC General Counsel's procedural confirmation that it was permissible for petitioners to define whatever issues petitioners wanted resolved.

The FCC should not be a sounding board to evaluate tax law. The only reason Tips provides the tax law citations is to counter AT&T's assertion that there are no tax issues and Tips just made it up---- **two years ago**---- to use today.

Likewise the IRS should not be deciding telecom law issues. Tips seeking of Declaratory Rulings on shortfall issues deals **solely with the FCC being asked to interpret telecom law**---- not tax law.

It is appropriate and permissible that Tips and its 85% partner the IRS, has the ability to seek an FCC Declaratory Ruling on shortfall issues based upon the fact that it has standing due to the fact that it could receive a financial reward for tax recovery. The FCC's guidance is respectfully requested on the shortfall issues as it will resolve the tax claims.

The bottom line is that AT&T has failed to show that Tips tax claims are not legitimate. Just the contrary as no law has been produced by AT&T to show it was exempt. We all have to pay our taxes why shouldn't AT&T?

AT&T 's false assertion to the FCC that Tips has no credible tax claim and has only sought the tax rewards to have the shortfall claims resolved is a farce. Tips tax claims are over two years old—before Tips or Petitioners ever knew it would be going back to the FCC again.

Tips has not even inquired with the FCC about the separate Declaratory Ruling that Tips made and then requested to combine with petitioners claims for judicial economy. AT&T's claim that Tips request is misconduct of the severest form is absolutely false. The FCC has the ability to resolve issues that are uncertain and controversial and the shortfall issues certainly fit that description.

The IRS Investigations Reward Dept would not have provided Tips the phone number of the Taxpayer Advocate Service and the Taxpayer Advocate Service would not have issued the FCC referral if Tips claims were bogus. The IRS would not have provided exhibit G if the IRS did not have interest in pursuing AT&T.

AT&T states on page 10:

Undeterred, Mr. Inga continued to assert the relevance and importance of the investigation, yet still offered no evidence to support his claims of IRS interest.

Exhibit G shows the IRS is interested. **Tips was advised by the IRS and Florida that both taxing agencies can not directly reach out and contact the FCC concerning Tips case due to its laws. With respect to the IRS see Section 6103 of the Internal Revenue Code which**

**covers disclosure and privacy laws—see exhibit G ).**

Tips has already provided AT&T with the contact person and address of the IRS to show the IRS is indeed interested. Tips in its 1/17/07 filing with the FCC at Para 25 provided the contact information of the IRS Investigation Rewards Department, despite the fact that it was not obligated to do so. **Tips did so only to show the FCC that Tips claims were legitimate.**

The phone bill that was provided at exhibit NN in petitioners 9/27/06 filing clearly shows no taxes were paid to Florida or the IRS on the shortfall charges. Tips is not making up a bogus tax case to get the FCC to rule on shortfall law as the evidence is clear that AT&T simply did not pay the IRS FET nor the Florida 7% sales tax. There are also the taxes on barter.

Recognizing that it did not pay taxes on shortfall AT&T simply says that it does not have to pay taxes on shortfall--however AT&T does not cite where in the law it was provided an exemption. In fact every state that applies taxes on telecom services is taking the position that shortfall and termination charges are taxable. The following is the standard logic used by these States:

Tips has already furnished Florida's law that shortfall is taxable and here is more expounded reasoning why shortfall is taxable:

#### **Sales Tax State Activity Update December 2006**

##### **South Carolina Telecom Taxes**

A company that provided telecommunication services in South Carolina wanted to know whether early termination fees charged to their subscribers were subject to sales and use tax when billed in connection with a taxable communication service.

In the competitive telecommunications industry, this company implemented special discounts and promotions which were offered to customers. In return,

customers that wanted to participate in this program were required to complete and sign a form commonly referred to as a term agreement which set forth the amount of the discount, the time period over which service had to be maintained and any other terms and conditions of the program. The term agreement had a provision that if the customer terminated the agreement prior to the expiration of the elected term, the customer was required to pay an early termination charge.

Based on the facts in this situation, the Department held that an early termination charge was **subject to sales and use tax when billed in connection with a taxable communication service since such a charge was a “part of the gross proceeds of sales” or “sales price” of the taxable communications service.**

(Private Letter Ruling #06-2, South Carolina Department of Revenue, November 7, 2006)

AT&T itself has constantly argued that its shortfall and termination charges are legitimate tariffed charges and are necessary to avoid price discrimination amongst its customers.

Every indication is that Tips tax claims are justifiable. AT&T which has a battalion of lawyers can not come up with any law showing otherwise. AT&T just asserts it is exempt. Why, because they are AT&T it gets special tax exemption privileges that no one else does?

AT&T page 11 cites the FCC's 1/12/07 Order:

We grant a brief extension to the parties to file reply comments, which should be informed by this reminder as to the scope of the matter presented here. *See* January 12, 2007 Order \ 3.

### **Point One**

Petitioners still did not take the FCC statement ----- “which should be informed by this reminder as to the scope of the matter presented here” ----as a statement that it could no longer argue pre June 17<sup>th</sup> 1994 shortfall law and discrimination issues which affects the “traffic only” transfer case.

What petitioners thought that FCC probably meant by this statement was that AT&T should stop its fraudulent use argument ---which AT&T argued in its Dec 20<sup>th</sup> 2006 brief---because the DC Circuit already agreed with the FCC that AT&T could not rely up its fraudulent use provisions due to the illegal remedy it used. The FCC did not advise either party that it was going outside the scope, on subsequent filing to the FCC's 1/12/07 Order so petitioners assumed it was acting within the scope.

AT&T is taking the FCC's statement as petitioners can't argue its shortfall claims anymore but the FCC statement doesn't say this. If this is what the FCC meant than petitioners assume that when petitioners brought up any issues outside the scope that the FCC would inform petitioners, but no such FCC guidance or warning was ever offered by the FCC.

**Point Two:**

The shortfall permissibility issue is not ONLY an argument as to the June 1996 shortfall infliction. Given the fact AT&T continued to argue "fraudulent use" within its Dec 20<sup>th</sup> 2006 and Jan 31<sup>st</sup> 2007 submissions, the shortfall permissibility issues were also counters to AT&T's denial of the "traffic only" transfer and thus were clearly an argument that AT&T forced petitioners to address.

AT&T simply can not claim it was going to be defrauded of shortfall as the reason it did not transfer the traffic since the pre June 17<sup>th</sup> 1994 tariff provision was already in effect prior to the Jan 1995 "traffic only" transfer. By proving to the FCC that AT&T clearly understood that the CSTPII plans were still grandfathered under the pre June 17<sup>th</sup> 1994 provision this conclusively proved AT&T's fraudulent use argument was bogus.

Likewise the shortfall application illegal remedy also shows that AT&T can not be permitted to

speculate on what the future could bring when it held up the “traffic only” transfer. The FCC FOIA notes in fact clearly state that it was the Commission's concern that AT&T was trying to give itself the ability to evaluate intent of the parties to meet commitment.

The clear fact is that even if the CSTPII/RVPP plans were not June 17<sup>th</sup> 1994 grandfathered, **AT&T would not be able to rely upon the shortfall charges due to the illegal remedy** which AT&T used. The shortfall application illegal remedy argument thus addresses both the “traffic only” transfer issue and the June 1996 shortfall infliction. The FCC 2003 decision itself made the point that AT&T should not have speculated:

AT&T's apparent speculation that CCI would fail to meet these commitments and would be judgment-proof did not justify its refusal to transfer the traffic in question.

The FCC's point is correct –there were many ways not to be liable for shortfall charges and the shortfall application illegal remedy would be one of them.

**Point Three:**

Petitioners still had available to it the right to request a reconsideration of the FCC Jan 12<sup>th</sup> 2007 ruling which it indeed exercised its right to do so in a timely fashion; especially given the fact that that petitioners hadn't even filed its reply comments as of the Jan 12<sup>th</sup> 2007 FCC Order.

Petitioners certainly did not engage in misconduct by exercising its rights for reconsideration.

The FCC server clearly lists reconsideration as a permissible avenue for petitioners to pursue and thus AT&T's fabricated “misconduct of the severest form” is totally absurd.

If AT&T actually believed petitioners were engaging in misconduct with its post 1/12/07 filings why didn't AT&T bring this to the attention of the FCC? AT&T waited for months to bring this

up now! It appears that with the additional new evidence found, when added to the old evidence makes this an insurmountable obstacle for AT&T. Therefore AT&T has now decided to trump up misconduct complaints and attack because AT&T can no longer present an intelligent defense.

Petitioners respectfully request the FCC to clarify what it meant by its statement. Petitioners do not want to do anything out of line.

AT&T page 11:

Petitioners likewise enlisted 800 Services to submit a word-for-word repetition of petitioners' reply comments an impermissible burdening of the Commission (and AT&T) with utterly wasteful duplication in the vain hopes of suggesting a groundswell of interest (beyond the supposed interest of state and federal taxing authorities) in the new issues he wished to inject in this proceeding.

While AT&T in its brief (see above)---- states 800 Services submitted a word for word duplicate in its exhibit it references CCI. When CCI sent in its comments petitioners saw the word for word duplicate arguments and petitioners requested that CCI please refrain from word for word submissions, as it would prolong the FCC from ruling and therefore was not in petitioners best interests. 800 Services (Phil Okin) has not filed word for word duplicate comments at all.

Given the fact that they were word for word submissions this would mean that there was no need for the FCC or AT&T to read the submissions, therefore AT&T's Johnny Come Lately argument of being over burdened is weak and not petitioners fault in any event. Additionally the CCI brief was sent in many months ago so why is AT&T complaining now about CCI?

AT&T's comments that "petitioners" sought to create a

groundswell of interest (beyond the supposed interest of state and federal taxing authorities) in the new issues he wished to inject in this proceeding.

Not only didn't 800 Services or CCI file **any duplicate tax comments**----but why does AT&T attribute its statement to petitioners when Tips actually did the FCC briefs on the tax issues and Tips didn't duplicate anything?

Apparently AT&T's not only creating a false argument but then wishes to misdirect the false argument to petitioners, when Tips in fact did the FCC tax filings. The FCC can plainly see what AT&T is up to.

**Additionally, petitioners can not control it if the public sends in duplicate arguments as their submissions.** For AT&T to even bring this up is an indication of how desperate AT&T's case is. AT&T is simply looking to make weight. Per petitioner's request of CCI has not submitted an exact copy of what was submitted by petitioners in many months---as evidenced by the FCC server log.

This certainly is not misconduct of petitioners. Tips and petitioners dispute AT&T's facts that led to AT&T's false allegation.

AT&T's footnote 4 on page 11:

Although Petitioners' Reply Comments are signed by their lawyer, Mr. Frank Arleo, there can be no doubt from the tenor, syntax and digressive argumentation of this pleading that it was authored principally, if not entirely, by Mr. Inga. *See also* Exh. 12 attached hereto (explaining that he, not his lawyer, needed additional time to prepare petitioners' reply comments).

The fact that comments were written by petitioners then given to its counsel for editing and then signed and submitted by petitioners counsel is misconduct of the severest form!!! Is AT&T serious!!! When petitioners did not have its comments edited and submitted by its counsel,

petitioners signed and submitted its public comments.

In fact the FCC server log shows that almost all of the public comments have been submitted by petitioners. That is why they are called public comments; any member of the public can comment.

What AT&T wants is for petitioners to run all briefs through its counsel so as to run petitioners legal costs through the roof--- to the point that petitioners will finally settle for an AT&T chump change settlement offer---as AT&T has done with so many other aggregators.

This is yet another ridiculous trumped up argument to make weight. Again, why didn't AT&T—many months ago—mention this “so called misconduct” –which is actually no misconduct at all?!!! The FCC can see what AT&T is up to.

AT&T page 12:

Notably, Mr. Inga's three-page request did not purport to identify any error in the Commission's conclusion that Judge Bassler's order had not expanded the scope of the referral.

This is a permit but disclose proceeding. Despite what AT&T asserts petitioners motion for reconsideration was not limited to a three page request by petitioners. Several filings were made amounting to over 100 pages. The initial filing was simply a brief summary and did point out what petitioner's believe is an FCC error in evaluating the Judge Bassler's referral phrase “as well as any other open issues”.

Petitioners simply wanted to initially make sure that it got its reconsideration request in on time,

then knew it would have to dig through the voluminous record. Petitioners understood that the Declaratory Ruling proceedings are handled by the FCC in a **permit but disclose manner** and understood that it would have the opportunity to address why petitioners believed the Bassler statement: **“as well as any other issues left open,”** also encompassed shortfall and discrimination issues. The error that petitioners believe the FCC made was in its connotation of what Judge Bassler meant when he said **“as well as any other issues left open.”**

Petitioners evidenced a tremendous amount of evidence in its motion for reconsideration.

Petitioners evidenced in the record where the shortfall issues were addressed within the FCC 2003 Decision and directly addressed DC Circuit Judge Ginsburg’s conversation with the FCC’s counsel Mr. Bourne. Petitioner’s showed AT&T’s statements that these issues were before the FCC.

Most notably the error that petitioners pointed out to the FCC was that Judge Bassler was simply mimicking AT&T’s assertion to his Court that all these other issues were open as exhibits A, B, and C evidenced here clearly show.

Tips and Petitioners dispute all the facts that AT&T evidences as misconduct. There is no misconduct with Petitioners request for reconsideration and if there was the FCC at that time would have pointed it out. **Petitioners later withdrew its motion for reconsideration and thus AT&T suffered no impact of a reversal.**

Now, months later AT&T claims that the reconsideration was only 3 pages and did not point out an FCC error. It wasn’t three pages and it did point out what petitioner’s believed was an error. Why wasn’t AT&T commenting 5 months ago when petitioners did its reconsideration request?

AT&T actually presents this as “misconduct of the severest form!” AT&T’s trumped up sanction claim is a total waste of the FCC’s limited resources. This is simply further demonstration of the great lengths that AT&T is going through to delay the resolution of all issues---- because AT&T knows full well that the FCC doesn’t believe a word AT&T says in reference to any of the issues.

**Imagine complaining 5 months later about a reconsideration request that has been dropped for over a month! Its Incredible!!!**

If this were any Court, the Judge would hit AT&T with a Rule 11 so fast it would make AT&T’s counsel head spin. Only because it is the FCC does AT&T believe it can get away its nonsense.

AT&T page 12:

Instead, he claimed that he had been led to believe by an **April 27** letter from the Commission's then acting general counsel, Mr. Austin Schlick, that petitioners were free to raise any issues they wanted, and that Mr. Inga thought Judge Bassler had intended to refer all issues. *Id.* at 1.

Again, more AT&T trumped up nonsense! AT&T is pointing to a April 27<sup>th</sup> 2005 letter from the FCC’s GC Austin Schlick as not stating petitioner could define its issues. However in the email from Mr. Schlick that was also copied to FCC counsel John Engle is at Exhibit A page 3 in petitioners 9/27/06 filing, Mr. Schlick states:

**You can define the issue on which you seek a Commission ruling.**

Previous to the above statement Mr. Schlick responded to another petitioner question regarding what other procedural avenues does the FCC make available to adjudicate issues that petitioners wish to define. See page 3 of exhibit A in petitioners 9/27/06 filing which Mr Schlick confirms

that the FCC Decisions would have to be done via the Declaratory Ruling process for the issues in the NJ case.

AT&T's can neither point to the April 2005 letter nor the July 2005 letter from the FCC's General Counsel Austin Schlick regarding the scope of Judge Bassler's June 2<sup>nd</sup> 2006 referral.

FCC Counsel Schlick's statements were **many months prior to Judge Bassler's referral**. The point that the FCC's General Counsel was making is that petitioner's would be permitted by the FCC "to define" whatever Declaratory Ruling petitioners wished. It did not matter what the scope of the future District Court referral was to be. <sup>3</sup>

AT&T again on page 13:

Mr. Inga now claimed that "whether or not Judge Bassler intended to have the other issues addressed is irrelevant," *id.* at 22; *see also id.* at 10 (same), and grounded his right to raise the shortfall and discrimination issues entirely on Mr. Schlick's April 2005 letter.

Petitioner's believed it was true that whether Judge Bassler's referral intended to have the other issues addressed is irrelevant given the fact that any company can request the FCC to issue a Declaratory Ruling as petitioners have. Petitioner's were led to believe that Declaratory Ruling Requests do not have to solely emanate from a District Court Judge. Petitioner's are obviously

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<sup>3</sup> In reference to Mr Schlick's letter of April 27<sup>th</sup> 2005 petitioner's also would like the FCC to know that the FCC advised petitioners that the FCC would only answer **procedural** questions not provide legal advice. Petitioners question was procedural. Petitioners only sought information regarding different processes that the FCC offers to resolve disputes. Petitioners certainly were not asking the FCC Counsel: "What course of action do you think petitioners should take?" Since this 2005 correspondence petitioners have learned the differences between Declaratory Rulings vs. Formal Complaints.

novices and do not understand the FCC's procedural issues as AT&T does but yes petitioner's certainly did believe that it could define the issues it wished the FCC to resolve based upon the FCC's General Counsel statements. The guidelines that petitioner's understand is that as long as there are no disputed facts and there is an issue that is uncertain and of controversy the FCC has broad ability to resolve the issues. The FCC stated at pg 11 para 15 of its 2003 Decision at exhibit B in petitioners 9/27/06 filing:

The Commission has broad discretion under the Administrative Procedure Act and Commission rules to decide whether a declaratory ruling is necessary to "terminate a controversy or remove uncertainty. 5 U.S.C. § 554(e); 47 C.F.R. § 1.2; *see also* 47 U.S.C. §§ 154(i), (j); *Yale Broadcasting Co. v. FCC*, 478 F.2d 594, 602 (D.C.Cir.), *cert denied*, 414 U.S. 914 (1973).

The shortfall and discrimination issues are obviously a controversy filled with uncertainty and must be resolved by the Commission and the FCC does not need a Judge to explicitly ask to have these issues resolved. There certainly is no petitioner misconduct in relying on the FCC's GC statements as AT&T asserts.

Back to the Tips Tax issue and the 3/14/07 letter again as AT&T's brief jumps all over the place.

AT&T's incredible baseless allegations page 14:

In his accompanying March 16th letter to the Commission, Mr. Inga states that he was "a former Enrolled Agent (EA) of the United States Treasury Department and thus a top tax law specialist." *See* Ex-Parte Comments of Tips Marketing Services, Corp. Regarding Internal Revenue Service Primary Jurisdiction Referral to FCC In Support of Petitioner's Declaratory Ruling Request (March 16, 2007) ("March 16 Ex-Parte Comments") at 1. **As such, Mr. Inga "presumably knew people" who worked at the IRS in New Jersey, where he resides.** It is **simply inconceivable** that anyone other than Mr. Inga would have "walked into the Mountainside NJ Internal Revenue Service Taxpayer Service Office" and asked someone to fax this letter.

**Presumably Knew People!!!** Some presumption!!! WOW what an allegation against Tips and the IRS employee based upon a presumption!!!

Yes indeed Mr. Inga was an Enrolled Agent (EA) and a top tax law specialist. This information was provided to let the FCC understand that the tax rewards applications submitted to the IRS and the Florida Department of Revenue were done by someone who knows tax law.

AT&T then takes this fact and then “**presumes**” that Mr. Inga “**knew people**” who worked at the IRS. This clearly gives the connotation that there were **favours being done** and additionally that the IRS employee was not acting in accordance with IRS guidelines.

AT&T then says it is “**simply inconceivable**” that anyone can walk in and get the letter faxed.

As the FCC has already seen AT&T relied up the IRS employee Mr. Schwarmann’s account of what happened and thus AT&T “presumed” wrong. Because Mr. Schwarmann did not return Tips calls and obviously did not look over the established documented Case ID that was accessible in the IRS database, Mr. Schwarmann did not have all the facts to evaluate if Tips did anything wrong.

As the IRS has already seen at exhibit F –AT&T gave Mr. Schwarmann what was uploaded on the FCC server and not the finished product from Ms Lee. The final product additionally included Ms Lee’s personal name stamp which she initialized . Ms. Lee also placed her IRS badge number on the document after it was faxed. Ms Lee in fact wrote “Sent OK” on the document after the fax went through.

Mr Inga was a private tax practitioner **not an IRS employee** as AT&T asserts and stopped practicing tax law about 20 years ago before the IRS ever came up with its Taxpayer Advocate Service. That is why the IRS Investigation Rewards Department had to tell him about the Taxpayer Advocate Service as a way to resolve the shortfall impasse because Mr. Inga did not know about this Taxpayer Advocate IRS department as it was not around 20 years ago.

The IRS Mountainside office is an IRS walk in center that services people throughout the day. AT&T has written its brief in hopes that the FCC would believe that there was some IRS office that housed a good ol' buddy that Mr Inga worked with. **This is what AT&T is now resorting to!!! Asking for sanctions on its presumptions!!!** The FCC can not let AT&T make these type of baseless filings!!!

The IRS agent Ms Lee just didn't fax the letter without any questions asked, she was given full contact information of the IRS Investigations /Reward Dept. and understood Tips was there from the recommendation to the Tax payer Advocate Service.

As AT&T has done with its entire motion for sanctions filing, AT&T also completely made numerous false "presumptions" to the IRS that led to a full federal investigation. AT&T literally made a federal IRS investigation case based upon AT&T's allegations to the IRS ---- the same false allegations and off the wall presumptions as AT&T now also makes to the FCC.

All of AT&T's "presumptions" were checked by investigators who did receive substantial correspondence and verified what happened with all IRS employees. The IRS has already notified Tips on June 11<sup>th</sup> 2007 that all of AT&T's forgery, fabrication, and "doing special favors for friends of Mr Inga" claims were totally bogus and the IRS was no longer investigating Mr. Inga for AT&T's false allegations.

It could only assume that AT&T was also told on the same June 11<sup>th</sup> 2007 date that the IRS employees were not doing any special favors for Mr Inga as AT&T asserted. If AT&T was told on the same June 11<sup>th</sup> date as Tips then AT&T knowingly filed for sanctions when it already knew the outcome of the IRS investigation.

However even assuming that AT&T had not been told as of the same June 11<sup>th</sup> 2007 date---which is prior to its FCC sanction filing---AT&T should have waited for the results of the IRS investigation which it initiated.

*In re Litigation Trust Recovery*, 17 FCC Rcd 21852, 21857-58 (2002). Sanctions are appropriate for the filing of frivolous pleadings, as AT&T has filed, which include those made when "**there is no 'good ground to support it,'**" those "**'filed without any effort to ascertain or review the underlying facts.'**"

Therefore if AT&T filed on June 12<sup>th</sup> 2007 without having already been advised by the IRS that the issue has been resolved favorably to Tips that means AT&T "**'filed without any effort to ascertain or review the underlying facts.'**"

AT&T instituted the IRS investigation and either ignored the Tips favorable results or filed without the underlying facts.

AT&T is **now complaining** about a 3/14/07 letter, which petitioners **already voluntarily withdrew** and immediately replaced the very next day after the Roy Schwarmann letter was seen ---with the April 3<sup>rd</sup> 2007 referral letter from he Taxpayer Advocate Service office.

Why didn't AT&T contact the **FCC** or **Tips** when it received the March 23<sup>rd</sup> 2007 letter from the IRS agent, Roy Schwarmann? Now AT&T writes the FCC about 3 months after it receives the 3/23/07 letter from Schwarmann and states that it now has a problem with a letter **that was**

**already voluntarily withdrawn---- that had no effect on the case whatsoever!** This is absolutely amazing! No Judge would put up with AT&T's frivolous arguments and the Commission should not either.

When AT&T saw that Judge Wigenton was not responding to AT&T's amazing request to depose all the IRS employees AT&T should have stopped right there. **Instead AT&T actually wants the FCC to police the IRS!**

In AT&T's April 2<sup>nd</sup> 2007 letter to Judge Wigenton AT&T claimed the same false allegations to Judge Wigenton and told the Judge "Your Honor this is very serious"! Petitioner's think Judge Wigenton can decipher what is serious and what is obvious AT&T trumped up "forgery" and "fabrication" "allegations.

Imagine AT&T actually requesting Judge Wigenton to allow depositions taken of IRS employees—going right over the IRS's heads !!! Judge Wigenton never even responded to AT&T, recognizing the 3/14/07 document was obviously not a so called "forgery" or "fabrication".

AT&T then went directly to the IRS and again fabricated numerous –"presumptions" with all of its "inconceivable" statements of "presumed inside IRS friends of Mr Inga that were presumably doing favors for Mr Inga or receiving compensation from Mr Inga.

All of AT&T's fabrications regarding the IRS involvement has now been dismissed by the IRS.

AT&T page:17

The more recent “referral” to which Mr. Inga adverted in his email was a letter from the Taxpayer Advocate Center. The TAC is an independent component that does not speak for the IRS, but instead **“independently represents [taxpayer] interests and concerns “within the IRS.”** See [www.irs.gov/advocate/article/0,,id=97392,00.html](http://www.irs.gov/advocate/article/0,,id=97392,00.html) (last visited June 12, 2007) (emphasis added). Indeed, the TAC letter states that TAC is **“authorized to resolve issues that are at an impasse “at the IRS.”** Exh. 4 attached hereto (emphasis added and deleted). The letter does not state that the IRS is conducting any “investigation” into AT&T’s alleged failure to pay taxes, but rather that Mr. Inga is pursuing a tax reward claim. *Id.* As an advocate for Mr. Inga’s interests within the IRS, therefore, the case advocate is simply writing on behalf of Mr. Inga, not the IRS itself, because Mr. Inga’s private bounty claim is, unsurprisingly, going nowhere with the IRS (*i.e.*, is “at an impasse”). *Id.*

AT&T again makes Tips Marketing Services point. Again, AT&T keeps stating that the IRS is dealing with Mr. Inga . The IRS is dealing with Tips Marketing.

Regarding AT&T’s conjecture about the tax investigation:

**“unsurprisingly, going nowhere with the IRS”**

obviously is false because the IRS would not have referred Tips to the Taxpayer Advocate Service if the IRS was not investigating AT&T. The IRS Investigations /Rewards Department additionally noted the Tips file when the recommendation to Tips was made to use the Taxpayer Advocate Service. This was probably also verified by the IRS investigators.

Yes indeed the Taxpayer Advocate Service is an IRS office that ---as AT&T states:

**“independently represents [taxpayer] interests and concerns within the IRS” and is authorized to resolve issues that are at an impasse at the IRS.”**

What is the impasse? Based upon the evidence presented by Tips, there is the probability that

AT&T has failed to pay various forms of taxes. The taxes however are to be calculated upon the shortfall charges. The impasse in Tips rewards applications is simple: The taxing authorities have been made fully aware that there is an issue as to whether the shortfall charges should have been charges in the first place. The shortfall charges possibly represent the taxable base to apply the tax rates to.

The Impasse: Until the FCC decides the duration in which an aggregator can utilize the pre June 17<sup>th</sup> 1994 grandfather provision and decide whether AT&T can rely upon such shortfall charges due to illegal remedy application, the IRS Investigation/Rewards Department and Florida can not continue the investigation. Therefore the situation is at an impasse!

The IRS Investigation/Rewards Department therefore gave Tips the toll free number of the Taxpayer Advocate Service because Tips had standing and needed to resolve its IRS/Tips impasse. As mentioned previously the IRS Investigation/Rewards Department also faxed to the Taxpayer Advocate Service a case status document (exhibit G) addressed to Tips Marketing stating:

**“Your claim is still open and under active consideration”**

Therefore AT&T’s statement:

The letter does not state that the IRS is conducting any “investigation” into AT&T’s alleged failure to pay taxes

Obviously this is wrong. AT&T’s claim that the FCC was being misled by Tips as to the reality of the IRS investigation is obviously false. There is no misconduct. The only misconduct is AT&T’s for jumping to conclusions with false presumptions.

AT&T page 17:

This letter thus demonstrates that the IRS has not been investigating AT&T for "massive tax fraud," as Mr. Inga has repeatedly told the Commission, but rather that he has attempted to use Commission processes to serve his interests in a private tax-bounty request.

Obviously this above AT&T assertion is wrong, as the IRS confirmed via fax for the Taxpayer Advocate Service that there was an active investigation.

What is massive tax fraud? Hundreds of millions of shortfall occurred in the 1990's ---just on toll free services alone---as the AT&T Revenue at Risk Report ( exhibit HH in petitioners 9/27/06 filing ) indicates these type of astronomical numbers. Remember when looking this report these are all three year contracts so multiple the annual commitment by three. Hundreds of millions of shortfall occurred but petitioner's plans were pre June 17<sup>th</sup> 1994 immune.

The Revenue At Risk Report is for toll free only and doesn't even include Software Defined Network ( SDN); Distributive Network Services (DNS); Virtual Tariff Network Services, (VTNS); Tariff 12 ; and Contract Tariffs.

If the FCC determines that the shortfall is permissible not only will the IRS be able to move but the IRS has informed Tips that it has a US State notification system to immediately notify all US States to do their own investigation. Therefore the tax ramifications if the shortfall is permissible is indeed massive.

Both the IRS interests as well as Tips interests may be served by the FCC resolving the shortfall issues that petitioners also requested 9/27/06 in accordance with the FCC's General Counsel Office confirmation of the FCC's procedural method to resolve issues.

AT&T page 18:

**6. Mr. Inga's Efforts to Cut Short the Proceedings Before the Commission Resolves the Referred Issue.** Mr. Inga's conduct since submitting the TAC letter provides equally strong evidence that he knowingly attempted to defraud the Commission. After months of arguing that the Commission should expand the scope of the proceedings, Mr. Inga has abruptly changed course and attempted to declare the re-instituted proceedings over.

AT&T is making a ridiculous argument that petitioners were looking to totally vacate the FCC because of the IRS 3/14/07 IRS letter. First of all the recent Order from Judge Wigenton denied petitioners request to submit briefs to **modify the Judge Bassler order and return to the FCC.** If petitioners---according to AT&T---were running from the FCC there would have been no request to modify the Order **and go back to the FCC.**

As AT&T's exhibit 15 indicates it was AT&T that left the FCC and went back to the District Court and filed over 100 pages of "updates" on case 06-210 when supposedly AT&T was addressing an entirely different case having to do with petitioners designated contacts person at AT&T.

Petitioners noted this:

AT&T on March 9th filed a brief with the District Court to supposedly just address the designated contact issue but decided that it would also provide Judge Wigenton with information on the case before the FCC.

The information AT&T provided was totally irrelevant to AT&T's attempt to modify a Court Order as to who I can contact at AT&T.

What AT&T has done in the filing to the District Court is an obvious attempt to "frame its position" on what is before the FCC to the new Judge.

If AT&T was that interested in making sure Judge Wigenton was "up to speed" on the case why not just point her to the case file ID 95-908; there she can read a thousand pages!!!

Now that AT&T "in its attempt to frame the issue" has opened the Judge up to issues that are before the FCC, petitioners must counter AT&T's attempt to frame the FCC issues.

Judge Wigenton was only asked by petitioners to provide a briefing schedule to address what was before the FCC or to lift the stay if petitioners future filings so moved her. Judge Wigenton did not have any of the petitioner's filings before her. Judge Wigenton only had 100 pages of AT&T's filings in her lap. Based upon AT&T's filings only did Judge Wigenton decide what she wanted before the FCC.

The lengthy AT&T exhibit 17 was filed with Judge Wigenton and to the new Judge Wigenton it probably sounded like AT&T was right and petitioners were wrong. Much of AT&T's exhibit 17 "creative revisionist history" to Judge Wigenton is also of course filed again by AT&T within its June 18<sup>th</sup> 2007 FCC filing.

The difference is that petitioners are now able to pick AT&T's June 18<sup>th</sup> 2007 FCC filing apart and totally destroy it. In comparison Judge Wigenton made her decision not to modify the Judge Bassler Order from the AT&T's 100 pages of filings AT&T submitted and Judge Wigenton never even asked to see petitioners brief.

AT&T actually threatened petitioner's with sanctions if petitioner's went back to Judge Wigenton. However it was AT&T of course that went back first and loaded her with its "creative revisionist history" that the FCC itself has witnessed is very misleading.

AT&T claims the IRS letter sent petitioners to the District Court. This is nonsense! The IRS letters have nothing to do with the discovery of the 1995 and 1996 oral argument transcripts, the multiple certifications, and the briefs all of which explicitly evidence AT&T counsels and employees conceding that S&T obligations do not transfer on “traffic only” transfers.

Additionally petitioners reviewed Judge Bassler's Decision and realized that Judge Bassler made a critical error in reading the FCC2003 Decision- stating the FCC's 2003 decision only stated that S&T obligations do not transfer under the Fraudulent Use Heading of the FCC decision—when it clearly was under 2.1.8 heading.

If there were no IRS letters obtained by Tips, the petitioner companies would still have gone back to Judge Wigenton with the additional explicit AT&T concessions.

Equally bizarre of an assertion is AT&T's connotation of petitioners statement that the FCC proceedings were over was a statement that meant petitioners **wanted to leave the FCC.** The record shows that this statement was made in conjunction with the clear new evidence found that conclusively answered the Judge Bassler question on precisely which obligations transfer on a “traffic only” transfer. The proceeding are over means there is no more possible argument ---the additional evidence now brings this case to the point where the FCC does not need to review anything else and the **FCC needs to now immediately rule in petitioners favor.**

On April 3<sup>rd</sup> 2007 the day after AT&T's so called advisement that petitioners were "caught by AT&T" -----petitioners filed with the FCC the following on page 1:

Therefore drop the reconsideration on the sole remaining discrimination issues under reconsideration. **Just resolve the "traffic only" transfer issues and the IRS Referral on the shortfall issues until Judge Wigenton issues a referral on discrimination issues.**

Where does AT&T come up with this nonsense that it was petitioner's quest was to vacate the FCC because it was 'caught'? Petitioners were clearly advising the FCC to rule on the first two issues and petitioners will seek to get a referral from Judge Wigenton on discrimination.

Additionally consider the numerous submissions made by petitioners from April 2<sup>nd</sup> 2007; which there were 12 additional briefs! If petitioners were running from the FCC, petitioners would not have stayed at the FCC and continued to submit 12 additional briefs during April, May, and June. AT&T just keeps making things up that are totally opposite the facts of the record.

Furthermore AT&T's timeline is again totally out of whack. AT&T asserts that due to its April 2<sup>nd</sup> 2007 letter in which petitioners first saw the Roy Schwarmann letter that this caused petitioners to use the new evidence it found as an excuse to supposedly leave the FCC.

This can not be true because prior to the April 2<sup>nd</sup> 2007 petitioners filed on March 27<sup>th</sup> 2007 an email that was also copied to Ms Shetler advising the FCC that AT&T had been refusing to provide publicly filed briefs that answered Judge Basslers question conclusively.

March 27<sup>th</sup> 2007: In part states:

Please ask your counsel to email a copy of these 2 briefs to my counsel Mr. Arleo. This is not a discovery issue. These are briefs that AT&T has already publicly filed. **Unfortunately, due to the AT&T concession, we anticipate AT&T not cooperating to provide the briefs, and Mr Arleo will probably need to ask Judge Wigenton to ask your counsel to provide another courtesy copy.** Maybe AT&T can surprise us so we do not have to ask Judge Wigenton for this, which is normally a professional courtesy. Given the fact that the FCC proceedings are a permit but disclose proceeding we are making ex-parte contact with the FCC and advising the FCC that this **very important concession** by AT&T counsel is coming. AT&T would of course be able to comment. Please let Mr. Arleo know and the FCC know if AT&T will be providing these AT&T briefs.

Petitioners ended up having to ask Judge Wigenton to order AT&T to provide the briefs. AT&T understanding that Judge Wigenton would do so sent the brief.

Petitioners then asked for the rest of the 1995 and 1996 file and AT&T's Richard Brown said I will have my secretary look for them. About two weeks went by without AT&T "finding" these additional briefs. In that time a counsel formerly used by petitioners discovered them in a box that he did not realize he still had.

The effort by petitioner's to dig for all the 1995 files came **prior to AT&T's April 2<sup>nd</sup> 2007 letter** and the new 1995 and 1996 evidence of course had **nothing to do with Tips IRS letter as AT&T misleads the FCC.**

Another petitioner statement shows no one was running from the FCC due to the 3/14/07 letter.

Petitioners will advise the Court that besides the traffic only transfer issue being before the FCC the shortfall issues has been referred to the FCC by the IRS.

This above petitioner statement shows the issues are at the FCC not looking to get away from the

FCC as AT&T asserts.

AT&T page 18-19

Mr. Inga has followed this submission up with several others that purport to identify additional statements in which AT&T supposedly conceded away **the central issue that the parties have been litigating for a over decade—i.e., whether a transferee of traffic must accept "all" of the transferor's obligation, including any obligation to pay shortfall and termination charges.**

AT&T tries to change what the “central issue that the parties have been litigating for over a decade” by misrepresenting that it was always an issue to transfer shortfall and termination obligations on a “traffic only” transfer. Petitioner’s have covered this in depth showing AT&T’s ploy.

AT&T page 19:

Like so many of his arguments in this proceeding, Mr. Inga's "concession" claims are utterly baseless. In one of his most recent emails to the Ms. Shetler, for example, Mr. Inga provides the following excerpt from a 1995 hearing before Judge Politan.

Whitmer: Mr. Inga, you know, do you not, that if the service, except for the home account—or Mr. Yeskoo called it the "lead account"—is transferred to PSE, the **shortfall and termination liabilities remain with Winback & Conserve,** isn't that correct?

In this submission, Mr. Inga assumes that, because petitioners would remain "jointly and severally liable" for shortfall and termination charges, this means that the transferee, PSE, was not required to assume those same liabilities. But this quote obviously means no such thing. The whole point of joint and several liability is to require a transferor to remain liable for obligations even after someone else assumes them. The statement is thus completely consistent with AT&T's contention that the transferee, PSE, had to assume all of the transferor's obligations, including the obligation to pay shortfall and termination charges.

The above is more AT&T nonsense for several reasons:

**Point One:**

AT&T's position to the FCC in 2003 was correct that remaining jointly and severally liable on S&T obligations only occurred for plan transfers not "traffic only" transfers. AT&T counsel explained this to the commission:

AT&T's 2003 FCC Public Comments (exhibit Z to petitioners 9/27/06 filing)

Moreover, as AT&T's customers for all of the locations and all of the traffic generated under the tariffed plans, in terms of the *transfer of such accounts* the Petitioners would, "**but for**" the attempt to bifurcate the traffic from the **underlying plans, remain jointly and severally liable** with the new customer for **all obligations** existent at the time of the transfer.

**Point Two:**

Tariff Section 2.1.8E conclusively confirms that the duration period in which the transferor remains jointly and severally liable for S&T obligations only pertains to **plan transfers not "traffic only" transfers**---due to the fact that S&T does not transfer on a traffic only transfer. That is why 2.1.8E does not address the duration of remaining jointly and severally liable for S&T obligations transferring on a "traffic only" transfer. See exhibit AA in petitioners 9/27/06 filing.

**Point Three:**

If AT&T was correct and S&T obligations transferred to PSE on a traffic only transfer then PSE would receive the S&T obligations and CCI would remain jointly and severally liable for the S&T obligations. **Winback and Conserve (the petitioners) would no longer be jointly and severally liable for the S&T obligations under AT&T's scenario**—because only two parties--the **Former** ( singular not plural) and new **Customer** ( singular not plural) would be liable on obligations that are actually transferred under section 2.1.8.

The fact that Mr. Whitmer concedes that Winback and Conserve (the petitioners) would continue to remain jointly and severally liable for S&T obligations is a concession that the S&T obligations do not transfer to PSE from CCI. If the S&T obligations actually transferred from CCI to PSE the 3<sup>rd</sup> generation party (Winback& Conserve petitioners) would no longer be jointly and severally liable.

AT&T's statement:

Mr. Inga assumes that, because **petitioners would remain "jointly and severally liable" for shortfall and termination charges**, this means that the transferee, PSE, was not required to assume those same liabilities. (Petitioners as Mr. Whitmer states is Winback)

Mr. Inga is not assuming. It is a tarified fact. If Winback remains jointly and several liable with CCI ----then under 2.1.8-----CCI can not remain jointly and several liable with PSE. Only two parties the FORMER CUSTOMER (singular) and the NEW CUSTOMER (singular) can be jointly and severally liable if S&T actually did transfer which it only does on a PLAN transfer.

Mr. Whitmer's observation that (Winback) remained jointly and severally liable is accurate and by 2.1.8's terms means PSE can not be liable for S&T obligations of CCI. Remember the reason why the Winback remained jointly and severally liable for the S&T obligations with CCI is that Winback's PLANS were transferred to CCI not "traffic only" transferred from Winback to CCI. Mr. Whitmer was simply stating a tarified fact in his fraudulent use argument which conceded the transferors plans revenue commitments and associated S&T obligations do not transfer on a traffic only transfer.

AT&T states that Mr Whitmer's statements are consistent with its new theory but in actuality the Mr. Whitmer statements are totally inconsistent with AT&T's new position. Mr Whitmer's

statements are consistent with the following key AT&T counsel Mr Whitmer statements that support his stance that PSE was not obligated to assume PSE's plan obligations: :

Here is AT&T counsel Fred Whitmer's letter of February 6<sup>th</sup> 1995 to Winback: (See Exhibit X to petitioners initial filing)

Mr. Inga's efforts to transfer these end users and **leave the plans intact with their commitments**, .....AT&T will seek to enforce its rights **in the event shortfall and termination charges** become due under the tariff and will hold Mr. Inga personally liable for his conduct intended to deprive AT&T of its tariff charges.

More AT&T Counsel Whitmer Concessions are seen in AT&T's Counsel Mr. Whitmer's March 30<sup>th</sup> 1995 brief to the District Court page 2. Exhibit E to petitioners 5/24/07 posted filing.

In response, plaintiffs have tried from the outset of this action to convince this Court **that their liabilities to AT&T are illusory**, thereby hoping to persuade the Court to order AT&T to permit the two-step transfer without either requiring CCI to furnish a security deposit or **requiring PSE to accept the plans (and all of their liabilities) in addition to the traffic.**

Notice Whitmer doesn't say requiring PSE to accept the plan obligations. He states requiring PSE to accept the plans. He understood that plan obligations stay with the plan.

More Whitmer concessions: Oral Argument 3/8/95 Judge Politan speaking to petitioners counsel quoting Mr. Whitmer's brief: Exhibit F to petitioners 5/24/07 posted filing.

Judge Politan: Wait. Let me get to page 23 of Mr. Whitmer's brief. He Says: "If PSE took assignment of **the plans** from Winback & Conserve, **thereby accepting shortfall and termination liability**, AT&T would effect transfer."

More Whitmer concessions Oral Argument 3/8/95 page 13 -14: Exhibit G to petitioners 5/24/07 posted filing.

MR. WHITMER: The reason is CCI originally was going take the plans, your honor; **This is an important distinction.** They were going to take **the plans** so that the shortfall and termination liability----- **the shortfall and termination liability would have followed the plans to CCI.** It was because **CCI was financially incapable of satisfying shortfall and termination** that we, AT&T, demanded a security deposit of \$13 million.

Yes CCI kept the S&T obligations. Petitioners have evidenced many more AT&T counsel Fred Whitmer assertions that S&T obligations do not transfer on “traffic only “ transfers but petitioners believe the following one is the key.

To follow Counsel Whitmer points to his fellow counsel Richard Meade’s November 1995 certification to the District Court and which Mr Meade explains at para 15 how AT&T looked to resolve 2.1.8’s AT&T problem; what AT&T referred to as “the problem implicated in the CCI-PSE transfer, the **segregation of assets (locations) from liabilities (plan commitments).**”

1/23/96 District Court Oral Argument. See Exhibit EE to petitioners 5/24/07 posted filing:

22 MR. WHITMER: I'll hand it up to your Honor.

23 THE COURT: Sure.

24 (Document handed to the Court.)

25 MR. WHITMER: **If you look at paragraph 15**<sup>4</sup>

1 THE COURT: Paragraph 15.

2 MR. WHITMER: You can look at everything,  
3 obviously.

4 THE COURT: You say look at paragraph 15.

5 "On October 26, 1995, AT&T Corp. filed Tariff

6 Transmittal No. 9229 with the FCC. Transmittal No. 9229

7 **addresses the “problem” implicated in the CCI-PSE**

8 **transfer the segregation of assets (locations) from**

9 **liabilities (plan commitments)** in the following

10 manner. (Relevant pages of Transmittal 9229 are attached

11 hereto as Exhibit E.) Section 2.5.8.B (Shortfall Deposits)

12 gives AT&T the right to demand a deposit to cover

---

<sup>4</sup> Meade Concession: Exhibit N in petitioners 9/27/06 filing, see paragraph 15 and 16 of Meade certification explaining how 2.1.8 works (plan obligations do not transfer) and how AT&T was to address this problem of separating accounts from liabilities.

13 shortfall charges in the event: a) the term commitment is  
14 greater than one year; b) **the customer is asked to remove**  
15 **locations (by transfer or otherwise) such that the**  
16 **remaining locations would generate charges less than 80**  
17 **percent of the revenue commitment; and c) the customer's**  
18 **net assets are insufficient to secure against the risk of**  
19 **shortfall or the customer's financial responsibility is**  
20 **not a matter of record. Section 2.1.8 (Transfer of**  
21 **Service) of Transmittal No. 9229 specifies that AT&T has**  
22 **the right to reject the requested transfer if either party**  
23 **fails to pay a required deposit.”**  
24 That's it.  
25 MR. WHITMER: **Yes, sir.**

### **Mr Whitmer confirms his co-counsel Mr Meade's interpretation of 2.1.8**

Mr Meades certification then went on and explained that this **AT&T problem** was not just unique to the CCI –PSE transfer as AT&T resolved the 2.1.8 problem **for the entire industry;** and Meade noted in paragraph 16 exhibit N to petitioners 9/27/2006 filing that since it was a new change to 2.1.8 it would not be determinative of the issue presented on the CCI/PSE transfer. Petitioners transfer was in effect grandfathered:

Mr Meade certification to District Court (Exhibit N pg.7 para 16 of initial filing.)

The Deposit for Shortfall Charges included in Transmittal No. 9229 is a “new concept” that meets AT&T's **business concern** more directly, without addressing the question of intent. Because this is new, it will apply only to newly ordered term plans, and so would not be determinative of the issue presented on the CCI/PSE transfer.

### **Very Simple:**

***AT&T Counsel Meade wouldn't have had a stated “problem” and “business concern” under 2.1.8 if AT&T's new theory were true---that revenue commitments and their associated S&T obligations transferred on “traffic only” transfers.***

Meade's stated "problem" and "business concern" with Section 2.1.8 was because the S&T obligations never transferred on "traffic only" transfers!

If S&T obligations actually transferred there would be no "problem" or "business concern"!

But because there was a problem AT&T added Deposit Requirements to Address its stated "problem" and "business concern"

If AT&T new theory were true AT&T of course wouldn't have attempted to retroactively enact Tr.8179 to mandate that when a substantial "traffic only" transfer was ordered the plan must transfer. (See Tr. 8179 at exhibit L in petitioners 9/27/06 filing)

AT&T's explanation to cover for Mr Whitmer is contrary to the enormous record evidence and totally inconsistent with AT&T new theory. There is absolutely no doubt that Mr Whitmer clearly understood PSE is not obligated to assume revenue commitments on a "traffic only" transfer as he confirmed Mr Meade's concession to Judge Politan. Petitioner's have another dozen Whitmer concessions if this is not enough. At this point it is actually insulting to the Commission that AT&T still believes it can cover for Mr Whitmer.

AT&T page 20:

Moreover, as the Commission is aware, such "evidence" has no place in these proceedings. "It is a well settled rule of tariff interpretation that '[t]ariffs are to be interpreted according to the reasonable construction of their language; neither the intent of the framers nor the practice of the carrier controls."

AT&T wants the Commission to ignore all the AT&T's certifications and testimony (Whitmer, Meade, Williams, Carpenter, Barillari, Friedman) all conceding S&T obligations do not transfer on "traffic only" transfers.

AT&T also wishes the Commission to totally ignore the fact that AT&T claimed to Judge Politan it has done thousands of “traffic only” transfers and can not show one in which S&T obligations actually transfer.

AT&T wants to Commission to look at the reasonable construction of 2.1.8—so lets do that:

#### Point One

Under AT&T’s theory it would not be reasonable under 2.1.8 for a transferee to assume the entire revenue commitment when the transferee is only assuming part of the transferor’s traffic.

#### Point Two

Under AT&T’s theory it would not be reasonable for the transferee to have to accept the bad debt on accounts that were never transferred to it.

#### Point Three

Under AT&T’s theory it would not be reasonable for the transferee to have to accept the unexpired portion of minimum applicable payment period on accounts that were never transferred to transferee. As noted in petitioners 5/11/07 filing this could amount to substantial charges for accounts never transferred.

#### Point Four

Under AT&T’s theory it would not be reasonable for the transferor to transfer a few accounts to a transferee and the transferor would be able to divest itself of its entire commitment. The revenue commitment must stay with the transferor who must put up the deposit when making the commitment.

#### Point Five

Under AT&T’s theory it would not be reasonable for AT&T to have additional commitments afforded AT&T on the same traffic transferred if the transferor had already met its fiscal year commitment on that same traffic. AT&T would be doubly compensated on the same traffic transferred. This would lead to discrimination amongst AT&T customers as the transferees would have to make increased commitments on traffic received but would not receive lower rates.

## Point Six

Under AT&T's theory it would not be reasonable for AT&T to expect S&T obligations to transfer on "traffic only" transfers when 2.1.8 does not state that S&T obligations are required to transfer on "traffic only" transfers. The two obligations that are listed are neither revenue commitments.

Clearly the reasonable construction of the 2.1.8 tariff provision could never be construed to mandate all of the plan obligations transfer on a "traffic only" transfer when **the revenue commitment is based upon the AT&T aggregator customers' plan which does not transfer and for which the deposit requirement is calculated on.**

AT&T page 24:

Yet, Mr. Inga persisted in arguing, in his April 3<sup>rd</sup> submission, that the Commission should "resolve the 'traffic only' transfer issues *and the IRS Referral on the shortfall issues* until Judge Wigenton issues a referral on discrimination issues." *Id.* (emphasis added). There is no conceivable excuse for his continued reliance on the IRS letter after April 2<sup>nd</sup>.

AT&T falsely assumes that on April 3<sup>rd</sup> the March 14<sup>th</sup> letter was being relied upon. As AT&T has confirmed the first time that the Roy Schwarmann letter was seen by petitioners was April 2<sup>nd</sup> 2007 within AT&T's filing to Judge Wigenton.

Prior to Tips statements being made to the FCC regarding what was before the FCC the IRS referral on April 3<sup>rd</sup> 2007 ( the second referral) had already been agreed upon earlier that day by the IRS Taxpayer Advocate Service. Notice the fax scroll of 10:19am from the IRS office in Utah to the Springfield NJ Taxpayer Advocate Service fax number for Mr. Acquino and Mr Gardiner.

Prior to 10:30 am the Taxpayer Advocate Service in Springfield had already participated in a conference call with the IRS Investigation Rewards Department and had already received its requested questions from Tips to ask the FCC and made its modifications—and the letter was agreed upon by the Advocate. Therefore statements to the FCC was a reliance upon the new IRS Taxpayer Advocate Service letter not the March 14 2007 letter as AT&T again falsely presumes. What time in the afternoon the Advocate got around to faxing the FCC the letter later early afternoon on that April 3<sup>rd</sup> day is not as important as the earlier time the Advocate agreed upon the new letter.

Additionally, the National Taxpayer Advocate had already been contacted on April 2<sup>nd</sup> 2007 right after AT&T's introduction of the Roy Schwarmann letter to Tips and the IRS's Mr Cain had already assured Tips that the Taxpayer Advocate Service would rectify the use of the wrong IRS Department in Mountainside NJ and get the FCC letter re-issued.

Furthermore, as of April 3<sup>rd</sup> 2007 the Mountainside NJ manager Ms. Russell had not yet even returned the phone call to address Mr. Roy Schwarmann's 3/23/07 letter that AT&T failed to disclose until April 2<sup>nd</sup> 2007. Tips which witnessed Ms Lee place her IRS name stamp, initials, badge number, and write sent on the document was perplexed as to why Mr Schwarmann wrote such a letter on March 23<sup>rd</sup> 2007. Tips believed that Mr Schwarmann had the final product of Ms. Lee and **therefore could not understand why he would write such a letter.** Only now does Tips realize that Mr Schwarmann when writing his March 23<sup>rd</sup> 2007 letter **was basing it upon what AT&T gave him off the FCC server!** Tips mistakenly uploaded the faxed document instead of the final product and the faxed document did not have her IRS name stamp, her initials, and her badge number and marked the document as "Sent Ok."

Therefore it was Tips belief as of that April 3<sup>rd</sup> 2007 date that the 3/14/07 IRS letter would also be

addressed as proper once the evidence was presented to the IRS agent Mr Schwarmann—which as of that point none had been presented. Ultimately after all evidence was considered the IRS determined AT&T's allegations were totally false.

The fact that Tips immediately reacted to the Roy Schwarmann letter and rectified the erroneous referral of Tips by the IRS to the Mountainside NJ office--- by the very next morning----- obviously shows Mr. Inga was very upset to be falsely accused by the Roy Schwarmann letter exhibited within AT&T's letter to Judge Wigenton of April 2<sup>nd</sup> 2007. Tips was anxious to address AT&T's assertions to Judge Wigenton and the Roy Schwarmann letter, which it **immediately did.**

The actual timeline that the FCC should note is the following:

On March 14th 2007 AT&T sees the first 3/14/07 letter and does not contact Tips or the FCC but runs to the IRS.

On 3/23/07 AT&T gets the IRS to issue the Roy Schwarmann letter but notifies no one.

On April 2<sup>nd</sup> 2007 AT&T--- ten days later---introduces the letter to Tips but still does not inform the FCC. AT&T requests Judge Wigenton to depose all IRS officials and makes multiple allegations of fraud etc against Mr. Inga.

April 3<sup>rd</sup> the new letter is issued.

Judge Wigenton does not respond to AT&T's request to depose IRS employees. Judge Wigenton obviously recognized that even the letter without the additional documentation added after the faxing by Ms Lee----was not a forged or fabricated document. **Judge Wigenton did not allow AT&T to depose anyone.**

AT&T frustrated by Judge Wigenton's non action AT&T then turned back to the IRS and made outlandish allegations to the IRS which led to a full scale investigation by multiple IRS Internal Affair people.

Early on June 11<sup>th</sup> the IRS advises Tips that it reviewed all of Tips information and has interviewed all IRS people involved and will not be pursuing Tips. The allegations AT&T made were all proven false.

It could only assume that AT&T was also told on the same June 11<sup>th</sup> 2007 date that the IRS employees were not doing any special favors for Mr Inga as AT&T asserted. If AT&T was told on the same June 11<sup>th</sup> date as Tips then AT&T knowingly filed for sanctions when it already knew the outcome of the IRS investigation.

However even assuming that AT&T had not been told as of the same June 11<sup>th</sup> 2007 date---which is prior to its FCC sanction filing----AT&T should have waited for the results of the IRS investigation which it initiated.

*In re Litigation Trust Recovery*, 17 FCC Rcd 21852, 21857-58 (2002). Sanctions are appropriate for the filing of frivolous pleadings, as AT&T has filed, which include those made when "**there is no 'good ground to support it,'**" those "**filed without any effort to ascertain or review the underlying facts.'**"

Therefore if AT&T filed on June 12<sup>th</sup> 2007 without having already been advised by the IRS that the issue has been resolved favorably to Tips that means AT&T "**filed without any effort to ascertain or review the underlying facts.'**"

AT&T instituted the IRS investigation and either ignored the Tips favorable results or filed without the underlying facts.

Judge Wigenton was not responding to AT&T's request to depose the IRS employees and either AT&T ignored the IRS closing of the case the on June 11<sup>th</sup> 2007 or just refused to wait to hear from the IRS then filed on June 12<sup>th</sup> 2007 its sanctions motion with the FCC. For the 3<sup>rd</sup> time AT&T made the same baseless allegations that neither Judge Wigenton nor the IRS Investigations unit would entertain. On June 12<sup>th</sup> AT&T for the first time presents to the FCC the 3/23/07 Roy

Schwarman letter after it has already been withdrawn by Tips back on April 12<sup>th</sup> 2007 and replaced with the new letter April 3<sup>rd</sup> 2007.

AT&T amazingly wants the FCC to now entertain resolving tax issues and IRS affairs when the District Court and the IRS have already told AT&T its allegations were false. AT&T wants the FCC to decide what the IRS can or can not send to the FCC.

AT&T has simply engaged in a baseless attack after it has already being shot down twice on the same baseless allegations arguing over a 3/14/07 letter **that has already been withdrawn**—and of course AT&T has the Roy Schwarman letter on 3/23/07 and waits till June 12<sup>th</sup> 2007 to show it, and complain to the FCC! If this was misconduct why did AT&T wait about 3 months to show the FCC? Completely trumped up allegations.

AT&T page 24:

His April 12<sup>th</sup> request that the Commission not rely on the March 14<sup>th</sup> letter is all **but** an express concession that it he knew that it was improper to ask the Commission to render decisions on the basis of a fabricated document.

The April 12<sup>th</sup> letter reads in full:

Deena

We ask the FCC **not** to rely upon the March 14th 2007 primary jurisdiction referral on shortfall claims and instead **only rely upon** the one the IRS recently sent directly to the FCC to resolve all shortfall claims in case 06-210.

We are sure that eventually the FCC will post this second IRS primary jurisdiction referral on the FCC Server.

Thank you,

Al Inga Pres.

**Tips Marketing Services, Corp.**

AT&T should be applauding Tips Marketing Services, Corp. for voluntarily asking the FCC not to rely upon the 3/14/07 IRS letter because it inadvertently came from the wrong IRS department. The voluntary notification by Tips Marketing Services, Corp. was not based upon any concession that Tips or its owner Mr. Inga did anything improper as the document was never illegally obtained by Tips from the IRS.

When Tips was notified by Ms Russell that her office does not do these type of letters it took it upon itself to notify the FCC not to rely upon the 3/14/07 letter. Tips should not be ridiculed by AT&T but applauded by AT&T for **immediately** correcting the IRS error of Tips being directed to the wrong office and unknowingly obtaining a letter that is normally not issued by Mountainside Taxpayer Assistance Center.

The FCC must realize the gravity of the false accusations that have been leveled by AT&T's motion. AT&T should not have made such bold accusations when it based its accusations on what it admits were "presumptions" and what it believed was "inconceivable". When you accuse someone of "forgery", and actions that AT&T's brief asserts are "short of bribery" you better be right—but AT&T was flat out wrong—and to do this after AT&T has already been shot down twice on its same arguments is simply a frivolous filing to the FCC.

### **AT&T's History of Taunting Petitioners With Baseless Allegations**

AT&T's constant accusation that petitioners were seeking to defraud AT&T by bankrupting its companies has been AT&T's false accusation since the cases inception. The countless accusations that petitioners "were involved in a two part scheme to defraud AT&T" are countless.

Not until AT&T's Dec 20<sup>th</sup> 2006 –11 years after the 1995 denied transfer did AT&T finally admit that the CSTPII/RVPP plans were pre June 17<sup>th</sup> 1994 grandfathered and thus immune from S&T liability for at least another 18 months.

AT&T's entire fraudulent Use argument was entirely bogus as AT&T finally admitted. These were all frivolous AT&T submissions as AT&T knew its arguments were totally false.

Now AT&T files a submission against petitioners which mostly has to do with baseless allegations against Tips---a non petitioner in Case 06-210. The FCC never even questioned the IRS letters and if it had Tips would have immediately responded to the FCC.

AT&T also names Mr. Inga personally but never shows one bit of evidence that Mr Inga ever was acting outside his capacity as president of his companies.

Indeed, if AT&T's motion for sanctions to the Commission does not deserve sanctions itself, then the Commission's policy against captious, frivolous and abusive pleadings is totally meaningless.

Petitioners respectfully request that the FCC take appropriate action against AT&T for AT&T's false presumptions that AT&T made against Mr Inga and the IRS official. This was an IRS matter for investigation not an FCC matter. AT&T can not be allowed to make baseless extraordinary accusations such as Mr Inga presumably "knew IRS agents." Totally uncalled for!!!

There has been no misconduct by Tips, petitioners or Mr. Inga presented by AT&T. It is AT&T that has engaged in misconduct.

What is misconduct? Misconduct is when you're an AT&T counsel (Whitmer) and the Judge asks you what the status is of Tr 9229 and you tell the Judge that it is **still pending**, then later you point to the brief of your co-counsel Mr Meade that confirms that Tr.9229 went into effect

several months prior on a prospective basis. The intentional misrepresentation to a federal Judge to intentionally delay the case----**now that is what you call misconduct.** Furthermore, Mr Brown and Barillari were in the Court room with Mr Whitmer when he made the statement that Tr 9229 was still pending at the FCC. What AT&T has presented in its sanction motion does rise to anywhere near these type of sanctionable actions.

### **AT&T's Attempt to Change History**

It is one thing to be an advocate for your client, it is another thing to intentionally mislead the FCC. AT&T's short quote and twisting of Judge Politan's referral order can not be believed as an innocent AT&T mistake. AT&T's attempt to make it sound like Judge Politan was referring to the issue being "plan obligations" transferring on a "traffic only" transfer and not his stated referral of Tr. 8179 is pure AT&T deceit. The FCC can not allow AT&T to **go beyond the point of advocacy.**

### **AT&T's Filing of Sanctions Is an Abuse of the FCC's Resources**

The Commission has made it clear that it will not "allow the administrative processes to be obstructed or overwhelmed by captious or purely obstructive" submissions and has "authorized its Bureaus and Offices to impose sanctions upon participants" who abuse those processes. The filing of AT&T's motion for sanctions was done after the IRS has already notified AT&T that there was no fabrication and no forgery--- despite AT&T's false accusations AT&T provided the IRS.

AT&T's accusations that there was **no** IRS investigation even going on—is contrary to the April 3<sup>rd</sup> IRS letter which clearly stated the taxpayer Advocate confirmed there was an active investigation going on.

*In re Litigation Trust Recovery*, 17 FCC Rcd 21852, 21857-58 (2002). Sanctions are appropriate for the filing of frivolous pleadings, as AT&T has filed, which include those made when "**there is no 'good ground to support it,'**" those "**filed without any effort to ascertain or review the underlying facts.'**" AT&T's filing concedes that it presumed Mr. Inga "knew" the IRS agent and speculated that it was inconceivable that the IRS would service Tips. AT&T made no attempt to first contact Tips and have Tips explain what occurred in regard to the 3/14/07 letter. AT&T kept the FCC totally in the dark on the Roy Schwarmann letter and after striking out twice wants the FCC to police the IRS.

If the IRS did not inform AT&T on June 11<sup>th</sup> 2007 as it did Tips that its investigation was concluded ----then AT&T's misconduct filing is just as egregious as AT&T filed when "**there is no 'good ground to support it.'** Either way AT&T's filing is sanctionable.

AT&T should be sanctioned as it is appropriate "**in egregious cases where the abusive nature of the pleadings is clear.'**" *Litigation Trust Recovery*, 17 FCC Rcd at 21858. AT&T already addressed the IRS referral letters to the IRS and AT&T has already been informed that upon full investigation Tips did not engage in any AT&T alleged forgery of an IRS letter. Additionally AT&T went to Judge Wigenton back on April 2<sup>nd</sup> 2007 and Judge Wigenton properly saw no reason to depose IRS employees all over the USA in an effort to stall and run up legal bills.

If the IRS did not inform AT&T on June 11<sup>th</sup> 2007 as it did Tips that its investigation was concluded ----then AT&T's misconduct filing is an **abusive pleading.** Either way AT&T's filing is sanctionable.

AT&T's "issues" should have only been with Tips first then with the IRS---then if Tips did not answer AT&T's issues—the FCC should not have been involved in the IRS investigation of IRS

employees “allegedly doing favors” until the issue was over.

AT&T’s presumptions also accused the IRS employee Ms Lee. Given that fact that AT&T has made the falsely presumed statement that Mr. Inga “knew” her----- this obviously connotes that Ms Lee----- to do what she did----- was somehow being compensated, pressured or just “helping an old friend” as falsely AT&T asserted.

Mr. Inga never met Ms. Lee prior to the day she believed her department was authorized to issue the FCC the 3/14/07 letter. Ms Lee should not have had to have her name tainted by AT&T’s false accusations to the point where Ms Lee was questioned by IRS internal affairs as to her ----- AT&T asserted “prior relationship” with Mr. Inga----- or whether she was compensated.

**The 4 Petitioner’s and Tips Dispute All the Facts that AT&T  
Has Presented for its Motion for Sanctions**

**And Request That The FCC Instead Issues Sanction Against AT&T**

Due to AT&T’s baseless allegations of misconduct levied against petitioner’s and Mr Inga, petitioner’s ask the FCC to declare sanctions against AT&T. The sanctionable declaring should be that the FCC declare that petitioner’s “traffic only” transfer ordered in Jan 1995 fully complied with AT&T’s tariff at the time of the “traffic only” transfer--noting that revenue commitments and their associated shortfall and termination obligations do not transfer on “traffic only” transfers and the two obligations explicitly named within 2.1.8 were properly transferred.

Respectfully Submitted

Petitioner's:

One Stop Financial, Inc

Winback & Conserve Program, Inc.

Group Discounts, Inc.

800 Discounts, Inc

&

Tips Marketing Services, Corp

/s/ Al Inga

Al Inga President