

2.9. DEFINITIONS (continued)

Local Access and Transport Area - a geographical area within which a Local Exchange Company provides communications service.

Local Exchange Company - a company which furnishes exchange telephone service.

Location - For the purpose of the Location and Service Specific Term Plan, a location is defined as each billing account at a Customer's premises for AT&T 800 Service-Domestic and for AT&T 800 READYLINE, for AT&T MEGACOM 800 Service location is defined as a billing account.

Local Service Management Systems (LSMS) - An intermediate data base system which receives downloads of Customer records from the SMS/800 and further downloads them to the appropriate SCPs in its network.



Main Billed Account - an account associated with a Customer's service to which WATS charges are billed. Such an account may include one or more service group(s) and/or routing arrangement(s). AT&T WATS-Domestic and AT&T WATS-One Line Access Service may include one or more sub-accounts under a main billed account. The term sub-account denotes one or more service groups, furnished at the same premises of the Customer, which are billed to a separate billing account number under a Main Billed Account.

Mainland - the 48 contiguous states and the District of Columbia.

Main Station - the station associated with AT&T 800 Service and AT&T WATS and designated by the Customer as the Main location.

Minimum Average Time Requirement(MATR) - a specified period of time, used in the determination of usage charges, which represents the minimum average duration of calls completed during a billing period. The MATR for each service is specified in the appropriate section of this tariff.

Move - a change in physical location of WATS when made at the request of the Customer.

Multiline Terminating System - Customer premises switching equipment or key telephone type systems which terminate more than one local exchange service line, access line, private line service or Customer-provided communications system.

Outward WATS - service that has been renamed AT&T WATS.

Premises - a building or buildings on continuous property (except railroad right-of-way, etc.) not separated by a public thoroughfare.

Professional Voice - AT&T provided personnel from a talent agency used to provide announcements for AT&T Advanced 800 Service.

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

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

transfer traffic without the underlying plans was made with the intent to avoid payment of AT&T's lawful charges.

Accordingly, the Commission should deny the Joint Petition,² 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.

I. PETITIONERS CONCEDE THAT AT&T HAD NO CARRIER-CUSTOMER RELATIONSHIP WITH THE END USERS

Petitioners expressly concede that “[t]here was no relationship between AT&T and [the Inga] Companies’ end users.” Petitioners’ Comments at 5, ¶ 5; *see also id.* at 6, ¶ 8 (“AT&T’s relationship then was solely with the aggregator as AT&T’s customer”), at 7 ¶10 (“The [end user] definitely knew that it was now the customer of the aggregator”); and at 25-26, ¶ 78 (stating that Petitioners were “told by FCC that the aggregator is AT&T’s customer of record not end user [; t]he end-users were properly recognized as my Company’s customers, not AT&T’s”).

The exhibits appended to and relied upon in Petitioners’ Comments further confirm the absence of a carrier-customer relationship between AT&T and the end users. *See e.g.*, Exhibit A (informing Petitioner One Stop Financial that “[a]s the holder of a Multi-Location WATS (MLW) service plan, and or 800 Revenue Volume Pricing Plan (“RVPP”)/Customer Specific Term (“CSTP”) you are the AT&T customer for all locations that you have designated for inclusion under your discount plan,” emphasis in

² “Joint Petition for Declaratory Ruling on the Assignment of Accounts (Traffic) Without the Associated CSTP II Plans Under AT&T Tariff F.C.C. No. 2” (“Joint Petition”) filed July 15, 1996.

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

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

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

 ⁴ Sections 2.1.8.B of AT&T Tariff F.C.C. No. 2; *see also*, Comments of AT&T Corp. in Opposition to Joint Petition for Declaratory Ruling and Joint Motion for Expedited Consideration, filed August 26, 1996 (“AT&T’s 1996 Initial Comments”) at 10-11.

AT&T previously addressed that claim in its 1996 Initial Comments and demonstrated there that Petitioners' argument is incorrect both under the plain meaning of the relevant CSTP II tariff provision as well as the underlying intent of that tariff provision.¹¹

Petitioners' failure to address the Commission's second question regarding Section 2.2.4 AT&T's Tariff F.C.C. No. 2 is a concession that where, as here, AT&T had reason to believe that Petitioners were violating Section 2.2.4 of AT&T's Tariff F.C.C. No. 2 by requesting a transfer of traffic without the underlying plans with the intent to avoid the payment of any of AT&T's tariffed charges, AT&T's refusal to assent to such a transfer was proper under that tariff.

In all events, Petitioners' Comments are rife with unverified "factual" assertions that only further support AT&T's showing in its Initial Comments that declaratory relief is inappropriate where, as here, the facts are disputed. Such fact-based disputes are not properly before the Commission on a petition for a declaratory ruling.¹²

¹¹ AT&T's 1996 Initial Comments at 15-18.

¹² *Id.* at 9-10 and cases cited therein.