

Jan 2, 2008

Commission's Secretary
Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Deena Shetler: deena.shetler@fcc.gov
FCC Contractor: fcc@bcpiweb.com

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

PETITIONERS SUPPLEMENTAL SUBMISSION IN
FURTHER SUPPORT OF ITS MOTION FOR SANCTIONS

Comments In Response to AT&T's Dec 13th 2007 FCC Comments

Based upon AT&T's Dec 13th 2007 comments the FCC should be even more livid at AT&T's baseless and frivolous attack. AT&T's filing only serves to show that substantial sanctions are warranted against AT&T now more than ever.

We will address AT&T's assertions as they chronologically appear within its Dec 13th 2007 FCC filing. This filing could have been much longer if Tips and petitioners countered every AT&T misrepresentation. We have tried to focus on the most egregious misrepresentations.

AT&T initially wishes to advise the Commission as to the amount of pages that have been filed in this proceeding. It is only due to the fact that 2.1.8 was not explicit, nor was the referral explicit from Judge Bassler that has led to the amount of filings to the FCC. A great deal of time and paper has been written due to AT&T's tariff being non-explicit.

Additionally AT&T has now filed for the third time its sanctions motion on the IRS issues; however, there has been no change in the IRS issues relative to any misconduct against Tips. In fact the letter from the Taxpayer Advocate Service (TAS) manager Ms Olson clearly states that she was sorry for her employees not knowing what their authority was. It was simply a mistake. AT&T's Dec 13th 2007 comments continue to rehash the same IRS non issues for a third time.

In any event it is not in petitioners best interests to have to counter AT&T's IRS issues, or to file what it believes is needed to counter AT&T's new (post 2005) interpretation of 2.1.8 due to the obvious fact that it is petitioners are seeking a fast adjudication of the matter. It is AT&T's best interest to stall as long as possible in hopes that petitioners will finally take the paltry settlement offer AT&T proposed. AT&T's issue with the amount of petitioner's filings is a red herring simply looking to trump up misconduct where none exists. AT&T actually wishes that petitioners filed 100,000 pages and the FCC never decided the case against it.

Petitioners have repeatedly advised the other commenters not to verbatim file what petitioners have filed, so as not to delay the proceedings longer. In any event the declaratory ruling process is a "permit but disclose" proceeding and there is no misconduct here. However AT&T with its Dec 13th 2007 filing again trumpets that same baseless and frivolous assertions that Tips Marketing Services, Corp. (Tips) engaged in misconduct. This is the third filing that AT&T has asserted the exact same baseless misconduct against Tips involvement with the IRS. AT&T filed in June, July and now in Dec. What is particularly egregious about this filing is that it has come after AT&T learned that it was no more than an unknowing IRS employee mistake.

See Nina Olsen's 11/28/07 letter which was posted on the FCC server:

Date Received/Adopted: 12/03/07. Ms Olson writes:

Both the letter, which was faxed to you on April 3, 2007, and the follow up email, dated April 4, 2007, was signed by **an employee who was acting beyond his authority.**

I apologize for the inconvenience that was **caused by the action of a TAS employee.**

AT&T's filing against Tips in June and July was baseless and frivolous. This latest DEC 13th 2007 filing against the non party "Mr Inga" takes the level of AT&T's frivolity to a much higher level.

AT&T states on page 1

Mr. Inga's apparently endless stream of vexatious filings because the arguments he has advanced since **August are simply variations** of the same baseless claims he has made many times before;

Not so! The result is the same but the new “former customer” tariff analysis discovered in late August is brand new. Much of the filings since August have had to do with the “former” tariff analysis and a re reading of the record due to this discovery.

It is only due to the fact that 2.1.8 was not explicit that it took this long to discover the “former” tariff analysis. As the FCC is well aware there was no “former” tariff analysis presented to the Commission until after the August date. Obviously there was no “former” tariff analysis presented to any Court or the FCC prior to the recent discovery.

The “former” tariff analysis is not, as AT&T claims, “simply variations” of what petitioners had been arguing. It certainly supports petitioner’s previous arguments but it is not an unimportant variation.

Now we know why AT&T focused in on only “all obligations” instead of the entire sentence. Hindsight is 20-20 and it is amazing to look back knowing what petitioners know now and see how the AT&T scam was carried out from Court to Court and to the FCC over 13 years. If the “former” tariff analysis had been presented to the DC Circuit and the DC Circuit was pointed to the AT&T Transfer of Service Agreement (TSA) showing the obligations are on what is “specified above” and what a “main billed” (lead) telephone number means, the DC Circuit would have clearly understood 2.1.8’s obligation allocation. So when AT&T tries to assert that what petitioners have filed since August is “simply variations” of previous arguments, AT&T is way off base.

AT&T page 2:

Incredibly, despite the obvious impropriety of Mr. Inga's submission of this letter-improprieties that led to a criminal investigation by the IRS-he claims that AT&T should be sanctioned for bringing the "alleged misconduct regarding the IRS letter to the IRS for investigation without first contacting Tips and the FCC

First of all “Mr. Inga” was never personally involved with the IRS. It was Tips, a non party to the 06-210 case. Secondly it was not Tips submission but the IRS submission of the letters. Thirdly as AT&T concedes the criminal investigation was initiated by AT&T without even approaching Tips Counsel.

Additionally Tips Declaratory ruling request had been submitted in Jan 2007 well before the IRS Investigation/Reward Department advised Tips to contact the IRS Taxpayer Advocate Service (TAS) Center, and provided Tips with its phone number.

Additionally the 06-210 petitioners (One Stop Financial, Inc, Winback & Conserve Program, Inc., Group Discounts, and Inc.800 Discounts, Inc) also had the same declaratory ruling requests presented to the FCC. Tips was not seeking to initiate any declaratory ruling which was not already covered by either the declaratory ruling requests that led to case dockets 06-210 and 07-278.

Furthermore AT&T's assertion that Tips should have known what the job description of Taxpayer Advocate IRS employees because Tips president was a **"former"** (there's that word again) Enrolled Agent tax law specialist is absurd. Tips has already certified to the FCC that Mr Inga stopped his tax practice in 1989 when the AT&T RVPP service offering came out on Sept 13th 1989. As Tips has already explained the Taxpayer Advocate Service was never in existence until years after Mr Inga stopped his tax practice. Furthermore even if Mr Inga continued to practice tax law, it is an inexcusable presumption on AT&T's part that Tips should know the job description of all IRS employees!

Yes AT&T brags that it initiated a baseless and frivolous criminal investigation against Mr Inga because he was a **"former"** Enrolled Agent, and because of this he must be having "favors done" by IRS employees to get the referral letter issued. Of course it led to a criminal investigation; why wouldn't it after AT&T got Mr Schwarmann to report that a "former Enrolled Agent" must be doing something illegal to get the letter issued.

The only reason why AT&T and the FCC were advised of the fact that Mr. Inga was a former tax law expert was to further substantiate to the FCC the credibility of the assertions made to the IRS that AT&T did not pay taxes on the shortfall charges and thus these shortfall charges must be determined permissible or not.

AT&T's initiation of the criminal investigation through its in house tax auditor Mr Schwarmann was predicated on not only Tips "presumably" having received a favor from the IRS but of course questioned the IRS employees conduct to act impartial. Instead of AT&T doing it directly

itself, AT&T “used” its IRS in house tax auditor to initiate the criminal investigation in hopes of using this AT&T perceived ”leverage” to settle the civil claims against AT&T.

The FCC also should note that this version of AT&T’s sanctions motion no longer asserts that Tips president went in and out of the IRS office all day before the IRS employee finally relented as certified Mr Schwarmann.

When the time line between the time Mr Inga signed into the IRS lobby was compared to the time of the IRS March 14th 2007 fax, it was about a half hour. Mr. Schwarmann either made up “repeated visits” to assert a false misconduct against Tips, or Ms Lee actually lied to Mr Schwarmann and Mr Schwarmann subsequently certified to an inaccurate recount of the events that took place.

The implied harassment of Ms Lee obviously could not be the case given the wide open public scene of the office and the time line. It could also have been the case that AT&T counsel simply wrote Mr Schwarmann’s certification for him, slipping in the misrepresentations and Mr Schwarmann’s simply went along with AT&T’s re-creation of history. Given the fact that AT&T no longer addressed in its Dec 13th 2007 FCC comments the Schwarmann certified “repeated visits until Ms Lee relented” scenario it may well be that AT&T embellished Mr Schwarmann’s certification and got snagged; otherwise AT&T would have continued with the same lie.

Let’s turn to AT&T at page 2

The second sanctions request is equally specious. Mr. Inga claims that AT&T's defense of its interpretation of its tariff is an "intentional misrepresentation by AT&T counsel," and that, in advancing this interpretation, its counsel have "gone far beyond advocacy" and engaged in a "cover-up." Mr. Inga has offered absolutely no evidence to back up this accusation-for of course there is none

Petitioners absolutely stand by its assertion that AT&T counsel have known all along how 2.1.8 works and have attempted to scam all Courts and the FCC along the way. AT&T’s counsel Richard Brown was on the old AT&T crew of Counsel and the new crew of AT&T counsel. Mr Brown as a member of the old AT&T crew advised Judge Politan that the plans revenue

commitment and concomitant shortfall and termination obligations do not transfer on “traffic only” transfers.

The initial crew of AT&T counsel were correct in arguing to Judge Politan, the Third Circuit, the FCC in 2003 and the DC Circuit that shortfall and termination (S&T) obligations do not transfer on “traffic only” transfers. That crew of AT&T counsel were misrepresenting that petitioners could not meet their commitment on the remaining CSTPII/RVPP plan and attempted to use AT&T’s fraudulent use section despite knowing the plans were immune from S&T charges due to being pre-June 17th 1994 immune. The initial set of AT&T counsel misled the Courts as to AT&T’s capability to utilize its fraudulent use sections. We say goodbye to Mr Whitmer, Mr Meade, Mr Carpenter, Mr Friedman, Mr Barrillari, Mr Fash, etc.

AT&T then brings in the “new” crew of counsels (Mr Guerra, Mr Jacoby, Mr Mancini, Mr Phillips, Mr. La Farro, etc) that needed to cover-up for its previous counsels assertions that S&T obligations do not transfer on “traffic only” transfer. The AT&T position had to change because AT&T as of the 2005 DC Circuit Decision could no longer rely upon its bogus to begin with fraudulent use section due to the illegal remedy in which AT&T applied it.

The old crew of counsel of course needed to change despite the old crew of AT&T counsels still working at the same firms. The new AT&T counsel crew then provides comical cover-ups for all the clear assertions made by the former AT&T counsel crew. AT&T’s comedy routine provided AT&T’s incredible “De Minimus” cover-up for Mr Carpenters’ clear statements to the DC Circuit that “all obligations depends upon what is transferred”. Petitioners are still looking for the De Minims transfer provision with 2.1.8.

The cover-ups of the old crew of AT&T counsel by the new crew of AT&T counsel continued as we got to hear the doozie: What all the old crew of AT&T counsel were referring to as S&T obligations must staying with CCI on a “traffic only” transfer were actually joint and several liability obligations---- despite the fact that none of the old crew ever said such! What made this bogus cover-up even more comical was that to assert CCI (instead of the Inga Companies) would have joint and several liability obligations remaining meant by definition that shortfall and termination obligations **had to transfer to PSE. Therefore why didn’t AT&T process the transfer in Jan 1995 even under AT&T’s bogus cover-up?** We haven’t heard that bogus

cover-up for its previous crew of counsel in a while and we doubt we will hear that nonsense again.

We then laughed hysterically as the new AT&T crew actually told the FCC that its 2003 Decision was not based upon what 2.1.8 obligations meant but only what was “*proposed*” by petitioners. AT&T incredibly stated that what was “*proposed*” by petitioners was somehow different than what every other aggregator proposed in there traffic only transfer orders.

This *proposed*” AT&T defense to cover-up for the old crew also had so many problems. AT&T could not show a stick of evidence that it actually transferred S&T obligations for any other aggregators traffic only transfers and could not show that the other aggregators proposed anything different than what petitioners ordered that was followed to the letter of the law as Judge Politan noted.

Additionally, the “proposal” cover-up by the new AT&T crew just did not jive with AT&T’s old crew counsel Mr Meade’s statement that the problem AT&T **had with 2.1.8** was the separation of obligations from the accounts transferred. If what petitioners “proposed” was some how different than what all other AT&T customers “proposed” why did Mr Meade certify to Judge Politan that the way that AT&T was going to handle AT&T’s problem with 2.1.8 **for the entire industry** was to use deposits on the transferor ---but this Tr. 9229 change would not affect petitioners who proposed the same “traffic only” transfers due to the fact that the change was “new” and thus prospective in nature.

We laughed even harder when AT&T’s bogus defenses collided with each other. If petitioners “went outside the tariff requirement and submitted a “*proposal*” not to transfer S&T obligations to PSE---- then why did AT&T simultaneously claim that PSE “refused” to accept the S&T obligations that---- according to AT&T--were not even “*proposed*” to be transferred to PSE? Furthermore AT&T actually came up with its bogus “*proposal*” to **act outside 2.1.8** defense when the cover letter from PSE directs AT&T to do a **proper** transfer.

There is simply no way that anyone at the FCC at this point can believe that the new AT&T counsel crew has not attempted to engage in a massive cover-up for its previous old crew of counsels.

AT&T states there is no evidence of an AT&T cover-up. The many comical and bizarre cover-ups by the new AT&T counsel crew to cover-up for the old AT&T counsel crew are substantial evidence that AT&T's new counsel crew has understood all along that S&T obligations do not transfer.

The FCC knows full well there is always one truth but many lies. If AT&T's new interpretation were valid there would be no need to conjure up all of these ridiculous defenses for AT&T's old crew. Furthermore the fact that the old crew all asserted that S&T obligations do not transfer on a "traffic only" transfer justifies that 2.1.8 was not explicit and AT&T must be found in violation of the law that tariffs must be explicit.

AT&T page 3:

After AT&T demonstrated, through sworn declarations, **that "it" did not lobby the IRS** to initiate an investigation or allege to the IRS that Mr. Inga had engaged in any wrongdoing

He now claims that AT&T should be sanctioned because it failed to contact Tips or the Commission before making any inquiries of the IRS

AT&T's position that **it** did not contact the IRS and allege Tips misconduct is simply misleading. While AT&T did not contact the IRS directly; AT&T initiated the IRS criminal investigation by utilizing its in house IRS tax auditor Mr Roy Schwarmann who passed on AT&T's baseless presumptions of favoritism against Mr Inga for AT&T's benefit. It was absolutely AT&T that initiated the chain of events through IRS agent Mr. Schwarmann.

AT&T page 3:

He now claims that AT&T should be sanctioned because it failed to contact Tips or the Commission before making any inquiries of the IRS

The sanctions against AT&T are not due to its failure to contact Tips, although that would have been proper, it is for filing with the FCC AT&T's presumptions on the IRS issues, engaging in libel against Mr Inga.

AT&T conceded that **it** directly did not make the false “favor presumptions accusations against Mr Inga to the IRS—AT&T “only” directly made its false and frivolous “favor presumptions” against Mr Inga to the FCC.

AT&T’s defense that it should not be sanctioned because it certified that “**it** did not lobby the “**IRS**” **directly**” are not certifications which make AT&T less responsible for its’ frivolous and false presumptions against the non party Mr Inga directly **to the FCC multiple times. The sanctions are against AT&T for baseless, frivolous and false presumptions made to the FCC.**

AT&T page 4:

There obviously was nothing improper about contacting a federal agency to determine the authenticity of a letter that is ostensibly signed by that agency but bears numerous indicia of falsity.

It is improper to utilize an in house IRS tax auditor to make false presumptions to begin a criminal investigation based upon the presumption that Mr Inga was a former Enrolled Agent and must be getting favors from IRS agents.

What are these numerous indicia of falsity that AT&T is referring to? The initial Ms Lee letter was stamped by the IRS and emanated from the IRS fax machine. The initial faxed letter from the IRS fax machine was then personally name stamped by Ms Lee, initialed by Ms Lee, her IRS badge number added and labeled as a “fax sent” by the IRS. There weren’t “numerous indicia of falsity” as AT&T asserts and **as usual AT&T provides no evidence of falsity.**

The second letter was on the Taxpayer Advocate letter-head and signed by the IRS representative. What “numerous” falsities are indicated by these letters? They both were signed by the IRS employees and **were authorized by the IRS employees** as the Nina Olson letter indicates.

AT&T keeps the lies coming but never provides the evidence. The reason why there is so much filing that needs to be done by Tips and petitioners is that every AT&T paragraph contains multiple misrepresentations.

Tips major issue is not that AT&T didn't initially contact that Tips or the FCC. The issue is that AT&T initially contacted the FCC in the middle of June with its then "needed" sanctions request, because AT&T knew it was not going to be believed on the merits of its case. Two months after Tips took it upon itself to advise the FCC on April 12th 2007 that Tips was not going to rely upon the first letter AT&T came out in mid June making baseless and frivolous "favor presumptions" against Mr Inga.

What AT&T had the duty of doing was to not make baseless and frivolous and as it turned out false accusations to the FCC about Tips or its president until the criminal investigation that AT&T initiated was concluded.

AT&T which understands the law on corporate entities, simply decided to assert to the FCC that AT&T does not recognize Tips as a separate company and instead states **Mr Inga personally** should be sanctioned despite the fact that Mr Inga has never been a party to the actions before the IRS nor the FCC. AT&T also requests that the other four separate companies owned by Mr Inga within case 06-210 should pay with the "SEVEREST OF SANCTIONS" for a completely different parties alleged misconduct—turning common law completely on its' head. Why? Because in their mind, they are AT&T and the law does not apply to AT&T.

AT&T amazingly advised the FCC to ignore law 101 that corporations are separate entities. Obviously the FCC dos not espouse to such a ridiculous AT&T assertion because it issued a separate case ID for Tips even though Mr Inga is the president of all petitioners within both the 06-210 case and the 07-278 case.

It is what AT&T frivolously stated to the FCC about the non party Mr Inga's alleged misconduct that was baseless, frivolous and very late in any event that needs to be sanctioned. The four petitioners within 06-210 were never involved with the IRS and therefore AT&T's false presumptions were not only frivolous but directed towards the wrong parties.

AT&T page 4:

Mr. Inga sought to convince AT&T and the Commission that the letter was from the IRS and reflected its views, not his: He repeatedly and falsely-advised the Commission that the letter was an "IRS referral"

The letters were absolutely from the IRS and signed and authorized issued by the IRS and stated that it was a primary jurisdictional referral which of course also reflected Tips views. Whether the IRS Taxpayer Advocate Service believed that it did not have **authority** to issue such a referral and support the IRS Investigation/Rewards Division does not mean that it does not share in the view that the shortfall charge interpretation should be determined by the FCC, so as to later deal with tax ramifications.

The IRS taxpayer Advocate can only gain if AT&T is found owing tens of millions in back taxes if the shortfall is interpreted as permissible, so it can only be assumed that if the Taxpayer Advocate believed it was authorized to issue the letter it would not have rescinded the FCC referral. AT&T seems to be confusing what the Taxpayer Advocates position was as per its issued letter with what it was authorized to do as an organization.

The Taxpayer Advocate Service employees themselves seem to be conflicted as to whether the Taxpayer Advocate Service was authorized to issue the letter. IRS Taxpayer Advocate employee Mr Cain told CCI's Mr Shipp and Tips that the Taxpayer Advocate was indeed authorized to issue the FCC referral.

The NJ State office manager of the Taxpayer Advocate Office and his employee both believed they were authorized to issue the FCC referral. The IRS Investigation/Rewards Department who sent Tips to the Taxpayer Advocate also believed the Taxpayer Advocate was authorized to issue the referral letter.

The IRS Taxpayer Advocate website also stated that it was able to resolve any IRS impasse. Here the impasse was very clear: The FCC must determine whether the shortfall charges inflicted were permissible because if the charges were permissible it may indeed establish a legitimate tax base to apply the tax rates to.

The letter from Ms Olson states:

As the statutory mandate of the National Taxpayer Advocate is to assist taxpayers in resolving problems with the Internal Revenue Service, **TAS has no interest in any matter pending at the Federal Communications Commission.**

Ms Olson may not have been aware of the IRS impasse that would have been clarified when the FCC interpreted the telecom issue. The IRS was not being asked to interpret the telecom issue—just ask the FCC to interpret the telecom issue. Intra-government agency referrals have been done numerous times to allow the experts to resolve impasses that other agencies have expertise in.

More AT&T nonsense on page 4:

Moreover, even after AT&T disclosed to his counsel that it knew the March 14th letter was not authored or authorized by the IRS, **Mr. Inga remained silent for weeks**, offering no explanation of his role in writing the letter and getting it faxed to the Commission, It was not until AT&T moved for sanctions that he finally admitted his authorship

This is what is so egregious regarding AT&T's sanction motion filings. We have replied to the above AT&T misrepresentation twice already as AT&T raised in both its June 2007 initial sanctions motion and its July filing but AT&T again to delay the case files it again.

Despite AT&T's lie, the record clearly shows that Mr Inga did not remain silent for weeks. AT&T notified Tips counsel of the Roy Schwarmann **allegations** on April 2nd 2007 within AT&T's filing to the NJ District Court.

Within one day Tips was advised by the National Taxpayer Advocate employee Mr Cain that Tips was mis-directed to the wrong IRS office and provided the contact information of the people at the Taxpayer Advocate Service. The second letter was obtained within **one day** ---not weeks as AT&T again lies. The evidence shows it was faxed to the FCC on April 3rd 2007.

When Ms Lee's manager Ms Russell on April 11th 2007 returned Tips call and advised Tips that her office was not the correct one to do the FCC referral but the Taxpayer Advocate office was more geared for this type of thing, Tips emailed the FCC's Deena Shetler and advised the FCC that Tips would not be relying upon the March 14th 2007 Ms Lee authorized and issued letter.

There was no "remaining silent for weeks" that was going on as AT&T above indicates. Just more AT&T lies as usual.

Tips took immediate action to comply with the advice it was given by the IRS agent Mr Cain at the Taxpayer Advocate National Service Center in Georgia to get the NJ Taxpayer Advocate

involved and by April 3rd—one day after AT&T's April 2nd 2007 notice to Tips counsel, Tips had secured the second letter. The April 3rd 2007 IRS TAS letter was secured by a 3 way conversation Tips had involving both the IRS Investigations/Rewards Department and the Taxpayer Advocate Service NJ state office manager and his employee.

The Investigations/Reward Department advised the NJ Taxpayer Advocate people that there was an IRS impasse. Additionally, a fax was sent very early on April 3rd 2007 by the Investigations/Reward Department to the Taxpayer Advocate stating the case was still pending. This fax has been submitted as evidence to the FCC. As usual AT&T is again misleading the Commission.

AT&T page 4:

It is simply ludicrous to suggest that, if AT&T had simply contacted Mr. Inga first, the whole misunderstanding would have been cleared up. It is even more ludicrous to suggest that AT&T should be *sanctioned* because it failed to make such a contact.

AT&T again deflects from AT&T's sanctionable misconduct to the FCC. AT&T should be sanctioned because of the baseless and frivolous sanctions motion that it did submit to the FCC, and continues to submit to the FCC, to intentionally delay the case.

The FCC did not need to be involved at all in the IRS referral letter. AT&T should have gone to Tips first and then if Tips did not satisfy AT&T then AT&T would have been justified to take up its issue with the IRS in proper and professional manner---not getting its in house IRS tax auditor to start a criminal investigation based upon baseless and false presumptions that the IRS employees were doing favors for Mr Inga!!!!

It was simply **AT&T's responsibility to determine before going to the FCC that parties that were actually involved in case 06-210 intentionally engaged in misconduct -----**instead of AT&T "presuming misconduct" and falsely asserting to the FCC what AT&T believed was misconduct against parties (Mr Inga and Tips) that are not even parties in case 06-210.

it was hard to imagine who, besides Mr. Inga, could or would have written this **false** letter. 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 ExParte 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."

There was nothing "false" about the letter or how it was obtained. There is a major difference between a letter that is so called "false" and a letter that was issued by a person who does not have authority to do so. AT&T allegations falsely accuse the letter as being "fabricated" and "false", and implies that the letters were corruptly obtained through personal relationships due to being a former tax specialist.

Having an employee unauthorized to issue the referral does not mean the letter itself was false. There was no forgery, there was no pressure, there was no compensation, there were no favors.

The IRS was not requested by Tips to simply fax a letter. The initial March 14th 2007 letter came with a page that contained the contact info of the IRS Investigation/Rewards Department and Tips expected Ms Lee to contact those people and Tips believed she had as she disappeared into her cubicle and then proceeded to stamp the letter and say "you do not need a letter-head, that's the way we do it—they can see by the fax it is from the IRS". No one just walked in and said "here fax this letter". Mr Inga spent about 10 to 15 minutes explaining to Ms Lee what the impasse was at the IRS Investigation/Reward Office.

AT&T page 5 footnote 12 makes a feeble attempt to justify its frivolous filing.

Given Mr. Inga's assertions concerning his work as an enrolled tax agent, AT&T's inference that he may have known someone who worked for the IRS in New Jersey was also reasonable.

An Enrolled Agent (EA) does not mean that Mr Inga worked for the IRS. It is similar to a CPA designation. According to AT&T anyone who was a former Enrolled Agent meant that the IRS would not be impartial and the Enrolled Agent would be given special favors by the IRS employees then the Enrolled Agent presumably knew. Incredibly AT&T actually believes that its baseless presumptions were justification enough to bring to the FCC the now proven false AT&T allegations against Tips! Tips believed that there was more to filing with the FCC than relying upon conceded presumptions. Additionally given the fact that AT&T's Dec 13th 2007 filing contains the Ms. Olson letter, you would believe that AT&T would be apologetic towards Mr Inga for AT&T having made false presumptions, and relied upon the "repeated visits" Mr Schwarmann certification that AT&T itself no longer is relying upon. No, AT&T continues to rely upon the faulty Ms. Schwarman certification and continues to pepper the FCC with its third sanctions brief on the same issue that Tips has been forced to twice respond to in detail.

AT&T page 5-6

AT&T's failure to infer that Mr. Inga had pressured an IRS employee into faxing this letter provides no basis for sanctioning AT&T

Where is AT&T's evidence that Tips pressured any IRS employee? AT&T simply makes this stuff up and offers zero evidence. The basis for sanctioning AT&T is due to its baseless assertions to the FCC that the non party Mr Inga was in "cahoots" with the IRS.

First AT&T accuses Mr Inga of having good ol' buddies that are willing to help him do whatever he wants—then on the same page AT&T states that Mr Inga needed to pressure IRS people to do what Tips requested. Both allegations are false but by definition how can AT&T simultaneously state both positions!!!! Obviously if Mr Inga "knew people" at the IRS who were allegedly doing him favors why would he need to "pressure" these buddies with repeated visits until they finally

relented! As Judge Politan stated during oral argument--- regarding AT&T's defensive tactics -- AT&T just throws **"it"** up against the wall just to see what sticks!!!

AT&T page 6:

In his opposition to AT&T's motion, Mr. Inga **first** gave an **un-sworn** and unsubstantiated account of how IRS personnel supposedly led him to believe that it was proper to fax his letter to the Commission. He then feigned indignant outrage that AT&T would question the "impartiality" and "objectivity" of these employees,¹⁴ and "taint[]" their names with "false accusations"¹⁵ Yet, after AT&T submitted a letter from Mr. Schwarmann of the IRS, explaining that Ms. Lee in the Mountainside, New Jersey Taxpayer Assistance Office had faxed the letter because Mr. Inga **pressured** her to do so,¹⁶

Point One: AT&T is correct that Tips initial comments were un-sworn; however AT&T does not point out that Tips President Mr Inga in its August FCC filing **did certify** to all the IRS issues that AT&T claimed should be sworn to. Yet AT&T again filed the same lies in its Dec 13th 2007 FCC comments.

Point Two: AT&T had no reasonable basis to question the "impartiality" and "objectivity" of the IRS employees because Mr Inga was a **former** Enrolled Agent.

Point Three: The Mr. Schwarmann certification was factually inaccurate. The following are AT&T's July 18th, 2007 comments in which petitioners correctly asserted that Mr. Schwarmann's certification was completely bogus:

The truth, however, is that Mr. Inga went to Ms. Lee's office **multiple times in a single day seeking to persuade her** to type his letter on IRS letterhead, but **she repeatedly refused to do so. Letter of Roy Schwarmann, IRS, to Jeffrey Tutnauer, AT&T Corp. (July 10, 2007) (attached hereto as Exh. 22) at 1**

Mr Schwarmann's was simply caught falsifying what occurred due to the time lime between when Tips president Mr. Inga signed in the IRS lobby and the time the fax was sent by Ms Lee. This is why AT&T now continues to lie in its Dec 13th 2007 comments by only falsely asserting that Ms Lee was "only pressured", but no longer creates the additional falsity that there were repeated visits.

Tips statement is accurate: Either Mr Schwarmann was lying or Ms. Lee's account to Mr. Schwarmann was a lie. What is customary is that AT&T writes the certifications and people sign

them. AT&T may have written the certification for Mr Schwarmann and embellished it as usual to give the illusion that Ms Lee was pressured, instead of simply doing something she later was advised was not within her job description.¹

AT&T page 6:

Mr. Inga's solicitude for the good names of these IRS employees vanished and he reflexively branded them **liars**. In his August 17th Submission, Mr. Inga resorted to his compulsive habit of defaming any and all persons who refuse to align themselves with his vendetta against AT&T

Mr Inga did not brandish all IRS employees' liars. Tips accurately pointed out that either Mr Schwarmann or Ms Lee were obviously lying regarding Ms Lee being pressured and receiving repeated visits until Ms Lee relented.

AT&T has simply never provided any evidence of the IRS agents being pressured—because they were not. Why would AT&T say they were they were pressured when according to AT&T Mr Inga “presumably knew” these people and they were willing to do what he wanted?

¹ AT&T counsels have written certifications for other parties in the past with the same embellishment effect. After AT&T account manager Joseph Fitzpatrick left AT&T, petitioners asked him why he falsely certified that petitioners said they were going to bankrupt its companies, when the plans were immune from S&T charges. Mr Fitzpatrick said that AT&T counsel greatly embellished the certifications for he and Mr Tom Umholtz and the two AT&T employees were simply expected to simply sign them. Take a look at the certifications that AT&T submitted to the FCC in regard to the IRS issues, and you can plainly see that it is the same AT&T ghost writer who wrote the certifications for these people. Additionally it was Mr Carl Williams testimony that AT&T counsel wrote his certification for him.

AT&T page 6 footnote 13:

Given his record of intentional falsehoods and concealment of the truth in connection with the "IRS referral, it is now abundantly clear that Mr. Inga is not to be believed even under oath, and any proffer of sworn statements on his part would not be entitled to be taken at face value by the Commission.

Where is this record of intentional falsehoods? There not one stitch of credible evidence that Mr Inga has ever submitted intentional falsehoods or engaged in any misconduct. AT&T simply says it without providing any evidence which the Commission has seen as commonplace by AT&T's counsel. AT&T's counsel is great at throwing accusations and presumptions around but short on any proof.

It is common sense that these IRS issues were already before the FCC. The IRS Investigations/Reward Department advised Tips to go to the IRS Taxpayer Advocate. Tips never heard of the Taxpayer Advocate before the IRS Investigations/Reward Department advised Tips of it.

Mr Schwarmann should not have personally gotten involved in the investigation of Tips, personally calling Tips and refusing to return Tips phone calls. He should have turned it over to TIGTA immediately. He could have advised AT&T to do its own investigation or for AT&T to directly initiate the criminal investigation instead of having him do it for AT&T. He called Tips and was advised by Tips president Mr Inga that Mr Inga did indeed go to the IRS office, to represent Tips. There was nothing to hide. Mr Schwarmann said "that's all I need to know" and slammed the phone down and refused to return phone calls.

Mr Schwarmann took no time to hear Tips position. Mr Schwarmann never took the time to understand who and why Tips was sent to the IRS, and how it got miss-directed to Ms Lee and what materials and contact information was given to Ms Lee. Mr Schwarmann incorrectly reported that IRS agent Ms Lee's letter was "fabricated" by Tips.

AT&T page 7 -8:

Specifically, Mr. Inga asserted that this TAS office "**was authorized** to issue the FCC the April 3rd letter to resolve the impasse in the IRS tax investigation of AT&T," and that **AT&T's claims that the IRS has no interest in resolution of the "shortfall infliction" issue "is simply false**. The recent submission by the National Taxpayer Advocate, Nina Olson, establishes that both of these assertions by Mr. Inga are themselves false. Ms. Olson states unequivocally that the letter "faxed to [Ms. Shetler] on April 3, 2007 . was signed by an employee who was *acting beyond his authority*," and that "TAS has *no* interest in any matter pending at the Federal Communications Commission. Moreover, Ms. Olson's letter confirms AT&T's assertions that a letter from TAS could not be a statement of the *IRS's* interests, because "the statutory mandate of the National Taxpayer Advocate is to assist taxpayers is resolving problems with the [IRS]"; indeed, her letter includes an official disclaimer that the "Office of the Taxpayer operates independently of any other IRS Office and reports directly to Congress.

Tips assertion that the TAS office was authorized to issue its letter was due to the fact that the State Manager and employee stated verbally to Tips and **included within the TAS referral letter that the TAS office was authorized** to issue the referral.

IRS agent Mr Cain at the National Taxpayer Advocate Center also told CCI's Mr Shipp and Tips President Mr Inga that TAS was authorized to issue a referral to the FCC. The fact that 5 months later Ms Olson stated that its employees were not authorized doesn't change the fact that at the time of the TAS referral Tips was advised by all parties that TAS was indeed authorized to issue the referral.

The following is AT&T quote of an assertion Tips had made, and AT&T states that Ms Olson's letter proved Tips wrong. The Tips assertion:

AT&T's claims that the IRS has no interest in resolution of the "shortfall infliction" issue "is simply false

AT&T is attempting to confuse the fact that TAS now believes that it shouldn't have issued the referral with whether TAS believes the Investigation/Rewards Department has any interest in the FCC interpreting the shortfall infliction issue.

The TAS office was explicitly told by the Investigations Rewards Department on the phone that there was an impasse of its investigation and an FCC referral could resolve the impasse. These are two separate IRS offices and even though TAS can't issue the referral, this did not mean that the IRS Investigations/Rewards office wasn't interested. TAS was explicitly advised by the IRS Investigations/Rewards office of its interest in resolving whether the shortfall charges were permissible in the first place. The IRS Investigations/Rewards office even faxed a document over to TAS advising TAS that the case was still pending and this was exhibited by Tips.

AT&T page 8:

As a former Enrolled Agent of the Treasury Department, Mr. Inga **presumably** understood the limits of TAS's authority, and that it did not and could not speak on behalf of the IRS.

Here goes AT&T again with its "presumptions." TAS was not even around when Mr. Inga ended practicing tax law to go into telecom industry. Even if Mr Inga continued practicing tax law, AT&T still can not reasonably presume that Tips would know what authority TAS has when TAS employees themselves believed they had such authority.

Lots of AT&T presumptions have been filed with the FCC with zero time spent ascertaining credible evidence. This is the definition of a frivolous filing!!!

What is even more egregious is that this AT&T assertion----- regarding what Mr Inga "should have known" as a former EA----- has been raised by AT&T three times. Still AT&T continues to resubmits arguments that have been thoroughly responded to.

AT&T page 8:

To avoid yet another round of baseless accusations, AT&T offers **no inferential deductions** as to why an employee in TAS would submit an unauthorized letter to the Commission on behalf of Mr. Inga.

The letter submitted by the TAS office which involved the Office Manager of TAS was issued on behalf of Tips, not Mr Inga as AT&T again misrepresents. AT&T's so called "no inferential deductions" statement is filled with inference that the IRS TAS employee must have been

offered payment or was a good old friend doing a “favor” that they believed was not within its power to do.

If AT&T was not inferring misconduct why state it? The TAS **office manager** and employee simply believed that its office was authorized to ask the FCC to resolve the IRS impasse by interpreting whether the shortfall charges were permissible in the first place to then apply the tax rate to if the shortfall charges are deemed permissible. The TAS office was not being asked to interpret telecom law. It was being asked to resolve an **IRS impasse** for a taxpayer Tips, which was is the exact focus of TAS.

AT&T’s nonsense continues at 8:

In short, it is Mr. Inga's conduct in connection with the fabricated March 14th letter, not AT&T's, that is deserving of sanctions. He indisputably attempted to mislead the Commission into thinking that this fabrication reflected the views of another federal agency; he hid his role in creating and faxing the March 14th document **until AT&T moved for sanctions**

The same nonsense over and over. The IRS March 14th 2007 letter was not “fabricated!” The letter was personally stamped, initialed by Ms Lee, and her badge number included, and sent from the IRS fax machine displaying the IRS fax machine number. The fax was sent to Tips fax machine because an email to the FCC’s Deena Shetler sent the day before the March 14th 2007 Ms Lee letter asking for Ms Shetler’s fax number was unanswered. Ms Shetler later confirmed she missed that email but found it later.

There was no “hiding of any role.” Tips advised the FCC by its own accord that the March 14th 2007 IRS letter was not to be relied upon by the FCC ---in **April 2007**----not as AT&T misrepresents above: “until AT&T moved *for* sanctions” which was in **June 2007** after AT&T realized that it was going to lose the telecom case due the 330 pages of new conclusive evidence that petitioners submitted in **May 2007** to the FCC, that destroyed AT&T’s case.

AT&T recreated history as in June it trumped up all of its misrepresentations despite the fact that Tips had immediately within 24 hours of April 2nd 2007 after it discovered that it was mis-directed to the wrong IRS office contacted the National Taxpayer Advocate Service (Mr. Cain) to explain what happened. There was no: **“guilt-betraying attempt to withdraw it”**

Tips simply withdrew on its own when it recognized it was directed to the wrong office and Ms Russell (Ms Lee’s manager) stated that TAS was the more appropriate office. Tips did absolutely nothing wrong. It already had the same issue before the FCC. Tips was acting in accordance with the recommendation received by it from the IRS Investigations/Rewards office which gave Tips the TAS National Hotline number.

The only logical deduction that Tips could make from the Investigations office giving Tips the name and phone number of the National TAS office was that this was a common way that the Investigations office was able to resolve IRS impasses. Ms Lee was provided with the IRS Investigation Office contact names and number and she obviously believed the same, ----that the referral was perfectly normal.

AT&T page 9:

AT&T refused to cave in to various hollow threats he had made to try to force AT&T to settle this matter.

Petitioners have never made any threats upon AT&T if AT&T doesn’t settle the matter. Petitioners have no leverage other than the overwhelming evidence. Again AT&T provides no evidence to support its baseless claim. What could petitioners possibly do to make AT&T settle other than to prove its case at the FCC? Nothing!

AT&T is the party making threats. That is why when the Oct 10th 2007 FCC filing was done conclusively establishing AT&T violated its tariff, AT&T the next day (Oct 11th 2007) wanted to know how much petitioners wanted to settle. This was no coincidence. AT&T realized the

evidence was overwhelming and AT&T called to settle and then threatened petitioners that if petitioners did not take what AT&T wanted to pay the case would go “**for several years**”.

AT&T page 9:

Sometime during the course of the summer, Mr. Inga convinced himself that a July 16, 2007 email from the Commission staff meant that the Commission had decided to deny AT&T's motion without even waiting for AT&T's reply brief. Specifically, in her email of Monday, July 16th, Ms. Shetler responded to a procedural inquiry by stating that there would "not be a decision [on AT&T's motion] prior to Wednesday.

As usual AT&T short quotes Ms Shetler's email. The email is below and it was petitioner's interpretation that the Commission would not be ruling on the sanctions motion. CCI's Larry Shipp also believed the same when he read it. Here are the emails and below that was our interpretation:

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

From: Deena Shetler

To: Mr. Inga ; fcc@bcpiweb.com ; lgsjr@usa.net ; phillo@giantpackage.com ; Joe Kearney ; Guerra, Joseph R. ; adllc@aol.com

Sent: Monday, July 16, 2007 9:36 AM

Subject: RE: Deena:Case 06-210 CCI et al vs AT&T Regarding Mr Kearney's motions...

Mr. Inga,

There will not be a decision prior to Wednesday. The types of motions that have been filed in this proceeding are **unusual** in a petition for declaratory ruling and **there is not a set schedule for resolution**. The Commission will consider **the arguments made by the parties and decide what is relevant to the resolution of the proceeding before it.**

Deena Shetler

AI

From: Mr. Inga [<mailto:freerecdptsrvc@optonline.net>]

Sent: Monday, July 16, 2007 11:44 AM

To: Deena Shetler; fcc@bcpiweb.com; lgsjr@usa.net; phillo@giantpackage.com; Joe Kearney; Guerra, Joseph R.; adllc@aol.com; Brown, Richard

Subject: Re: Deena:Case 06-210 CCI et al vs AT&T Regarding Mr Kearney's motions...

Deena

That goes for AT&T's sanction motion as well as Mr Kearney's two motions? Correct?

AI Inga

Petitioner's

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

From: Deena Shetler

To: Mr. Inga ; fcc@bcpiweb.com ; lgsjr@usa.net ; phillo@giantpackage.com ; Joe Kearney ; Guerra, Joseph R. ; adllc@aol.com ; Brown, Richard

Sent: Monday, July 16, 2007 9:51 AM

Subject: RE: Deena:Case 06-210 CCI et al vs AT&T Regarding Mr Kearney's motions...

Correct.

When Ms Shetler stated “not prior to Wed then stated the sanctions motion was “**unusual** in a petition for declaratory ruling and **there is not a set schedule for resolution.**” Then stated “The Commission will consider **the arguments made by the parties and decide what is “relevant” to the resolution of the “proceeding before it”**.”

What CCI and petitioners believed she meant by considering “the arguments made by the parties **and decide what “is relevant to the resolution of the proceeding before it.”** ---what this meant was that only what was relevant (the telecom issue) “of the “proceeding before it” (the proceeding referred to the FCC by the District Court was before it).

When Ms Shetler said: “No not by Wed” and then in reading the rest of the email the ”No not by Wednesday” statement was interpreted as: “No not by Wed **or any other day** because the sanctions motion is unusual and it is not before the FCC”. Mr Arleo also believed that the “not by Wed” statement was her way of saying: Not ever!

Petitioners then followed up with the email to everyone:

That goes for AT&T's sanction motion **as well as Mr Kearney's two motions? Correct?**

Al Inga

What petitioners then meant by its response back to all parties was that the FCC will also not be considering Mr Kearney’s motions **either!**

Misinterpreting Ms. Shetler’s full email was not hard to do. This is why AT&T in its Dec 13th 2007 comments short quoted Ms Shetler’s email to:

"not be a decision [on AT&T's motion] prior to Wednesday”.

Below we can see AT&T's own counsel Mr Guerra stated that petitioners had made its interpretation of Ms Shetler's email known within its August 20th 2007 FCC comments. Obviously petitioners would not have directly commented back to Ms Shetler what it believed her email implied on August 20th 2007 if it did not totally misinterpret the email. Furthermore the below email from AT&T counsel Mr Guerra simply asserts that petitioners misconstrued Ms Shetler's email. Read the following....

-- Original Message -----

From: Guerra, Joseph R.

To: Deena Shetler ; fcc@bcpiweb.com

Cc: Mr. Inga ; lgsjr@usa.net ; phillo@giantpackage.com ; Joe Kearney ; adllc@aol.com ; Brown, Richard

Sent: Wednesday, September 19, 2007 9:44 AM

Subject: AT&T Sanctions Motion in Docket No. 06-210

Dear Ms. Shetler,

I am writing on behalf of AT&T to seek confirmation that the motion for sanctions AT&T filed in this matter is still pending before the Commission. On July 16, 2007, you responded to an email from Mr. Inga concerning the timing of certain submissions in connection with AT&T's motion. Your response stated:

There will not be a decision *prior to Wednesday*. The types of motions that have been filed in this proceeding are unusual in a petition for declaratory ruling and there is not a set schedule for resolution. The Commission will consider the arguments made by the parties and decide what is relevant to the resolution of the proceeding before it.

AT&T filed its reply in support of its motion on July 18, 2007. **In his August 20th response to this filing, Mr. Inga asserted (p. 1) that "the FCC has stated—prior to AT&T's July 18th 2007 filing—in Ms. Shetler's email to all parties, that AT&T's motion and Mr. Kearney's motions will not be addressed by the FCC."** Mr. Inga's recent emails and filings, moreover, likewise appear to assume that AT&T's motion is no longer pending.

AT&T assumes that the email Mr. Inga mentioned in his August 20th filing is yours of July 16, and that he has misconstrued it. Nevertheless, to avoid any confusion on the subject and to ensure that he is not referring to some other email that AT&T has not seen, we would appreciate confirmation that AT&T's sanctions motion is still pending and under consideration.

Thank you for your consideration in this regard.

Sincerely,
Joe Guerra

Now we turn to AT&T's Dec 13th 2007 FCC Comments and AT&T asserts at AT&T pg 9 that petitioners have "extraordinary talent for distorting the meaning of even **the plainest text**"

AT&T Counsel Mr Guerra recognized this as a simple misconstrued email. However AT&T to now make this into something that it could use for its sanctions nonsense needs to embellish it by stating that Mr Inga has this extraordinary talent for distorting the meaning of even **the plainest text.**" The Ms Shetler email was obviously misconstrued by Mr Inga, Mr Arleo and Mr Shipp and then questioned by Mr Guerra.

What the Commission really needs to take from this simple miscommunication is that AT&T actually included this simple miscommunication as **misconduct by petitioners** of the "SEVEREST FORM"!!!

What was the benefit for petitioners to misconstrue Ms Shetlers' email? There was none! AT&T makes absolutely no sense as usual and is simply making weight because it has nothing egregious. Talk about making something out of nothing!! AT&T includes this so called misconduct on Dec 13th 2007 to an email that was easily misconstrued back in July!!! Talk about frivolity!!! This is what AT&T raises as sanctionable!!! The FCC can not allow AT&T to file this absolute nonsense to intentionally delay resolution of all issues.

AT&T page 10:

Following comments by Mr. Kearney and CCI, Mr. Inga submitted comments on September 5th claiming that AT&T's interpretation of § 2.1.8 was "moronic" because, in his view, a transferee should not be responsible for a transferor's plan obligations (**or bad debt on accounts that were not transferred**), when it has **no control over these liabilities**. AT&T had long ago addressed, and refuted, this "**control**" argument. Unwilling to indulge Mr. Inga's desire for endless debate, AT&T declined to respond to this **repetitive argument**.

Yet another AT&T deflection due to the fact that AT&T has no logical answer to the new control analysis. The new control argument was **not** repetitive because it covered the control issue from the **transferors' perspective** for the first time.

It is true that petitioners had addressed the control issue from the **transferees' perspective** in its 1/31/07 filing as AT&T states above. However it is even easier to understand from the transferors' perspective why AT&T's bogus post 2005 2.1.8 interpretation does not jive with its tariff.

AT&T simply has no answer to the fact that its new post 2005 interpretation for 2.1.8 conflicts with the tariff. AT&T's conflict is with Section 2.1.8 para C's provision dealing with the transferor remaining jointly and severally liable when obligations are transferred and AT&T's own concession that remaining jointly and severally liable also means **giving up control** of the obligations.

It is AT&T's post 2005 bogus interpretation of 2.1.8 that on a "traffic only" transfer the transferor's revenue commitment and associated shortfall and termination obligations transfer to the transferee and the transferor remains with the **non controllable** revenue commitment and its concomitant shortfall and termination obligations. The Commission must understand this, so carefully understand why this does not work under AT&T's tariff.

Petitioners had stated in its Sept 27th 2006 filing that it was an absurd AT&T's 2.1.8 interpretation that a transferor with a \$50 million revenue commitment transfer accounts worth \$10,000 in revenue to the transferee, and the transferee had to assume the \$50 million revenue commitment and the concomitant S&T obligations.

AT&T within its Dec 20th 2006 responded that that it was not an absurd interpretation of 2.1.8; that it made perfect sense for the former customer to transfer away the controllable commitments and keep the **non controllable S&T obligations**.

Under AT&T's interpretation of 2.1.8 AT&T's position was that due to the fact that the former customer would **no longer have control** of meeting its revenue commitment, that the former customer **would need to have side deals as an "indemnification or a bond"**

It is important to understand AT&T's position. AT&T Dec 20th 2006 FCC filing page 18 footnote 11:

- Petitioners suggest that it would have been "absurd" for the transferor to retain liability for revenue **commitments that it could not "control"**. Petn. at 22. **The point of the "all obligations" and "joint and several liability" requirements,** however, was to protect AT&T. The **transferor** had complete discretion to choose which, if any, companies it would transfer **its traffic** or plan to, and thus could protect itself by **choosing wisely,** with **full knowledge of its potential liability, and/or to include additional contractual protections, such as indemnification or a bond, as part of its agreement with the transferee.** Rather than bar transfers altogether, the tariff reasonably placed the onus on the customer to determine the best means to afford itself suitable security against potential liability to AT&T arising.

Both parties agree that a **"former customer"** ----AT&T states "transferor" to hide the tariffed "former customer" phrase----- has only joint and several liability standing, and remains with absolutely **no control over the obligations** which are transferred. Obviously a former customer only gives up control of obligations on the service transferred. If a plan is transferred the transferor gives up control of the revenue commitment and concomitant S&T obligations on the plan.

Petitioners understand that this is true only on plan transfers as the Inga could not control the obligations for shortfall and termination obligations because it transferred the plan; however as AT&T stated in Dec 2006 AT&T's new position is that the "transferor" **no longer controls the obligations transferred** and AT&T asserts that this is true as for both plan transfers and "traffic only" transfers.

Here is where AT&T's post 2005 interpretation of 2.1.8 clearly conflicts with its tariff:

Since AT&T's Dec 20th 2006 interpretation of 2.1.8's **"joint and several liability requirement"** is that former customer CCI **would no longer have control of its revenue commitment and concomitant shortfall and termination obligations** why does CCI **as a continued plan holder** still indeed **have control** of its revenue commitment **and concomitant shortfall and termination obligations** by simply adding accounts **as per tariff section 3.3.1.Q para 4?**

AT&T's own concession that a former customer of the service transferred would remain jointly and severally liable for what it transferred and must give up control of the obligations on the transferred service means S&T obligations can not transfer---- because CCI as a non transferred plan owner remains in control of its obligations. That is why AT&T said they do not want to address this because it is repetitious. It wasn't repetitious for AT&T to falsely accuse Mr Inga over and over again on the trumped up IRS issues; however when it comes to the heart of the case AT&T says:

AT&T had long ago addressed, and refuted, this "**control**" **argument**. Unwilling to indulge Mr. Inga's desire for endless debate, AT&T declined to respond to this **repetitive argument**.

It is obvious why AT&T is declining to respond. These AT&T counsel just keep you laughing as they avoid the heart of issue. AT&T's post 2005 section 2.1.8 interpretation suffers from this obvious: "**FATAL FLAW!!!**"

Let's break it down further....

AT&T's so called:

"point of the **all obligations** and **joint and several liability requirements**"

is obviously contrary to the undeniable fact that the transferor who is not a "former customer" on a "traffic only" transfer because it remains an AT&T customer by keeping its plan--- obviously remains in control of its plans **revenue commitment and concomitant shortfall and termination obligations**.

This is why at 2C of 2.1.8 the remaining jointly and severally liable provision only pertains to the "**former**" customer and not the "transferor or remaining Customer".

2.1.8 C. The Company acknowledges the transfer or assignment in writing. The acknowledgement will be made within 15 days of receipt of notification. The transfer or assignment does not relieve or discharge the **former** Customer from **remaining jointly and severally liable with the new Customer for any**

obligations existing at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for WATS, and (2) the unexpired portion of any applicable minimum payment period(s). When a transfer or assignment occurs, a Record Change Only Charge applies (see Record Change Only, Section 3).

The importance of the word **“former”** is critically important in both para B and para C of section 2.1.8 to determine that S&T obligations do not transfer on a “traffic only” transfer and in fact confirms what "former" means in relation to the control aspect of plan ownership.

The obvious reason why the transferor’s revenue commitment and concomitant shortfall and termination obligations do not transfer on a “traffic only” transfer is that the transferor which keeps its plan still obviously **controls its plans obligations.** Conversely stated, the transferor of “traffic only” can **not** be as a remaining plan holder, left in a status with non controllable S&T obligations if S&T obligations actually transferred on a "traffic only" transfer. AT&T’s position that the CCI would be left with non controllable obligations is obviously incorrect because CCI can still control the obligations by adding accounts under 3.3.1.Q para 4 and this supports the importance of the word “former.”

Another explanation: CCI remains in control of its plans obligations and therefore by definition under 2.1.8C’s remaining jointly and severally liable provision of having the transferor be left with non controllable S&T obligations can not pertain to a plan holder which still controls its plan. Thus S&T obligations do not transfer.

This is why AT&T has totally skirted the obligations control issue resulting from the remaining jointly and severally liable provision of 2.1.8. It doesn’t make sense from the transferee’s perspective; however from the transferor’s perspective it can plainly be seen that such a position conflicts with the tariffs general definition for a CSTPII/RVPP plan owner that still controls its S&T obligations.

The old AT&T crew of counsels had it correct when they asserted that CCI did not remain jointly and severally liable because it only transferred accounts and not the controllable plan.

CCI would only remain jointly and severally liable for the plan obligations if the plan transferred to PSE because that would mean that S&T obligations transferred.

See exhibit Z to petitioner's initial 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.

The plan holder CCI (CUSTOMER) controls the non transferred plan and its S&T obligations and is responsible for S&T obligations as per 3.3.1.Q para 10. The whole purpose of the **REMAINING** jointly and severally liable provision is that the "**former customer**" **remains** obligated for **the service that is transferred away.** Well obviously CCI did not transfer away all of its service i.e. (a few accounts and the plans). Therefore the "former customer" provision within 2.1.8 C only relates to what is transferred by the transferor to continue to remain jointly and severally liable.

Under AT&T's bogus 2.1.8 interpretation for para C—If CCI becomes jointly and severally liable on a "traffic only" transfer, then by definition PSE controls the plans obligations in which the plan are not even transferred to PSE!!! How ridiculous! No wonder why AT&T "declined to comment" and ran from this issue.

AT&T's interpretation would mean that you would have the transferor and the transferee both in simultaneous control of the plan! The tariff of course only allows the customer (singular) to add and delete accounts to control obligations---not customerss –plural.

Therefore AT&T's new post 2005 interpretation for 2.1.8 is obviously factually wrong. So when AT&T asserts that it has already addressed the "control issue," and that AT&T has "**declined to respond to this repetitive argument**" it is not a repetitive argument, and as usual AT&T is again attempting mislead the Commission and avoid the issue. Obviously a former customer only gives up control of obligations on the service (plan or traffic only) transferred.

AT&T page 10: The following is all AT&T's comments.

Two days later, Mr. Inga submitted comments setting forth his "former customer" argument, an argument he has since deemed "conclusive," yet somehow overlooked for 13 years.

AT&T points out that that the "former "tariff analysis "was overlooked for 13 years". That just goes to support the fact that the tariff was not explicit. No Court nor the FCC saw it either, so we don't feel like dummies! However when you finally do see it you say "How stupid could I be!"

Now it makes perfect sense confirming that petitioners, the FCC 2003 decision, Judge Politan, and the "old" AT&T crew of counsel were absolutely correct that the transferors' revenue commitment and concomitant S&T obligations do not transfer on a "traffic only" transfer.

Page 10-11

Mr. Inga claims that "[a]ll obligations' pertain to the service (plan or traffic) listed on the top of the AT&T TSA for transfer which defines the transferor as a FORMER Customer on what is transferred. As Mr. Inga himself "**tacitly**" **acknowledged, however, this "new" argument is a variation on his earlier claim that the word "any" in § 2.1.8 somehow meant that all obligations' pertain to what is selected for transfer.**

Don't fall for AT&T's "tacit" spin job. The word "any" and number(s) in 2.1.8 defined that "traffic only" or the plan could be transferred. AT&T is trying to do the same thing to petitioners that AT&T has been doing to the FCC---confusing the provision in 2.1.8 that allows "traffic only" to transfer as well as the plan.

What obligations are transferred, as AT&T counsel Mr Carpenter conceded, depends upon what is transferred ("traffic only" or the plan). The new "former" tariff analysis is not really a "variation" of petitioner's original 2.1.8 obligations analysis but supports petitioners original obligations analysis.

AT&T states: In his **prior version** of the argument,

Mr. Inga stressed that

any can be one, some, or most, without specification, that can be transferred [u]nder 2.1.8 at `B' `the "new" Customer transferee PSE) notifies [AT&T] what it has accepted (either selected `traffic only' as the case at issue, or the plan with all traffic) and then ...it is obligated for `all the obligations' **BUT, only on that part of the service which the transferee (PSE) accepts.**"

Above we see that AT&T instead of simply addressing the new “former” tariff analysis AT&T reverts to petitioner’s **prior version**.

What petitioners actually stated at page 8 of its 9/7/07 “former” tariff analysis filing looked back on how petitioners initially addressed the obligations allocation under 2.1.8 in its initial 9/27/06 filing **focusing on the transferee PSE**.

The D.C. Circuit stated at exhibit C pg. 7 line 1:

This section on its face does not differentiate between transfers of entire plans and transfers of traffic, but rather speaks only in terms of WATS--- the telephone service itself.

Both the D.C. Circuit and the FCC did not see on its face where within 2.1.8 it allowed traffic only to transfer because 2.1.8 violated the law by not being explicit. The differentiation is actually in the “any” number(s) of accounts that the new customer accepts. Any can be one, some, or most, without specification, that can be transferred. If 2.1.8 only allowed plan transfers (as the FCC originally believed) the word “any” would have to be changed to ALL and the singular option “Number” would have to be only the plural option: Numbers. **“All obligations” pertain to, or as AT&T counsel Mr. Carpenter *infra* states “depends upon, what is selected for transfer”.** Under 2.1.8 at “B” “the “new” Customer (transferee PSE) notifies the Company” (Company=AT&T), what it has accepted (either selected “traffic only” as the case at issue, or the plan with all traffic) and then yes of course it is obligated for “all the obligations” **BUT, only on that part of the service which the transferee (PSE) accepts!**” Of course, shortfall and termination obligations are not transferred by petitioners/assumed by PSE, because, shortfall and termination obligations are the Transferor (petitioner’) Customer’s plan obligations as per tariff page 3.3.1.Q bullet 10 exhibit D). S&T

obligations never transferred on traffic only transfers. This is why, despite the fact that AT&T states it has done tens of thousands of traffic only transfers under 2.1.8, AT&T can not produce one single piece of evidence showing that its position was ever done in such a manner. No evidence exists! AT&T admitted in its 1996 FCC filing, and the FCC Ruling stated, the plans were not being transferred or terminated. If the D.C. Circuit had seen on its face the differentiation, then it would have easily understood that paragraph "B's all obligations language **pertains only to what is accepted and reported by the new customer (PSE) to AT&T.**

Instead of focusing just on the transferee, what was missing in the above 9/2706 tariff analysis was the focus on the **transferor and the word "Former"** which provides the **distinction** as to the transferor Customers status as a former customer on what service (plan or amount of traffic) is transferred. Section 2.1.8 para A **defines the Customer of record as the "Former" customer and so does AT&T's Transfer of Service Agreement.**

AT&T in its Dec 13th 2007 comments on page 11 switches it around and puts the cart before the horse....

It defines the "former Customer" as "[t]he Customer of record"

AT&T again is trying to pull a fast one on the Commission like it did in 2003. Fool me once same on you AT&T ---fool me twice shame on the FCC.

Just look at Para A of 2.1.8: Exhibit B FCC's 2003 Decision page 6 footnote 46

The Customer of record (**former Customer**) **requests** in writing that the company transfer or assign WATS to the **new Customer.**

What AT&T did to mislead was to reverse the order, erroneously stating

It defines the "former Customer" as "[t]he Customer of record"

If it was actually AT&T's interpretation of 2.1.8 that "former customer" was defined as the "customer of record" at the time of transfer why didn't AT&T simply point this out to Judge Bassler in 2005 and 2006 and to the FCC up until its Dec 13th 2007 filing? Is it that AT&T in almost a year since its first Dec 20th 2006 FCC filing, simply never got the chance to point this out? Or AT&T simply believed this just wasn't important? If you believe that I have a bridge in Brooklyn for sale.

AT&T was praying that no one would recognize that the transferee was only obligated to assume "all obligations" of the "Former Customer". Petitioners have detailed the case history of AT&T's "obligations" assertion nonsense, twice flipping its position arguing at various points that shortfall and termination obligations are encompassed within 2.1.8's "unexpired portion of the minimum applicable payment period(s). See petitioners 1/31/07 comments at page 66 through 69:

X. Oh Where, Oh Where, Has My Shortfall Gone page 66

Hindsight being 2020 it is now clear as can be that AT&T was faced with the question: Do we try to scam everyone into believing that S&T obligations are encompassed within "the unexpired portion of the minimum applicable payment period(s) (like David Carpenters scam at the DC Circuit) OR DO we short quote down to "all obligations" and pray that no one recognizes the all obligations are only on the service transferred which makes the transferor a "**former** customer."

Well since the DC Circuit opinion seemed to have a problem with S&T obligations being included with "the unexpired portion of the minimum applicable payment period(s) (DC Circuit pg. 11, n 2 ex. C to petitioner's initial filing)

In a motion submitted after the argument however, the Inga Companies note that the only obligations enumerated by Section 2.1.8 are outstanding indebtedness for the service and the unexpired portion of any applicable minimum payment period.

AT&T carefully evaluated each of its' scams and decided:

Let's go with the "all obligations" short quote scam and pray no one recognizes the rest of the sentence in 2.1.8 or the AT&T TSA form, or that it conflicts with the rest of our tariff and doesn't make any sense." Hey if now Supreme Court Justice Roberts was only focused in on the words "all obligations" we may be able to pull our scam off. Let's just keep on saying

all obligations doesn't mean "some obligations". It will be our "if it doesn't fit you must acquit mantra!" We can even submit pages of case law defining the word: "all"—and that will do the job! And don't worry if they recognize "former customer" we are AT&T, we will just reverse 2.1.8 para A and tell everyone that 2.1.8 defines former customer as the customer!

Oh hindsight is wonderful when you finally have all the pieces to the puzzle. You go back through the record now and you see each AT&T scam before each Court and the FCC.

Take a look at 2.1.8's opening, Para A and Para B:

Transfer or Assignment – WATS, including ANY associated telephone number(s), may be transferred or assigned to a new Customer, provided that:

A. The Customer of record (former Customer requests) in writing that the company transfer or assign WATS to the new Customer.

B. The "new Customer" **notifies the Company** in writing that it agrees to assume all obligations of the former Customer at the time of transfer or assignment. These obligations include (1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s).

Now take a look at AT&T's Jan 31st 2007 FCC Filings **DOT DOT DOT (...) Routine**

I. CCI'S COMMENTS PROVIDE NO BASIS FOR INTERPRETING THE PHRASE "ALL OBLIGATIONS" IN § 2.1.8 TO MEAN "ONLY SOME OBLIGATIONS."

At the time of the events that give rise to this dispute, § 2.1.8 provided that:

WATS, including any associated telephone number(s), may be transferred or assigned to a new Customer, *provided that . . .* [t]he new Customer notifies [AT&T] in writing that it agrees to assume *all obligations* of the former Customer at the time of the assignment or transfer.

Yes hindsight is 2020. What the "blank" happened to AT&T's quote of Para A of 2.1.8? The one para A sentence was simply too much to copy and paste? AT&T dotted (...) it right out of attention and then further decided to emphasize "all obligations" by italicizing it. AT&T clearly knew what it was hiding.

Further Deception—AT&T Substituted
“Transferor” in Place of “Former Customer”

Yes hindsight is 2020: Here are a few examples:

See AT&T Jan 31st 2007 page 2

Exh. 1 to AT&T Comments (emphases added). In its comments, AT&T demonstrated that, **by its plain terms, § 2.1.8 requires** a transferee to assume **“all obligations”** of the **transferor**, including the **transferor’s** obligations to pay shortfall and termination liabilities, when traffic under a WATS plan is transferred.

Obviously by its “PLAIN TERMS” § 2.1.8 does **not** require a transferee to assume “all obligations” of the **TRANSFEROR**.

AT&T 1/31/07 page 3:

Beyond this patent misreading of the Commission’s prior decision, CCI argues that the language of § 3.3.1.Q supports its view that a transferee need not assume the **transferor’s** shortfall and termination obligations.

AT&T 1/31/07 page 3:

Thus, § 2.1.8 **expressly provided** that, following a transfer, *both* the **transferor** and transferee would be subject to “all obligations” that the **transferor** had at the time of the transfer.

Expressly provided????? Yea Right!

AT&T 1/31/07 page 4:

Section 3.3.1.Q simply confirms that a transferee’s duty to assume “all obligations” of the **transferor** necessarily included shortfall and termination liabilities.

Section 3.3.1.Q para 10 relates to S&T obligations on a “Customer”—which relates to the AT&T service subscribed to: Customer Specific Term Plan/Revenue Volume Pricing Plan.

AT&T 1/31/07 page 5:

That issue is limited to whether the proposed CCI/PSE transfer complied with AT&T's tariff—in particular **§ 2.1.8's requirement** that a transferee agree to accept all obligations of the **transferor**.

This AT&T ploy will no longer go by on petitioners watch and neither should it on the FCC's watch.

There are dozens of additional examples of this AT&T ploy throughout AT&T's briefs. AT&T simply substituted the word: **"transferor"** instead of **"former customer"** for the tariffed requirement of what was to be assumed by PSE, so as not to draw attention to the phrase: **"former customer"**. Oh how clever this new crew of AT&T counsel is in trying to cover-up for its' exiled crew of counsels. The new AT&T crew doesn't miss a single trick!!!

The AT&T Deception Game Continues:

See CCI's FCC filing Date Received/Adopted: 09/28/07 at Exhibit B: AT&T's initial brief to the DC Circuit page 1

During the period at issue, AT&T's 800 service was provided under a tariff that allowed the "transfer or assignment" of 800 service to a new customer only if the new customer "agrees to assume all obligations of the **[existing] customer** at the time of the transfer."

What happened to the phrase "former customer?" Where did it go? Why didn't AT&T comment on this little "switcheroo scam" that it pulled on the DC Circuit in its Dec 13th 2007 FCC comments?

Maybe AT&T will tell the FCC that the word "existing" means the same as "former." – and the 2.1.8 defines existing customer as the customer? How AT&T can continue to insult the FCC's intelligence is beyond belief. The obvious AT&T scam now is to delay as long as possible and keep submitting nonsense to the FCC.

Take a look at AT&T's own Transfer of Service Agreement (TSA) form and look at what it defines the transferor as: **FORMER** CUSTOMER: All the AT&T TSA's have the header at exhibit F in petitioners 9/27/06 filing....

Transfer of Service
Agreement and Notification

I, _____, hereby

(Former Customer)

request that AT&T transfer or assign service for Account

Number(s): _____

To _____

(Customer)

Simply look at the bottom right hand corner of the AT&T authorized and issued Transfer of Service Agreement (TSA) **signature line designation** for the transferor with the date of the contract as to what is being transferred that changes the customer of record status to a Former Customer. It explicitly defines CCI as the "**FORMER**" CUSTOMER. Obviously AT&T own interpretation for 2.1.8 is that there is a distinction between a Customer and a **Former** customer.

Former Customer (Date)
Authorized Representative

Title

New Customer (Date)
Authorized Representative

Title

Obviously **Former** Customer means that the Customer of Record is no longer an AT&T customer for what is transferred. That is not that case here because CCI remained an AT&T

Customer in control of its plans obligations. Therefore PSE does not assume CCI's/Inga's S&T obligations as AT&T counsel Mr Whitmer explained within his February 6th 1995 letter, and to Judge Politan in his November 1995 brief, and numerous times during oral argument.

As per 2.1.8 the transferor Customer of record is only a Former Customer on that which it designates for transfer only at the time of transfer. Afterwards CCI continues to be a Customer of AT&T for the accounts and plan not transferred. It is as simple as that!!!

Only the **former** customers' obligations that exist at the time of transfer are transferred. Since CCI did not transfer its plan at the time of transfer and therefore remained an AT&T customer; the Customer of record continued to be obligated for the shortfall and termination obligations as per 3.3.1.Q para 10 as AT&T counsel Mr Friedman pointed out to the FCC in 2003.

It is simply common sense that there would be absolutely no reason to even have the word "former" in 2.1.8 if it meant what the new AT&T counsel crew asserts as "all obligations" are of the Customer of Record. If section 2.1.8 actually mandated that the new customer had to assume "all obligations" of the: A) transferor or B) customer of record or the C) existing customer after the transfer----- then 2.1.8 would not say "former" customer! Section 2.1.8 would only say customer.

Amazingly, AT&T actually wants the Commission to believe that the word "former" was added in front of Customer so it could mean the same thing (customer) as if the word was not there!!! According to AT&T's absurd interpretation the word 'former' really has no meaning! Obviously there is a major difference between a "former customer" and "customer".

Under AT&T's absurd 2.1.8 interpretation---- that the transferor former customer is defined as the AT&T customer of record---- this would mean the Inga companies having transferred away all of its AT&T plans to CCI are still considered by AT&T as a "customer" of record when in fact the Inga Companies are obviously a "former" AT&T customer! Imagine AT&T is actually expecting the Commission to believe its nonsensical tariff interpretation which is incredibly insulting to the FCC staff!!!

AT&T's own position to the DC Circuit conflicts with its brand new bogus interpretation that 2.1.8 defines former customer as the Customer. See exhibit C in CCI's FCC filing Date Received/Adopted: 09/28/07 which is AT&T's initial brief to the DC Circuit page 7

3. The Inga Companies-CCI-PSE Transactions. Winback & Conserve Program, Inc., One Stop Financial, Inc., Group Discounts, Inc., and 800 Discounts, Inc. were all **formerly** resellers of AT&T's 800 services under nine CSTP II **plans**. These companies are referred to collectively as the "Inga Companies" because they **were** all owned and controlled by Mr. Alfonse Inga. *Id.* at ¶ 1.

AT&T above obviously recognized the transferor (Inga Companies) as a former customer.

Obviously the Inga Companies after transferring its plans would be a **former** AT&T customer not an AT&T customer of record. It only makes sense –as in para A of 2.1.8 ---that the AT&T customer of record is defined as a **former** customer as to what is selected for transfer, at the time of the transfer.

Under AT&T's comical and absurd post 2005 2.1.8 interpretation after the Inga to CCI plan transfer the Inga Companies and CCI are **simultaneously** AT&T customers (plural) of record! Section 2.1.8 only allows one customer of record not plural customers. Obviously the Inga Companies are no longer an AT&T customer of record on the AT&T plans it transferred to CCI, in which it no longer controls!

AT&T Fails to Address the Specified Above Phrase in Its TSA

The FCC should also note that AT&T simply offers no reason as to why its own authorized and issued Transfer of Service Agreement (TSA) form states the obligations are only on what is "**specified above**" See CCI's FCC filing Date Received/Adopted: 09/28/07 pg 8

Under AT&T's illogical post DC Circuit interpretation for section 2.1.8 the transferee (PSE) is responsible for "all obligations" of the remaining customer – not the **former** customer, despite what the tariff explicitly states. Under AT&T's logic PSE would thus be responsible for indebtedness on accounts that are **not** transferred to PSE.

The tariff does not agree with AT&T nor does the AT&T TSA form used to enact 2.1.8. A careful reading of the AT&T authorized and issued Transfer of Service Agreement (TSA) Forms state in the opening paragraph:

Former Customer understands and agrees that this transfer or assignment does not relieve or discharge it from remaining jointly and severally liable with the New Customer for any obligations existing at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for the account numbers “**specified above**” and (2) the unexpired portion of any applicable minimum payment period(s).

See all TSA’s within petitioners exhibit F in petitioners 9/27/06 filing. Also see additional AT&T authorized and issued AT&T TSA’s processed by AT&T at exhibit Y in petitioners 9/27/06 filing

“**Specified above**” is AT&T’s own 1995 interpretation for section 2.1.8 and is consistent with petitioner’s 2.1.8 interpretation and is adverse to the new crew of AT&T counsels.

This is what happens when AT&T keeps making “it” up on the fly. AT&T keeps trying to squeeze the round peg into the square hole and its new tariff interpretation of course conflicts with so many other tariff sections and its own previous interpretation.

AT&T makes it Explicit in Subsequent Versions of Section 2.1.8 that the Transferor Customer is Defined as a “Former” Customer for the Service Transferred at The Time of The Transfer—

Section 2.1.8 was Revised in November 1995 and May 1996; However AT&T’s Interpretation that the Transferor Customer Being Defined As a “Former” AT&T Customer Remained the Same **As AT&T’s TSA Form Remained the Same**

See the November 1995 section 2.1.8 within petitioners 9/27/06 FCC filing at Exhibit P
The transferor is called a “Current Customer” and the Current Customer is defined at D:

D. The Current Customer “will no longer be” AT&T’s Customer for the “service” as of the Effective Date of the transfer,

The “service” of course is what is being transferred. Obviously it is the Transfer of **Service** (plan or “traffic only”) that is taking place

Obviously **if you are “no longer” an AT&T customer** you are in fact a “former” customer. The obligations are only on what service is transferred as the AT&T Transfer of Service Agreement TSA form remained the same as 2.1.8 changed. As my twin 9 year olds would say:

Well, Duh!!!!²

May 1996 Section 2.1.8:

See the May 1996 version of 2.1.8 petitioners 1/31/07 FCC Filing Exhibit C page 164

D. The Current Customer will “no longer be” AT&T's Customer for the service as of the Effective Date of the transfer, which will be the earlier of the date on which AT&T provides to the New Customer a written acceptance of the transfer or assignment, or the fifteenth day after AT&T receives a fully executed original of the Transfer of Service form, except:

The AT&T TSA remained the same (which means AT&T’s interpretation of 2.1.8 remained the same) describing the transferor as a (“former customer”). However in May 1996 instead of AT&T saying “former customer” as it did in Jan 1995 AT&T states the transferor Customer **“will no longer be AT&T’s customer.”** “No longer be” = ”former” Again,--- Duh!

S&T obligations never transferred on a traffic only transfer.

As the FCC 2003 Decision page 10 footnote 65 stated in quoting Judge Politan:

To quote the district court,
“Words mean what they say.

There is only one way to interpret 2.1.8 and have it make any sense and not conflict with rest of AT&T’s tariff. The transferor customer is defined as the “former” customer on what is transferred and thus the transferee is obligated to assume only the obligations on what is

² Wikipedia: <http://en.wikipedia.org/wiki/Duh>

Duh is an American English slang exclamation that is used to express **disdain for someone missing the obviousness of something.** For example, if one read a headline saying "*Scientific study proves pain really does hurt*" the response might be "Well, duh!"

transferred. The revenue commitment is associated with plan and the S&T obligations are concomitant with the revenue commitment as previously exhibited in detail.

AT&T page 11-12

By contrast, allowing PSE to acquire the benefits of CCI's traffic without assuming its burdens would undermine the very purpose of § 2.1.8, which "was to ensure that benefits could not be transferred without concomitant obligation." as the DC Circuit found. Again, because it was unwilling to engage in endless debate with Mr. Inga, **AT&T declined to respond** to this repetitive argument as well.

The DC Circuit only **found** that section 2.1.8 allowed "traffic only" transfers and that you can not transfer no obligations-we agree. The DC Circuit did not "find" what AT&T asserts. The DC Circuit as it conceded was totally confused as to which obligations transfer.

Section 2.1.8 absolutely does ensure that the benefits could not be transferred without the concomitant obligations." There are two benefits: A) the traffic and B) CSTP II plan ownership.

Section 2.1.8 ensures that when "traffic only" transfers so does the indebtedness and unexpired portion of any minimum applicable payment period transfer for the designated accounts transferred.

If the entire plan was to transfer section 2.1.8 ensures that the transferee must accept A) indebtedness and unexpired portion of any minimum applicable payment period **AND** the revenue commitment and concomitant shortfall and termination obligations.

What the DC Circuit had a hard time figuring out (because petitioners were not at oral argument) was the benefits of owning and maintaining a CSTPII/RVPP plan with little accounts on it. There are many benefits as outlined by petitioners in its 9/27/06 filing on page 16 para 48; the major one is having already established as an AT&T customer a favorable credit rating so as not to be forced into putting up tens of millions in security deposits on a new plan. The old CSTPII/RVPP plan could be merged into a new Contract tariff, which was one of petitioner's goals. Without the CSTPII/RVPP plan a brand new

AT&T customer would have to put up \$13 million dollars on a \$50 million commitment. So it was important to maintain status as an AT&T customer; and of course the plan maintained its grandfathered pre June 17th 1994 S&T immunity benefit.

Additionally, the DC Circuits only considered the relationship between the transferor and the transferee regarding which obligations are transferred/assumed. When the FCC used the word “parties” in its DC Circuit brief it was referring to the relationship that the transferor and transferee had **to AT&T, not solely the CCI-PSE relationship.**

The purpose of 2.1.8 was to protect AT&T and make sure that the company that put up the deposit to obtain the discounted rate could not divorce itself from being obligated for the revenue commitment and S&T obligations, by simply transferring away a few accounts. AT&T’s bogus post 2005 interpretation for 2.1.8 would eviscerate 2.1.8’s very purpose---- which was to make sure that the obligations were assumed by the transferee on what was transferred by the **former customer.**

AT&T page 12:

Mr. Inga submitted comments on September 12th, in which he reinstated his request for reconsideration of the Commission's January 12, 2007 order limiting the proceeding to the § 2.1.8 issue

And with good reason! This is misconduct!!! AT&T is now on Dec 13th 2007 asserting that petitioners 9/12/07 motion to reconsider addressing shortfall and discrimination claims was misconduct? Why did AT&T wait 3 months to address this if it believed it was misconduct? The only reason why the reactivation of the motion for reconsideration of the shortfall and discrimination issues were filed with the FCC is that they were withdrawn **due to AT&T’s assertion to the NJ District Court that these issues were already before the FCC.** When Judge Wigenton decided that she would not even allow petitioners to brief the Court the reconsideration motion was then filed.

In the 9/12/07 filing petitioners noted that the FCC had issued its 1/12/07 Order prior to substantial evidence being presented to the FCC showing AT&T asserting to the NJ District

Court that the shortfall and discrimination issues were all before the FCC and were **“ripe”** as AT&T declared due to the fact that there were **no disputed facts**.³

Additionally after the 1/12/07 FCC order the IRS TAS department had issued the primary jurisdiction referral to the FCC on 4/3/07 and had not rescinded it as of Sept 12th despite AT&T's full press lobbying of the IRS TAS Division.

Petitioners were more than justified to have filed such a motion on Sept 12th 2007. AT&T's Dec 13th 2007 Comments simply state that the reconsideration was made but do not explain what the misconduct was. **Petitioners were not simply asking the FCC to reconsider evidence that had already been considered.** There was an avalanche of new evidence showing AT&T's position to the NJ District Court just to get the case to the FCC. Where is the misconduct here? Did the Commission need for AT&T on Dec 13th 2007 to tell it what was filed by petitioners over 3 months earlier on Sept 12th 2007 without explaining what the misconduct was? The Commission can not let AT&T get away with this type of nonsense. AT&T's filing is simply frivolous and nonsensical and was necessitated by AT&T's own actions before Judge Wigenton.

AT&T page 12:

and on September 13th' and 14th, in which he argued that AT&T's interpretation of § 2.1.8 **“somehow”** proved that AT&T's imposition of shortfall charges in June 1996 was illegal.

Somehow? AT&T sure can play dumb when it needs to.

On Sept 13th 2007 Petitioners detailed in depth that the new crew of AT&T counsels 2.1.8 bogus interpretation----- that CCI would have joint and several liability on a “traffic only” transfer----- automatically meant that under the tariff AT&T illegally inflicted shortfall due

³ 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”**

to 2.1.8 E sub paragraph 2C. AT&T simply states “somehow.” The reason why AT&T did not respond was because AT&T simply couldn’t deny that its new interpretation for 2.1.8 conflicted with several other tariff provisions.

The Sept 14th 2007 petitioner 2 pages, FCC filing simply exhibited to the Commission AT&T’s response to a letter sent by petitioners counsel Mr. Arleo which detailed that AT&T’s bogus 2.1.8 position automatically meant that AT&T illegally inflicted shortfall in June 1996.

The AT&T letter of course did not, because it could not, explain why petitioners would be wrong under AT&T’s bogus interpretation of 2.1.8.

Is AT&T actually saying that petitioners did not have the right to present new tariff evidence exhibiting that under the tariff that AT&T’s 2.1.8 bogus interpretation was a complete tariff conflict? This is misconduct?

Why did AT&T wait to Dec 13th 2007 to raise this issue when it was submitted 3 months earlier? Why raise it now and not explain what the misconduct is? Petitioners only delay this “permit but disclose” case longer to its own detriment. What is AT&T’s issue here, other than it was no way to respond? The FCC can not let AT&T get away with this nonsense. If AT&T is going to raise an issue as misconduct it needs to provide evidence and explain what the misconduct is. AT&T simply needs to make weight to trump up its FCC insulting sanctions motion.

AT&T page 12:

He emailed the Commission staff and AT&T counsel on September 17th, asserting that the Commission "may" issue a public notice in response to his January request for a separate proceeding to address his "shortfall infliction" or "illegal remedy" claim

More AT&T nonsense! AT&T does a spin on the word "may" as AT&T puts quotes around it in its Dec 13th brief. What AT&T has done here is take the entire focus of the email and change it. If you were only to read the above AT&T short quote it comes off as if Tips was granting the FCC the permission to issue a public notice—as in--- "you may."

Obviously if you read the letter the word “may” that AT&T highlighted was used in ---“may or may not.” In fact at the end of the letter, both bolded and underlined it states: “**if the FCC so issues a PN.**” (PN=Public Notice)

This is the type of AT&T games that need to be sanctioned. There is absolutely no way that AT&T could misunderstand what “may” means when you read the letter.

Additionally what was being proposed was in the interests of judicial economy to lessen the burden on the Commission staff. The letter is here for the FCC staff convenience:

Dear Mr. Brown and Mr Guerra

The FCC **may** issue a Public Notice (PN) regarding the adjudicating of the June 1996 shortfall and termination permissibility (June 1994 grandfather clause & section 2.5.7 waiver) and method of infliction (illegal remedy) based upon petitioner's motion.

Petitioners and Tips would like the FCC to issue a PN within case 06-210 in which AT&T and petitioner's have already substantially briefed the June 1996 claims, and then Tips will drop its Jan. 2007 Declaratory Ruling **request in the interests of judicial economy.**

Does AT&T have an issue with the combining of the June 1996 claims with the "traffic only" transfer claims or does AT&T want to keep the June 1996 claims under a different case ID?

It is understood that AT&T doesn't want the June S&T infliction adjudicated at all because AT&T losses either way, but if the FCC were to issue a PN on the June 1996 issues does AT&T have an issue with combining the Declaratory Rulings?

If AT&T does not respond it will be assumed that AT&T has no problem with the FCC's resolution of the June 1996 issues, within case 06-210, **if the FCC so issues a PN.**

Al Inga Pres
Petitioners
Tips

This obviously is not misconduct on **Tips** part. The misconduct is AT&T intentionally “misreading” the letter three months after the alleged misconduct. Why didn't AT&T raise its so called misunderstanding of the word “may” back in Sept? AT&T just threw it in now to again trump up its sanctions request.

More AT&T reporting on day to day events:

AT&T page 12:

and he emailed again on September 19th, **claiming**
that state taxing authorities remained interested in
resolution of the "illegal remedy" claim exhibit 38

Reading AT&T's above comment it appears as if AT&T is asserting that Tips was making a
false claim in its statement that Florida remained interested in resolution of the shortfall charge
infliction issues. AT&T's own exhibit shows the email from Florida showing that it is interested.

Here is the short letter from Florida regarding its continued interest:

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

From: "Thomas Butscher" <ButscheT@dor.state.fl.us>
To: "Mr. Inga" <freerecdeptsrvc@optonline.net>
Sent: Wednesday, September 19, 2007 9:06 AM
Subject: FCC Issue

Al Inga
Tips Marketing

Mr. Inga:

I am looking at my pending files. What is the status of the FCC adjudication of the shortfall issue?

Thomas K. Butscher
Senior Counsel
Technical Assistance & Dispute Resolution
Florida Department of Revenue
(850)922-4710

Again, there is no misconduct here. Again, why is AT&T bringing this up three months later?
Again, the FCC can not allow AT&T to get away with its frivolous sanctions motion filing.

AT&T page 12-13

Convinced that this new barrage of filings was prompted by Mr. Inga's mistaken belief that he faced no threat of sanctions and could burden the Commission and AT&T to his heart's content, AT&T sought confirmation from Commission staff that its motion for sanctions was still under consideration.

First of all there was never an increase in the pace of filings by petitioners for AT&T to make a claim that petitioners were filing more after July 16th 2007 ---when AT&T states the filings increased due it petitioners mistaken belief that there was no threat of sanctions. Petitioners know there is no threat of sanctions because it has not engaged in any sanctionable offenses.

Here is the truth: The record shows that the pages filed by petitioners after July 16th 2007 - ---through the date of Sept 24th 2007 when the FCC's Ms Shetler advised that the motions were still pending----- were **substantially less than the 5 petitioner briefs filed within "13 days" from 5/9/07 through 5/22/07 encompassing 330 pages of new AT&T concession evidence from the old AT&T counsel crew before Judge Politan.**

In comparison there were 239 pages filed between July 16th 2007 ----through the date of Sept 24th 2007 (about 2.5 months). Additionally 122 of the pages were filed Date Received/Adopted: 08/17/07 in response to AT&T's trumped up sanctions motion So AT&T's rhetoric that petitioners engaged in a **"new barrage of filings"** during this period is yet another AT&T farce.

What actually happened is that when the new 330 pages of evidence was filed over the 13 days in May, coupled with what was already before the FCC, had the new cast of AT&T counsel saying: "Now the FCC definitely knows we're lying to cover for the old AT&T counsel."

The 163 page petitioner brief detailing much of the oral argument before Judge Politan was filed "Date Received/Adopted: 05/22/07" and conclusively established AT&T's former position and showed the AT&T's new counsels were intentionally misrepresenting AT&T's old position.

At the time of this 163 page filing petitioners told 800 Services president Mr Okin that AT&T was going to do one of two things:

- 1) Either settle because the writing is clearly on the wall as AT&T loses automatically under judicial estoppel and equitable estoppel or
- 2) Do something to intentionally delay the case for as long as possible in an attempt to get petitioners to settle for peanuts.

AT&T obviously went with option number 2.

The reason that AT&T contacted the FCC to find out what the status was of its sanctions motion was because it was its' only hope that it had left to get out from under a sure loss.

AT&T's only hope was its bogus sanctions motion—and as we have witnessed trumped up nonsense beyond belief to stall the case—as AT&T threatened petitioners counsel on the phone, that if petitioners did not settle for high school tuition payment help, it would be years before the case ends. AT&T even put it in writing that it will be **several years** which petitioners have already submitted to the FCC.

AT&T doesn't address petitioner filings after July 16th 2007 through Sept 24th 2007 due to AT&T's incredible statement that those petitioner filings were done only because petitioners believed it wasn't going to get sanctioned!

So AT&T doesn't address the filings done between July 16th 2007 through Sept 24th 2007. However if that is AT&T's excuse why didn't address petitioners filings that were made prior to AT&T's June 12th 2007 sanctions filing? Why didn't AT&T address those 330 pages filed in May that "necessitated" AT&T's bogus sanctions motion?

Because petitioners **9/20/07** filing was within AT&T's self imposed "no comment is warranted time line (July 16th –Sept 24th)" the FCC did not get an answer to why AT&T needed to lie to the DC Court on page 9 of its initial brief to the DC Circuit in 2004, stating:

AT&T denied this second proposed transfer
to PSE on January 27, 1995.

AT&T simply got snagged again in a lie. Petitioners have exhibited AT&T's counsel Mr Whitmer's initial "warning" letter of February 6th 1995 which was well past the 15 day statute of limitations date within 2.1.8. para C. (AT&T Whitmer letter at exhibit X in Ptnrs. 9/27/06 filing)

The only reason why AT&T knew it needed to lie to the DC Circuit Judges--- as to the bogus Jan 19th 1995 date----- which of course was presented without evidence, ----was due to AT&T's acknowledgment that AT&T blew the 15 day statute of limitations provision within para C of 2.1.8. and thus under the law has no right to question which obligations transfer even if petitioners were in violation of 2.1.8;.however petitioners were never in violation of 2.1.8 nor any tariff provision.

Even though AT&T imposed a no comment time line from July 16th through Sept 24th this still does not provide an excuse why AT&T did not address the new evidence filed by petitioners in May 2007 that could have been replied to according to the new AT&T crew.

It would have made for good comedy as AT&T attempted to cover-up why in March 1996 it stated multiple times to Judge Politan that the **FCC was still deciding the issue**, when in fact Tr. 9229 had been filed **5 months earlier in November 1995 on a prospective basis!** The 1996 oral argument comedy skit gets better as moments later after Judge Politan continues to press AT&T, we hear AT&T counsels (Mr Brown, Mr. Whitmer and Mr Barrillari) advising Judge Politan to read paragraph 15 in AT&T's counsel Richard Meade's certification to the Court. The Meade certification explains AT&T's problem with 2.1.8 because it separates S&T obligations from the traffic that transfers; however since AT&T industry wide answer (deposit requirements) are "new" CCI/Inga and PSE are not affected by the tariff ---not pending---but already put in place!

Additionally since CCI --not petitioners--- filed CCI's 9/28/07 comments AT&T doesn't need to address those either:

Petitioners would like AT&T to address **exhibit I** in CCI's comments Date Received/Adopted: 09/28/07 which is AT&T's reply to the FCC before the DC Circuit on page 8.

AT&T distinguishes that there is a difference between which obligations transfer on a plan transfer versus a “traffic only” transfer:

The FCC’s contrary claims rest on its mischaracterization of a single sentence from AT&T’s Opposition below, which stated: “Section 2.18.B states that a customer may transfer its WATS service (in this case the relevant WATS services are the CSTP II Plans) to a ‘new Customer’ only if the new customer confirms in writing that it ‘agrees to assume *all* obligations of the **former** Customer at the time of transfer or assignment.’” AT&T Opposition, pp. 10-11 (JA 249). This sentence did *not* distinguish between “traffic” and the “plans.” Rather, after stating that “in this case the relevant WATS services are the ‘CSTP II Plans,’” **it distinguished these “services” from the “obligations” of the former customer.** Even when viewed in isolation, this sentence did not state that Section 2.1.8 **applies “only” to transfers of entire plans (with associated obligations) and not to transfers of the traffic alone (without these obligations).**

The FCC also missed the privilege of AT&T’s comments on CCI’s **exhibit J** within the same Date Received/Adopted: 09/28/07 filing. AT&T’s reply to the FCC before the DC Circuit page 11:

The FCC makes tortured arguments that parties’ rights and liabilities are different when service is transferred **with the associated liabilities** than when service **is transferred without them.** FCC Br. 19. **This is “true”, but irrelevant.**

Additionally we were not honored to receive AT&T’s detailed comments on CCI’s Oct 10th 2007 filing. Petitioners are happy to take AT&T’s tacit concession on the 2.5.18 and June 17th 1994 provision analysis which of course prompted AT&T call to petitioners counsel for settlement.

AT&T continues under its “self imposed” “time line”--- after the September 24th 2007 Ms Shetler email.....

AT&T page 13:

Less than an hour after the Commission staff confirmed that AT&T's sanctions motion was still pending, Mr. Inga wrote the staff, claiming that his "former customer" argument had "conclusively answered" the § 2.1.8 issue, and that AT&T's inquiry concerning the status of its sanctions motion was "basically AT&T's last-ditch effort before it decides to settle.

The reason why petitioner responded to Ms Shetler within the hour was **because it was responding to her email**, explaining that it was misled by her earlier email. Additionally, the focus of the letter was not what AT&T claimed it to be. The focus of the letter was to explain that petitioners were led to believe by Ms Shetler's email that the FCC was not going to address **Mr Kearney's** and AT&T's motions.

Additionally the focus of the letter was to tell AT&T that petitioners **were not receiving any additional advice from the FCC** as could be insinuated by the AT&T email from AT&T counsel Mr. Guerra.

Petitioners wrote in that letter:

AT&T's insinuation that Ms Shetler would actually send only petitioners a notification regarding the dismissal of AT&T's sanction motion, and not AT&T is absurd. Ms Shetler would never engage in the conduct AT&T insinuates she may have done. AT&T's "presumptions" are again way out of line.

Furthermore, there is nothing sanctionable regarding petitioners asserting a position to the FCC that AT&T's sanctions motion was being done as a last ditch effort because it understood that the evidence was overwhelming against AT&T.

Again we see AT&T raising issues 3 months later on issues that if it believed were misconduct would have raised them at the time. Within its sanctions filing AT&T has simply frivolously thrown “it” up against the wall to see what would stick.

Evidence has already been exhibited which showed that Judge Politan has already admonished AT&T for this same type of see if “it” sticks defense.

AT&T page 13:

Since then, Mr. Inga has embarked on a campaign to try to frighten AT&T into settling through a series of baseless threats and warnings

Petitioners would like to know what these threats and warnings are that AT&T asserts? Obviously if petitioners were actually threatening AT&T into settling AT&T would have already initiated charges. Petitioners stand by its statements to the FCC regarding AT&T’s sanctions motion was simply enacted and trumped up beyond belief in June after petitioners filing in May 2007 the 330 pages of new evidence which was previously unavailable. AT&T’s correctly assumed that petitioners had conclusively proved its case and that is why trumped up its June sanctions motion.

Petitioner’s advice to settle at a reasonable amount before the FCC issues sanctions against AT&T for its frivolous sanctions motion should be taken as good advice from petitioners. Every petitioner would advise its defendant to settle at a reasonable amount before the authority hammers them. There is certainly nothing egregious about such a recommendation. It is comical that AT&T actually thinks that petitioner’s one man band company is actual going to scare goliath AT&T!

What are these threats! What are petitioners going to threaten AT&T with—the filing of more petitioner briefs at the FCC to delay petitioner’s justice even longer? Increased legal fees? AT&T has more billions than it knows what to do with. As usual AT&T simply makes no sense.

AT&T page 13:

On September 27th, he submitted a motion seeking to expand the proceedings to include the "illegal remedy" claim based on the demonstrably absurd theory that a colloquy during the 1996 oral argument on the primary jurisdiction referral proved that the Third Circuit expected the Commission to address this issue

This is misconduct?! AT&T waited until Dec 13th 2007 to bring up petitioners September 27th 2007 filing as misconduct! If AT&T had an issue with this why didn't it bring the issue to the FCC's attention 3 months earlier in September?

The statements from Third Circuit Judges Stapleton and Weis regarding the FCC needing to address the pre June 17th 1994 duration of the shortfall and termination charge immunity period is based upon **AT&T's own assertions before Judge Politan and the Third Circuit.**

AT&T is that party that claimed that Judge Politan's referral encompassed not just whether 2.1.8 allowed "traffic only" transfers but whether **its tariff in general** allowed the "traffic only" transfer at hand. Example (the pre June 17th 1994 immunity provision within section 2.5.18)

The fraudulent use provisions have been disposed of due to AT&T's use of the legal remedy—not that AT&T had the right to use its fraudulent use remedy in the first place. However the FCC has not interpreted the pre June 17th 1994 duration of the immunity period from S&T charges.

The Third Circuit referral sent Judge Politan's referral to the FCC verbatim. **The Third Circuit did not provide additional or different ordering clauses in its decision. The Third Circuit simply wanted what Judge Politan had initially referred.**

If AT&T now believes that the Judge Politan's referral is to be limited to its strict interpretation of what the explicit referral stated then the case is now over and petitioners win.

The referral that initiated in Judge Politan's District Court and was subsequently referred "as is" by the Third Circuit in 1996 simply was:

whether section 2.1.8 [of AT&T's Tariff FCC No. 2] permits an aggregator to transfer traffic under a [tariffed] plan without transferring the plan itself in the same transaction.

If AT&T **no** longer believes that the FCC was to address all sections of AT&T's tariff in reference to the "traffic only" transfer at hand, then this is yet another AT&T **position**

change and the case is won by petitioners. However if AT&T **still believes** that Judge Politan's referral encompassed all inter-related tariff sections to 2.1.8 then AT&T must agree that the FCC should interpret the June 17th 1994 immunity duration period as the Third Circuit's Judges expected.

AT&T's following assertion states that the June 17th 1994 issue was encompassed within the 2.1.8 referral:

AT&T page 13 Footnote 41

Not only do appellate courts speak through their opinions, not questions raised during oral argument, **but the judges had to be discussing the "shortfall immunity" issue (which AT&T has repeatedly stated is relevant to the § 2.1.8 issue,** see December 20, 2006 Comments at 31-34), and could not have been referring to the **"illegal remedy"** issue: AT&T's supposedly **"illegal"** imposition of shortfall charges occurred in the summer of 1996, months after the oral argument Mr. Inga now cites.

The Third Circuits referral of the June 17th 1994 provision was done to directly resolve the "traffic only" transfer; that is understood. However, the point that petitioners made in its 9/27/06 filing is that an FCC interpretation of the duration of the June 17th 1994 immunity period **also directly resolves the June 1996 shortfall charge permissibility issue**---not the June 1996 shortfall application **illegal remedy** in which AT&T exceeded the discount cap at 3.3.1.Q para 10.

The shortfall application illegal remedy is for violating this 3.3.1.Q para 10 provision:

For billing purposes, such penalties shall reduce any discounts apportioned to the individual locations under the plan.

Of course the Third Circuit as of its April 1996 Decision date would not have even known about the shortfall application illegal remedy that AT&T used, because the decision was prior to AT&T's June 1996 illegal act.

In petitioners 9/27/07 filing petitioners did not state that the Third Circuit was referring the shortfall application illegal remedy. Petitioners stated that the Third Circuit wanted the June 17th 1994 duration of the S&T immunity period provision addressed. The following is from petitioners 9/27/07 filing which makes only the following statement:

Petitioners 9/27/07 filing:

The FCC 1/12/07 order believes that the adjudication **of the June 17th 1994 grandfather provision** was not expected by the referring Third Circuit to be resolved by the FCC.

There is not a statement from petitioners within its 9/27/07 filing that states the Third Circuit was expected to resolve the **shortfall application illegal remedy** for imposing S&T charges in excess of the tariffed discount cap on the end-users bills.

Evidence has already been presented that shows that AT&T asserted to Judge Bassler and the FCC that the June 17th 1994 duration of immunity from S&T charges issue should be resolved by the FCC to resolve both the “traffic only” transfer issue and whether it was permissible to apply the S&T charges to the end-users bills in June 1996 because the CSTPII plans were still immune from S&T charges.

The June 17th 1994 duration of the S&T charge immunity period has not been interpreted by the FCC, as the Third Circuit expected. AT&T in its Dec 13th 2007 Comments is stating that the June 17th 1994 duration of the S&T charge immunity period was to be decided, **so go ahead and decide it and we can agree on something!**

The Oct 10th 2007 filing makes the FCC’s decision an easy one regarding section 2.5.18 and its pre June 17th 1994 S&T charge immunity provision.

As usual AT&T’s statement that petitioners were referring to the Third Circuit referring the **shortfall application illegal remedy** issue is simply not reality; only the pre June 17th 1994 issue was referred.

AT&T page 13:

A week later, he emailed the staff claiming that he would soon be submitting an analysis of an August 1996 AT&T brief that would "conclusively show" that AT&T's imposition of shortfall charges was illegal

Because petitioners never know when the FCC will rule it wanted to let the FCC know that it wanted to submit new evidence on this matter. AT&T has also done the same, advising the FCC that it would like to comment. Basically saying: Don't rule yet!"

As petitioners stated the FCC was indeed conclusively shown that AT&T's imposition of shortfall charges was illegal. If the FCC recalls, AT&T's August 26th 1996 brief was the one AT&T didn't want to provide petitioners because it led to further tariff analysis on section 2.5.18.

AT&T to this day still can not address the November 1995 section 2.5.18 para 2 and 3 which conclusively shows that the pre June 17th 1994 **terms and conditions** were passed from restructures done prior to Nov 9th 1995. After November 9th 1995 penalty free restructures were allowed under 2.5.18 para 2 on the first post November 9th 1995 restructure, and then exempt under para 3 until the end of the term plan (3 years here), which started prior to November 9th 1995. Simple!

There is no misconduct on petitioner's part here at all. The only misconduct is AT&T's for bringing this up as petitioner misconduct--- **three months after the email!**

AT&T page 13

Later that same day, he warned that there were **many** parties monitoring the shortfall infliction/illegal remedy issue, but that he was holding off on submitting his analysis "to give AT&T the chance to settle under non disclosure

AT&T again spins the email sent by petitioners. First of all it was not a warning! The entire emphasis of the letter was to advise the Commission that petitioner's no longer were going to file the next day as it had earlier advised Ms Shetler. As you can see the subject line of the email is:

Re: Deena --Re-thinking when to file the next brief...

As indicated in the last email (below), CCI and petitioners have a brief that **we were going to file tomorrow** that carefully explains the June 17th 1994 tariff history.

However my counsel advised petitioners that we should first give AT&T the opportunity to settle under non disclosure--as once the brief is filed it is up there for the world to see and may open a

Pandora's box for AT&T. We are giving AT&T the opportunity to not only save face but save a ton of cash.

Therefore we are informing the FCC to standby as petitioners and AT&T see if we can finally come up with the dollar figure that will work

As the Commission can see it was explained that **“we were going to file tomorrow.”** And **“we are informing the FCC to standby.”**

This email was sent because it was proper to update the Commission on why we were not going to file by the next day as originally stated and cooperate with AT&T to settle the case.

This conduct is absolutely normal in business negotiations. Any petitioner understands that it would be in the defendants' best interests not to be exposed to additional parties' damages that would result from petitioner seeking damages within its own case. There was absolutely no threat upon AT&T. There simply is no misconduct. Trump-up, Trump-up, Trump-up. That is AT&T game plan. Make up nonsense and delay and force settlement at a fraction of actual damages.

AT&T page 13 footnote 41

AT&T will not **burden the Commission** with a blow-by-blow account of the parties' settlement efforts, and thus restricts its discussion to documents that have already been submitted to the Commission or do not otherwise disclose settlement amounts. However, if the Commission places any weight on Mr. Inga's claims that AT&T initiated settlement discussions, and that it did so in response to Mr. Inga's various filings, AT&T requests that it be given a chance to submit documents that incontestably refute these claims.

Has the FCC staff noticed yet that when AT&T can't respond with an intelligent answer or wish to conjure up another comical defense, that it asserts to the Commission that it doesn't want to “Burden the Commission;” or AT&T simply misrepresents: “this is repetitive and AT&T declines to comment.” AT&T's avoidance excuses are getting very old! Obviously its not a burden upon the Commission for AT&T to file for the third time non relevant IRS issues against non parties in the 06-210 case who did not engage in misconduct in any event.

AT&T advised petitioners that it not send the FCC, the Court or any other party (CCI) information regarding the settlement talks **until settlement talks broke off.**

Petitioners indeed honored AT&T's request.

When AT&T insulted petitioners with its offer to help pay high school tuition for the poor Inga Child in a case in which the damages are in the hundreds of millions the settlement broke off, but not by petitioners, AT&T broke off settlement talks. ⁴

The settlement discussions were to show the Commission a couple of things that the Commission should know.

1) AT&T's **reaction** to the Oct 10th FCC filing. AT&T immediately called petitioners to settle the next day on Oct 11th and used as a bogus excuse that it was getting back to petitioners July 10 settlement overture made THREE MONTH EARLIER—in which AT&T in July 2007 had completely totally ignored petitioners settlement proposal. This is more than a tacit admission that AT&T understood the evidence was conclusive against it.

2) It was also important that the FCC knew that AT&T warned that it was going to be years before the case got resolved. AT&T basically told petitioners counsel that AT&T would do whatever was possible to intentionally delay the proceedings. AT&T has made good on its threat by filing its sanctions motion for the third time.

We welcome AT&T to submit documents to refute that it was not reacting to the Oct 10th 2007 FCC filing. Since AT&T never sent a document nor made a phone call in response to the July 10th 2007 petitioner settlement overture it will be fascinating to see what AT&T produces. The FCC does not need AT&T's running to petitioners to settle as a tacit concession that AT&T is guilty as all sin. The FCC has tons of actual tariff evidence and

⁴ The FCC 2003 decision in fact shows that AT&T should have paid out 66% under CT-516 instead of 28% in discounts under CSTPI/RVPP on \$54 million in billing since Jan 1995. That is over \$20 million a year for 13 years. This does not include the supplemental complaint in which AT&T also put petitioners out of business in June 1996, nor does include legal fees which are statutorily defined under the Communications Act. Therefore the Commissions own 2003 Decision provides the variables to calculate the damages which are in the hundreds of millions. This is why AT&T is doing everything possible to stall the FCC proceedings.

numerous AT&T counsels concessions; but go ahead AT&T and submit your settlement talks brief evidence.

AT&T page 14:

On October 10, CCI submitted comments setting forth the supposedly conclusive analysis that purportedly proved that AT&T's imposition of shortfall charges was illegal.

AT&T Footnoted the above sentence at footnote 46

AT&T has not responded to this filing, and Mr. Inga's various emails on the same subject, because the **shortfall infliction/illegal remedy issue** is not part of the referral, see January 12th Order, and AT&T has explained why that the January 12th Order should not be reconsidered. See AT&T's Opp. to Request for Reconsideration of January 12th Order (Feb. 20, 2007). Contrary to Mr. Inga's claims, moreover, AT&T has never briefed the merits of the shortfall infliction/illegal remedy issue in this proceeding; instead, it has addressed the shortfall immunity issue, which is relevant to the § 2.1.8 issue.

As usual AT&T makes no sense! Interpreting the duration of section 2.5.18's June 17th 1994 shortfall immunity provision ---which AT&T claims is before the FCC---will also **simultaneously** resolve whether the plans were still immune as of June 1996.

Additionally CCI's filing "**did not**" comment of the "**shortfall application**" **illegal remedy** that AT&T used by exceeding the discount cap limit under 3.3.1.Q para 10. (Exhibit D in ptrns. 9/27/06 filing)

AT&T states it did not brief the shortfall application illegal remedy in this proceeding— but it did. AT&T rationalized that because it moved the shortfall and termination charges from the end-users bills to CCI's main billed account after a month it wasn't an illegal remedy.

Furthermore what is there to brief over this issue. There is no room for discussion or interpretation. AT&T can't exceed the end-users discounts! ILLEGAL REMEDY!! THE ISSUE IS BRIEFED IN A COUPLE SENTENCES!! Here the FCC's position:
FCC 2003 Decision Page 13 Footnote 87

Given our conclusion that AT&T violated section 203 of the Act it is unclear **what additional "fact-finding" on these issues is necessary.**

The FCC does not need to have any additional fact finding done on the shortfall application illegal remedy. The FCC is very well aware of the 190 bills submitted which show AT&T exceeded the discount cap. Please rule.

The evidence presented after the FCC 1/12/07 Order shows that AT&T asserted to Judge Bassler that all issues are before the FCC and that is why Judge Bassler stated as well as other open issues. There is no reason to add such a statement if all he wanted resolved was the “traffic only” transfer issue.

The Third Circuits Decision Ordering clause was to address what Judge Politan had referred to the FCC and AT&T’s position has always been that Judge Politan wanted all sections of the tariff interpreted and included the June 17th 1994 provision. AT&T’s position from day one is that the Politan referral was not just limited to section 2.1.8 but AT&T’s tariff in general. AT&T 1/31/07:

As AT&T has explained both in its Comments and in its Reply to Petitioners’ Request for Extension of Time, the scope of the issue referred to the Commission has been carefully defined by the District Court in two separate orders. That issue is limited to whether the proposed CCI/PSE transfer complied with **AT&T’s tariff**.

Finally, the FCC does not need to have a District Court to explicitly refer any issue. As long as a Declaratory Ruling (DR) issue is presented to the FCC that will terminate a controversy or remove uncertainty and the party has standing, the party bringing the DR request is entitled to have its non disputed facts interpreted. Did Judge Politan explicitly refer AT&T’s first illegal remedy in which AT&T permanently denied the “traffic only” transfer as opposed to tariffed remedy of temporarily suspending service? No! Did the FCC issue case ID 07-278 for Tips telecom issues, despite the issues not being referred by a Court.-No.

AT&T page 14:

Later that same day, Mr. Inga ratcheted up his threats even more, warning AT&T's outside counsel that, if AT&T did not settle, **he would accuse them of intentionally lying to the Commission.**

Petitioners have advised the FCC from day one that the evidence presented will conclusively show that AT&T is intentionally lying to the Commission. This is a new? This is a threat? Every petitioner makes the same remarks. In this case the evidence is overwhelming of the truth of petitioner's assertion.

AT&T's actions of initiating a criminal investigation to gain leverage in a civil matter based upon its baseless "presumptions" that Mr Inga is in cahoots with IRS agents, and advising the FCC of this is a threat. Telling the FCC that AT&T counsel is intentionally lying is no threat.

Additionally, petitioners did **not** threaten AT&T "that if it didn't settle it would accuse AT&T of lying to the Commission", and AT&T presents no evidence of such remarks. What kind of threat would that be even if it were true?

AT&T again trumps up misconduct where there is none. Petitioners know full well that advising the FCC that AT&T counsel are intentionally making gross misrepresentations is hardly a threat. The FCC is used to AT&T attempting to intentionally mislead it as it did in 2003. Again AT&T waited until Dec 13th 2007 to bring up what it alleges as misconduct from September?

AT&T page 14-15

The draft went on to make the **utterly reckless and unfounded accusation** that "[t]his case for AT&T counsel has never been about advocacy for its client.

Petitioners beliefs raised against AT&T were **not utterly reckless and unfounded**, as in AT&T's presumption that the IRS was doing favors for Tips because Mr Inga was a former Enrolled Agent. The evidence presented against AT&T is absolutely overwhelming exhibiting that the new AT&T crew of counsel is engaged in a cover-up for the position of its former counsels. **Petitioner's comments are not based upon presumptions.** There is

a major difference between advocacy for a clients' position and an intentional cover-up. It is Tips belief that AT&T's new crew of counsel has intentionally engaged in a cover-up for AT&T's initial crew of counsel despite knowing that its new post 2005 interpretation is total nonsense.

AT&T page 15:

In a follow-up email the next morning, October 17th, Mr. Inga explained that he would send this draft email to the Commission "if AT&T does not come back with a **realistic** settlement offer."

Another AT&T spin job. The email was amongst petitioners' counsels and AT&T's counsels-not the Commission: Here is the header:

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

From: Mr. Inga

To: Brown, Richard ; Guerra, Joseph R. ; adllc@aol.com ; Gerald P. Scala, Esq.

Sent: Wednesday, October 17, 2007 8:52 AM

Subject: Mr Guerra and Mr Brown: 10/17/07

As usual AT&T spins what was stated. Petitioners were in settlement negotiations with AT&T and AT&T asked petitioners to not notify the FCC of the settlement negotiations until after settlement negotiations broke off.

Petitioners were happy to see that AT&T made the call on Oct 11th 2007 to petitioners counsel to offer settlement payment after AT&T read the Oct 10th 2007 FCC filing.

AT&T counsel spoke to two different counsels of petitioners and requested that the FCC, the Courts, and third parties not know about the settlement talks until the talks broke off; and followed up with an email to this effect to petitioners counsel.

AT&T advised petitioners counsel that it should settle because the chances are that the Commission will get it wrong and this will waste **additional years**. AT&T counsel claimed that about 80% of the FCC cases that AT&T appealed are sent back to the Commission as the one in 2003. Petitioners counsel had no way of knowing whether AT&T's assertion was true or not.

Petitioners advised AT&T that it needed to **get realistic** about its initial offer to pay for "high school tuition." or the talks would be off and we would advise the FCC of AT&T's threats to intentionally delay.

Petitioners notified AT&T and the letter shows that petitioners were adhering to its promise as it advised AT&T:

Petitioners have not sent the below email to the FCC as of yet. It will be sent **only if** AT&T does not come back with a realistic settlement offer.

And...

AT&T requested that the FCC not be made aware that AT&T wishes to settle and for the time being we will honor that request.

AT&T simply does not want to explain the background of the letter that was sent only to AT&T counsel- not the FCC.

AT&T page 15

Second, he sent AT&T counsel a draft letter to Judge Wigenton seeking permission yet again to re-visit Judge Bassler's referral order and expand its scope

Once again the draft letter to Judge Wigenton was not to the FCC and was not seeking to expand the scope of what was referred. It pointed out to Judge Wigenton that there was new evidence on the "traffic only" transfer issue and this new evidence which was previously not available had not been presented to Judge Bassler.

AT&T responded that the evidence had to be new and unavailable and AT&T as usual threatened sanctions if petitioners went back to the District Court. **Petitioners then responded and explained that the evidence was obviously new and of course was not available; otherwise petitioners would have used it. Thus it was within petitioners rights under federal rules of procedure to return to the District Court.**

Petitioners detailed why AT&T's change in position is barred by Judicial Estoppel. Petitioners also pointed out that in the unlikely event that the FCC rules that S&T obligations transfer on a "traffic only" transfer AT&T loses under Equitable Estoppel. Petitioners also pointed out that there was never a request made upon AT&T to alter the obligations allocation of 2.1.8. Petitioners were willing to adhere to whatever 2.1.8 mandated as far as obligations. These are all fact issues not interpretation issues.

Exhibited here as A, B and C is the draft of the letter to Judge Wigenton responding to AT&T's sanctions threat as exhibit A (Petitioners counsel Arleo letter) Exhibit B (Mr Inga certification) and exhibit C (former AT&T sales manager Joe Kearney's certification).

AT&T page 15

The record clearly shows that his claim that the IRS is interested in either of Mr. Inga's pending declaratory ruling petitions is a blatant falsehood

Where does the record show that the IRS Investigations/Reward Division is not interested? No where. AT&T simply makes up statements and provides zero evidence. The fact that the IRS Taxpayer Advocacy Service Division rescinded its primary jurisdiction referral request made on behalf of Tips, has nothing to do with the Tips continued existing rights to pursue its claims against AT&T at the IRS investigation/Rewards Department.

AT&T page 15

and his claim of any such interest on the part of the **state taxing** authority is **entirely unsupported** and equally undeserving of credence.

Again AT&T loves to simply makes up statements but provide zero evidence. The Florida Department of Revenue continues to be interested in the outcome of the shortfall charge issues as it was on September 19, 2007 9:06 AM.---and AT&T was provided a copy of the following letter which also was uploaded to the FCC server....

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

From: "Thomas Butscher" <ButscheT@dor.state.fl.us>

To: "Mr. Inga" <freerecdeptsrv@optonline.net>

Sent: Wednesday, September 19, 2007 9:06 AM

Subject: FCC Issue

Al Inga

Tips Marketing

Mr. Inga:

I am looking at my pending files. What is the status of the FCC adjudication of the shortfall issue?

Thomas K. Butscher

Senior Counsel

Technical Assistance & Dispute Resolution

Florida Department of Revenue

(850)922-4710

Additionally if AT&T did not believe Florida was still interested AT&T wouldn't have had its counsel Richard Sinton call Florida's Senior Counsel Thomas Butscher, lobbying him to drop Florida's investigation of AT&T. As the FCC can see by the following email AT&T counsels (Mr Brown, Mr Jacoby, and Mr Guerra) were all informed a week before AT&T's Dec 13th 2007 filing that Tips spoke with Florida's Tom Butscher on Dec 7th who advised Tips to tell AT&T to stop contacting Florida about Florida's pending investigation of AT&T.

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

From: Mr. Inga

To: [Deena Shetler ; fcc@bcpiweb.com](mailto:Deena.Shetler@fcc.bcpiweb.com) ; Brown, Richard ; Guerra, Joseph R. ; JACOBY, PETER - LEGAL ; chh@commlawgroup.com ; adllc@aol.com ; rbrosen@hlgslaw.com ; lgsjr@usa.net ; phillo@giantpackage.com ; [Joe Kearney](mailto:Joe.Kearney)

Sent: Friday, December 07, 2007 5:52 PM

Subject: Mr Brown (Regarding AT&T contact of Florida officials.)

Dear Mr Brown

Florida Department of Revenue senior counsel Thomas Butscher advised Tips today that AT&T's Richard Sinton had contacted Mr. Butscher asking questions regarding Tips tax reward claims and Mr. Butscher explained that such information could not be disclosed to AT&T.

Please advise Mr Sinton to stop contacting Mr Butscher in an attempt to get the Florida Department of Revenue to no longer investigate AT&T; especially now that the FCC 07-278 docket is active.

Some people might think that AT&T was attempting to obstruct Florida's investigation.

AT&T has already had the IRS advise it that it will not divulge information regarding the IRS investigation. It appears that AT&T does not believe it has to conform to the State of Florida or the IRS's non disclosure statutes.

AT&T's conduct is obviously an effort not to have the FCC rule on these telecom issues that have vast ramifications for many parties.

Please see to it that Mr Sinton nor anyone else contacts Florida in reference to the ongoing investigation.

Tips did not realize that when it divulged Mr Butscher's name and email address that he was going to be "pitched by AT&T" to drop the tax investigation.

We anxiously await the FCC's ruling in case 07-278.

Al Inga Pres
Tips

The FCC will note that AT&T's Mr Sinton was one of the AT&T people who provided a certification and obviously AT&T is well aware that its' FCC Dec 13th statement is yet another in a long list of intentional lies:

and his claim of any such interest on the part of the state taxing authority is entirely unsupported and equally undeserving of credence

Obviously AT&T is well aware of Florida's interest.

AT&T page 18

Having inundated the Commission staff (and AT&T) with countless emails, Mr. Inga claimed that, if AT&T refused to accept "this generous offer it is basically saying that it" seeks only "to delay the case and continue to abuse the FCC's limited staff

The point is totally accurate. Petitioners noted that the "traffic only" transfer issue was also a declaratory ruling request within the separate case 07-278 and therefore AT&T's

sanctions motion to dismiss the issue within 06-210 case was not going to prevent the FCC from interpreting this issue.

Petitioners recognized that the only AT&T benefit of continuing its sanctions motion was to delay the 06-210 proceedings and therefore petitioners offered AT&T to withdraw petitioners sanctions motion which was not moot in exchange for AT&T to withdraw its sanctions motion which was moot--- so the FCC can concentrate only on the merits of the case.

AT&T's refusal to accept such an offer clearly indicates that the money it believes that it will pay in sanctions is worth the ability to delay the case and force petitioners to settle for far less than the actual damages.

AT&T's summary of so called "misconduct" page 19:

In a proceeding concerning the meaning of a **single, 13 year-old tariff provision**, Mr. Inga has:

AT&T states: "**the meaning of a single, 13 year-old tariff provision**" to intimate that it is no big deal! Petitioner has the same rights to recover its damages no matter how long AT&T was able to delay justice over this "single" tariff provision. Some may argue it is not even an entire provision but the single word: "**former**" used within Para A and B that was "better found late than never found,"

The word "former" just conclusively established that petitioners, the former AT&T crew of counsels, Judge Politan's and the FCC's 2003 decision as the correct interpretation of 2.1.8. AT&T's Dec 13th 2007 Comments did nothing to change the "former" customer tariff analysis; in fact AT&T 12/13//07 comments only further demonstrated the comical cover up by AT&T's new crew of counsels. Although the case should have been decided against AT&T on 1) the 15 day statute of limitations provision within para C of 2.1.8 and 2) due AT&T's concession along with everyone else that 2.1.8 is not explicit.

AT&T's first bullet point page 19:

- filed over three dozen formal pleadings totaling over 1,000 pages (along with dozens of emails), devoting a great many of these pleadings and pages to issues that are manifestly not before the Commission

AT&T's first bullet point addresses the amount of pages that have been filed. The Declaratory Ruling process is a “**permit but disclose**” proceeding and there is no misconduct regarding the amount of pages that a public commenter believes it needs to support petitioners counsels initial FCC Declaratory Ruling Request.

The amount of pages was necessary to counter AT&T's revisionist history and misrepresentations. As we just saw with AT&T's assertion that Florida was not interested. AT&T obviously knows that its statement is a lie but asserts it anyway and therefore we must respond to the incredible amount of misrepresentations which drives the FCC filings up as AT&T itself desires to delay the case.

In fact it is AT&T which has twice repeated the same sanctions allegations which were already answered by Tips and or Petitioners. This last filing comes after the IRS explains its staff made a mistake in issuing the letters.

If AT&T's tariff was explicit there would not have been the need for the amount of pages filed.

AT&T's second bullet point page 19:

- fabricated and submitted a March 14th "IRS" letter that he tried to pass off as an official statement by that agency, and that he still does not admit was unauthorized;

AT&T's second bullet point concerns the March 14th 2007 fax from IRS agent Ms Lee. Despite the fact that the letter had already been withdrawn by Tips due to the IRS mistake, AT&T 2 ½ months later injected it into its trumped up June sanctions motion due the new evidence filed by petitioner in May 2007. AT&T incredibly made two false presumptions that actually countered each other. AT&T simultaneously claimed that Tips pressured Ms.

Lee going in and out of the IRS office repeatedly until she finally relented—an impossibility due to the time line established between IRS lobby sign in and the fax sent. Simultaneously AT&T also falsely asserted that Ms Lee must have been doing a favor for an old friend of former Enrolled agent Mr Inga for Tips to so easily obtain the Ms. Lee fax. This is what happens when you keep making up lies, as we have seen with AT&T's interpretation of 2.1.8, ---all the lies and defenses conflict with each other. As Judge Politan stated AT&T is just throwing "it" up against the wall to see what sticks.

The exhibits presented by Tips show the fax was personally stamped by her, initialed by Ms Lee, IRS badge number added, and marked by Ms Lee as "Sent Ok", in reference to the fax sent. It was understood that the IRS reserved the right to modify the body of the letters in any way it wished.

AT&T asserts that Tips takes the position that the March 14th 2007 IRS fax was authorized. At the time both Ms Lee and Tips believed what she was doing was indeed with Ms Lee's job description and Ms Lee was indeed authorized to issue the letter.

Ms Lee was not asking the FCC to do any thing more than resolve a telecom issue to resolve a tax issue. The fact that the IRS Investigations/Rewards Division understood the impasse and itself had directed Tips to contact TAS only further established the belief that the IRS was authorized to refer to the FCC the declaratory ruling questions.

The March 14th 2007 letter issue had been long resolved for months by the time AT&T filed its June 2007 sanctions motion. AT&T June 2007 filing was filled with conflicting presumptions.

AT&T used its in house IRS tax auditor Mr Schwarmann to initiate a criminal investigation to gain leverage in a civil claim. Mr Schwarmann has not offered any explanation of why the "pressured repeated visits" lie was included within his certification. Did he make this up himself? Did Ms Lee make this up in her recount of what she told Mr Schwarmann? Did AT&T write Mr Schwarmann certification and simply "threw it in" and Mr Schwarmann was brazen enough to certify to it because he didn't think it could be proven as a lie—so he signed the certification? The fact that AT&T's Dec 13th 2007

comments has given up on the repeated pressured visits lie indicates that AT&T threw it in Mr Schwarmann's certification; otherwise AT&T would continue to make the same lie.

Even though AT&T's latest Dec 13th 2007 comments no longer makes the "repeated visit" bogus claim---instead AT&T settles for the false Ms Lee was "pressured" lie. It is incredible that AT&T literally initiated a criminal investigation over a simple letter sent by an IRS employee of 26 years who honestly believed that she was authorized to issue the letter---and falsely accused her of being in cahoots with Mr Inga to do this "special favor" for Mr Inga. AT&T has the nerve to blame Mr Inga after the IRS already advised that it was an IRS employee mistake. It was a simple IRS employee mistake nothing more.

AT&T's Third Bullet Point page 19

- branded disinterested IRS employees as liars in public filings because they contradicted his self-serving account of his behavior before the agency;

It was AT&T who branded Ms Lee as not acting impartial.

Tips made the statement to the FCC that either Ms Lee or Mr Schwarmann were intentionally misrepresenting that Tips made multiple IRS visits to Ms Lee until she finally relented and did the letter. The statement was not frivolously made. It was based upon the time line in which Tips signed into the IRS lobby and the time of the fax.

It was AT&T which "presumed" Mr Inga was receiving favors from old friends solely based up the fact that Mr Inga was a former Enrolled Agent tax specialist. It was AT&T which used its in house tax auditor Mr Schwarmann to make baseless accusations against Tips and the IRS employee Ms Lee as doing "special favors for a alleged friend."

None of this IRS issue should have been filed with the FCC by AT&T. The only thing the FCC should have received was the initial letters and then the withdrawals. All the IRS issues that went on could have gone on behind the scene without AT&T's numerous presumptions and the FCC should only have been advised of the outcome. But then AT&T would have less to add to its' trumped up beyond belief sanctions motion.

Incredibly Mr Inga was a former tax specialist was supposed to know every IRS employees job responsibilities!!! Mr Inga sold long distance telephone service too. According to AT&T's

rationale Mr Inga has to know the job description of everyone at the FCC? AT&T's sanctions motion is completely frivolous based upon moronic presumptions which alleged criminal misconduct all to gain financial leverage in a civil case.

AT&T's fourth bullet point page 19

- sought sanctions against AT&T for simply alerting the IRS to the existence of this fabricated letter, even though the agency itself viewed the letter as so irregular that it initiated a criminal investigation into it; and

The sanctions are against AT&T for filing a frivolous sanctions motion to the FCC which included many false and conflicting AT&T accusations against Mr Inga personally, who was not even a party to the case. The sanctions motions against AT&T were not filed by petitioners at the FCC due to AT&T's false presumptions to the IRS.

The AT&T sanctions motion filings were done purely on speculation and presumption and were done solely to delay the case after the 330 pages of new evidence were presented in 13 days in May.

The Ms Olson letter confirms that there was nothing done wrong other than the IRS employees honestly believed they were authorized to issue the letters. AT&T's manufacturing of a story in which **it had no first hand knowledge of** is deserving of substantial sanctions.

AT&T's concession to the FCC that AT&T **only made its false presumptions against Mr Inga to the FCC--- but not the IRS** (because AT&T had Mr Schwarmann do it for AT&T to the IRS) is more than enough of an AT&T concession of a frivolous FCC filing, to substantially sanction AT&T.

When you also consider:

A) the timing of AT&T's filing (after petitioners May 2007 filings which AT&T failed to address) and then

B) consider AT&T's FCC sanctions motion filing was overwhelming made against Tips Marketing Services, Corp a party that is not even included with the 06-210 case on FCC

issues----- that were already before the FCC anyway as declaratory ruling requests in both cases as of Sept 2006 (case 06-210) and Jan 2007 (case 07-278)

Then when you consider that these AT&T “sanctions issues” are now being presented for the third time-twice repeats of the same IRS non issues, and the third AT&T sanctions motion was filed **after** the IRS apologized to the FCC for the actions of its employees— AT&T deserves enormous sanctions for frivolous FCC filings.

AT&T’s fifth bullet point on page 19:

- recklessly and falsely accused every AT&T lawyer involved in this case over the past 13 years of intentionally lying to and attempting to mislead several federal courts and the Commission, **based on nothing more than his conviction** that his own tortured interpretation of a tariff provision is correct.

Each Court and the FCC have not been swayed by nothing more than petitioner’s so called **conviction that petitioner’s tariff interpretation has been correct.** The Courts and the FCC have looked at the overwhelming evidence provided by petitioners and zero evidence provided by AT&T of ever having transferred the revenue commitment and concomitant S&T obligations on “traffic only” transfers.

Just a few AT&T lies and cover-ups:

A) “changing 2.1.8 words” (“former” to “existing” to the DC Circuit);

B) By passing the quoting of Para A which defines the Customer as a former customer as to what is transferred;

C) Lying to the DC Circuit that petitioners were advised within 15 days

D) Lying to Judge Politan in March 1996 that the Tr 9229 was still pending before the FCC when AT&T knew it went into affect on a prospective basis 5 months earlier in November 1995.

E) Four times alternating where S&T obligations were either: 1) encompassed within the unexpired portion of the minimum payment period or 2) within “all obligations.”--- No

longer do we get AT&T's scam of short quoting 2.1.8. Now we are on to AT&T's new "reverse scam" that 2.1.8 somehow defines the "former" customer as the customer at the time of transfer; and AT&T's Jan 1995 TSA which states that obligations are only on what is "specified above" means nothing at all.

These are just a few of AT&T's actions besides the comical "defenses". AT&T can not, and never will be able to, provide the Commission any evidence in which petitioners or Tips intentionally lied. Neither petitioners nor Tips would not resort to the use of such tactics.

Summary

AT&T's "misconduct" allegations against primarily the non 06-210 parties (Mr Inga & Tips) were raised by AT&T in the middle of June but "strangely" were not so egregious that AT&T never raised these so called sanctionable misconducts at the time of their occurrence in the beginning of April. Looking at the record it is clear that the 330 pages of new evidence filed in May 2007 caused AT&T's June sanctions trump up job.

There is no conceivable excuse for such persistent, willful AT&T misconduct. Nor will there be any end to it unless the Commission sanctions AT&T. Simply ignoring AT&T and its 3 times initiated repetitious sanctions filing arguments will not stop AT&T's incessant vituperative filings either.

The Commission staff has deemed AT&T's motion "unusual." However it is not unusual for AT&T to attempt it. AT&T has enormous resources and routinely files sanctions and motions to dismiss cases for at minimum the ability to delay the case.

It all resorts back to common sense. AT&T ran to the FCC after the Jan 1995 TSA's and initiated its' Substantive Cause Pleading claim asserting to the FCC that had the right to retroactively change 2.1.8 AT&T filed (Transmittal 8179) and attempted to change 2.1.8 so that when a substantial "traffic only" transfer was ordered the plan and its revenue commitment/S&T obligations should be forced to transfer. Why? Because AT&T obviously understood that the revenue commitment and concomitant shortfall and termination obligations do not transfer on a "traffic only" transfer. (Tr 8179: Exhibit L in

petitioners 9/27/06 filing.) AT&T's Substantive Cause Pleading actions were taken at the FCC prior to the start of the NJ District Court injunction case. There is nothing on the AT&T TSA order form that would indicate that the parties were seeking any modifications to section 2.1.8, as PSE explicitly stated it is a proper order. AT&T's very actions before the FCC in 1995 indicated that it knew that the revenue commitment and concomitant shortfall and termination obligations do not transfer on a "traffic only" transfer.

AT&T's counsel Mr Meade's 1995 assertion to the FCC was that the "traffic only" transfer should not go through because the "substance" (the amount of accounts transferred) was more important than the "form" (the fact that petitioners followed 2.1.8 to the letter of the law). AT&T's counsels Mr Meade and Mr Carpenter both conceded that the FCC advised AT&T in 1995 that its substance argument over form argument was wrong and AT&T's attempt to retroactively change 2.1.8 was more than a codification.

It was wrong then and it is still wrong today. The simple reason AT&T did not transfer the accounts was because AT&T would have discounted its base rates by 66% instead of 28% on \$54.16 million in billing. AT&T's rhetoric in downplaying the "single provision" means hundreds of millions in damages and therefore AT&T has been more than willing to do "whatever" it has to defend itself---including the filing of its trumped up sanctions motion.

For AT&T to even file such nonsense within its sanctions motion is sanctionable. For a party to receive the type of sanctions that AT&T is requesting, so as not pay hundreds of millions in damages, that party better come to the table with irrefutable outrageous misconduct against the parties actually in the case! Furthermore AT&T must have impeccable "clean hands"⁵. The evidence presented in this case shows AT&T's hands are absolutely filthy!

⁵ Clean hands Doctrine: A rule of law that a person or entity bringing action must be free from unfair conduct itself (have "clean hands" or not have done anything wrong itself) in regard to the subject matter of his/her claim.

CONCLUSION

For the foregoing reasons, as well as those set forth in Tips and Petitioners motion for sanctions and reply briefs in support of that motion, Tips and Petitioners request that the Commission impose substantial sanctions against AT&T and its counsel and also deny AT&T's frivolous sanctions request.

Additionally petitioners expect that the 2.1.8 tariff analysis provided herein will make it absolutely clear how 2.1.8 should be interpreted and also show that AT&T's new crew of counsel intentionally attempted to mislead the Commission.

Respectfully Submitted
One Stop Financial, Inc
Winback & Conserve Program, Inc.
Group Discounts, Inc.
800 Discounts, Inc
Tips Marketing Services, Corp

/s/ Al Inga
Al Inga President

EXHIBIT A

ARLEO & DONOHUE, L.L.C.
ATTORNEYS AT LAW

Frank P. Arleo
Timothy M. Donohue

Of Counsel:
JoAnn K. Dobransky

622 Eagle Rock Avenue
Penn Federal Building
West Orange, NJ 07052
Telephone: (973) 736-8660
Fax: (973) 736-1712

January 2, 2008

Via Electronic Case Filing

Honorable Susan Wigenton, U.S.D.J.
United States District Court
M.L. King, Jr. Federal Bldg. & Courthouse
Room 5060
50 Walnut Street
Newark, New Jersey 07102

**Re: Combined Companies, Inc., et al. v. AT&T
Civil Action No. 95-908**

Dear Judge Wigenton:

This firm represents plaintiffs One Stop Financial, Inc, Winback & Conserve Program, Inc, Group Discounts Inc., and 800 Discounts, Inc, in the above captioned case.

After case was referred by Judge Bassler to the FCC there has been discovery of critical new evidence, which was previously unavailable. The new evidence answers petitioner's claims involving which obligations transfer on the Jan 1995 "traffic only" transfer at hand. What is also critically important about the new evidence is that it has now allowed the case to be decided on one undeniable fact as opposed to waiting on a FCC tariff interpretation. The certification of petitioner's president Mr Inga is attached that explains why the new evidence was unavailable to his companies before Judge Bassler.

Background

Judge Wigenton, this is a 13 year old case that has been before many Courts and the FCC and therefore it will take a couple pages just to recap before providing the new, previously unavailable evidence.

Plaintiffs had an AT&T service offering called a Customer Specific Term Plan II (CSTPII) which provided a **28%** discount on a revenue commitment of about **\$42** million as of Jan 1995. Plaintiff's competitors PSE and Tele-Save had Contract Tariff No 516 (CT-516) which provided a whopping **66%** discount on only a **\$4** million annual commitment. Despite plaintiffs qualifying

for the same terms or better as its competitors, AT&T denied plaintiffs the same discount terms, despite many written requests. Plaintiff's competitors brought legal action against AT&T to obtain CT-516.

Plaintiffs were being picked apart by its competitors despite having made 10 times the revenue commitment for a lower discount, so plaintiffs were forced by AT&T to undertake the following routine strategy with PSE after having openly negotiated with both plaintiff competitors.

Plaintiffs under section 2.1.8 had routinely moved "traffic only" to other AT&T customers keeping its plan and its revenue commitment and the concomitant shortfall and termination obligations with its non transferred plan.

In Jan 1995 plaintiffs had already met its revenue commitment on all its plans by over \$2 million dollars and still had 2 months left before the fiscal year end. The revenue commitment did not have to be made monthly, only by the end of the plans fiscal year. Additionally the CSTPII plans at issue were ordered prior to June 17th 1994 and could be restructured just before fiscal year end if the revenue commitment was projected to not be met. A plan restructure restarted the CSTPII contract for another 3 years. Thus plaintiffs were able to trade the benefit of not being hit by AT&T with shortfall charges at fiscal year end, in exchange for being forced to extend its CSTPII time commitment to AT&T for another 3 years.

Plaintiffs decided to transfer almost all of its end-user accounts under section 2.1.8 from its 28% CSTPII plan to PSE's 66% CT-516 plan keeping the main billed telephone number, aka lead account, on the non-transferred plan. A contract with PSE was entered into to transfer the accounts back if plaintiffs needed the account traffic to meet the CSTPII plans revenue commitment so as not to get hit with shortfall charges on the non transferred plan.

AT&T's argument to Judge Politan in 1995 and 1996, the Third Circuit in 1996 and the FCC in 2003 and the DC Circuit in 2005 was the same as plaintiffs in regard to which obligations transfer on a "traffic only" transfer under 2.1.8. All parties agreed and understood that when "traffic only" transfers, but not the plan, the revenue commitment and the concomitant shortfall and termination obligations must stay with the non transferred CSTPII plan. As section 2.1.8 indicates infra only two obligations actually listed within 2.1.8 must be transferred:

- (1) all outstanding indebtedness for the service and
- (2) the unexpired portion of any applicable minimum payment period(s).

AT&T's reason in Jan 1995 for not transferring the traffic to PSE was that due to the amount of the accounts being transferred AT&T asserted that there was no way that the revenue commitment on the non transferred CSTPII plans could be met. AT&T asserted that its fraudulent use section of its tariff (2.2.4), allowed AT&T to prohibit the section 2.1.8 "traffic only" transfer. However, the parties were in total agreement that the revenue commitment and shortfall and termination obligations only transferred when the entire plan was transferred, not when "traffic only" was transferred under section 2.1.8.

The parties were in disagreement with section 2.5.18., which dealt with the duration of the immunity period in which a CSTPII plan could be restructured before having to meet monthly pro rata commitments; as opposed to only having to meet the plans fiscal year end revenue commitment. AT&T's interpretation of the June 17th 1994 provision was that after the very first

post June 17th 1994 contract restructure the plans lose their shortfall immunity for subsequent restructures, no matter how many years remained in the 3 year CSTPII revenue commitment.

AT&T thus asserted it was justified to utilize its fraudulent use provision to stop the 2.1.8 “traffic only” transfer because AT&T asserted that the plans couldn’t meet its tariffed revenue commitment without the traffic which would in large part be transferred to PSE. AT&T’s fraudulent use assertion was in fact a concession that the revenue commitment and shortfall and termination obligations only transferred when the entire plan was transferred, not when “traffic only” was transferred under section 2.1.8. Otherwise AT&T couldn’t make the fraudulent use claim.

It turns out that the plans were immune from shortfall through 1998 as per new Nov 1995 section 2.5.18 tariff evidence found. AT&T also has not refuted this at the FCC. Therefore not only did AT&T falsely rely on its fraudulent use section to stop the “traffic only” transfer in Jan 1995 but AT&T unlawfully put plaintiffs out of business in June 1996 because the plans were immune through 1998. The illegal shortfall application of June 1996 became a supplemental complaint in 1997 added to the 1995 “traffic only” transfer complaint and according to the FCC may or may not be decided.

The FCC’s 2003 Decision recognized plaintiffs did its “traffic only” transfer under 2.1.8 however the FCC believed section 2.1.8 did not allow “traffic only” transfers, however, section 3.3.1.Q paragraph 4 did. So, the FCC ruled in plaintiffs favor stating that what plaintiffs did was not prohibited under tariff.

The FCC only used section 2.1.8 to determine which obligations transfer on a “traffic only” transfer within its 2003 decision under the heading 2.1.8. Section 3.3.1Q para 4 did not even have a bulk “traffic only” transfer provision so the FCC had to use section 2.1.8 to interpret which obligations transfer on a “traffic only” transfer. The FCC decision agreed with AT&T, plaintiffs, and Judge Politan’s District Court that shortfall and termination obligations must stay with the non transferred CSTPII plan as per FCC tariff No 2., at 3.3.1.Q para 10.

The FCC’s 2003 Decision also ruled that AT&T could not utilize its fraudulent use section because AT&T applied its fraudulent use remedy in an illegal fashion and thus could not rely upon its remedy even if there was justification, a fact the FCC never addressed.

The DC Circuit then vacated the FCC decision, correctly deciding that section 2.1.8, as utilized by plaintiff’s, was indeed the tariffs “traffic only” transfer section, not section 3.3.1.Q para 4 as hypothesized by the FCC which only allowed the deleting and adding of end-user accounts in separate transactions. The DC Circuit did not find fault with the FCC’s decision that AT&T utilized an illegal fraudulent use remedy.

Thus plaintiffs went from an FCC decision which stated that what plaintiffs did under 2.1.8 was not prohibited under the tariff, to a DC Circuit Decision which stated that plaintiff’s use of section 2.1.8 was expressly allowed. However the DC Circuit left open the question as to which obligations transfer when transferring “traffic only.”

The case then went to Judge Bassler’s District Court and AT&T then changed its position as to which obligations transfer on a “traffic only” transfer. AT&T asserted that no matter how many accounts are being transferred from the transferors plan, the transferors’ entire revenue

commitment and concomitant shortfall and termination obligations must transfer to the transferee.

Judge Bassler then referred the same question to the FCC that was not decided by the DC Circuit, regarding which obligations transfer on the “traffic only” transfer at hand. Judge Bassler sent the following referral to the FCC:

It is further ordered that plaintiffs, no later than August 1, 2006, file an appropriate proceeding under Part I of the FCC's rules to initiate an administrative proceeding to **resolve the issue of precisely which obligations should have been transferred** under Section 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).

New Evidence Previously Not Available

The following new evidence which was never seen by Judge Bassler nor the DC Circuit are AT&T counsel concessions made to Judge Politan asserting shortfall and termination obligations do not transfer to PSE on the “traffic only” transfer at issue.

The following is from AT&T's brief which plaintiffs requested the Court that AT&T provide it. It is AT&T's brief to NJ District Court Nov 1995.

AT&T explicitly states in regards to the “traffic only” transfer at hand that under the tariff the plan obligations (revenue commitments and associated shortfall and termination obligations) would be CCI's not PSE's:

First, a transfer of substantially all of the locations on the plans would have the result of increasing the potential shortfall to AT&T. Secondly the possibility that CCI will be unable to satisfy its tariffed obligations because it is transferring its principal assets -- the end-user accounts--- to PSE would leave CCI with no apparent revenue stream to meet its existing commitments and no apparent assets from which to satisfy potential shortfall liability. These charges are all “tariffed” obligations, for which CCI, **“not PSE”** (which would have the revenue stream to satisfy such charges), would be obligated.

AT&T is explicitly stating that **under the tariff PSE is not responsible to assume the plan obligations** (revenue commitments and associated shortfall and termination charges) —CCI remains obligated for these tariffed plan obligations. AT&T states the “traffic only” transfer would increase the potential for CCI shortfall is because AT&T is obviously recognizing that these tariffed obligations stay with CCI.

The following are transcripts before Judge Politan's District Court that were previously not available and that Judge Bassler and the DC Circuit never had as evidence.

More AT&T Counsel Whitmer Concessions are seen in AT&T's Counsel Mr. Whitmer's 1995 brief to the District Court page 2. **Here as Exhibit E**

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.**

Whitmer doesn't say requiring PSE to accept the plan obligations. He states requiring PSE to accept the plans and all their liabilities. He clearly understood that plan obligations stay with the plan.

March 21, 1995 Transcript before District Court Judge Politan

AT&T's counsel Fred Whitmer cross examining of petitioners president Mr. Inga----- making the correct point that Winback & Conserve would continue to be obligated for S&T obligations because under 2.1.8 Winback remained jointly and severally liable for the shortfall obligations.

Page 106 Line 13 **Here as Exhibit .**

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?

Relevant Excerpts from March 21st 1995 Hearing in District Court:

In the following excerpts Mr. Whitmer points to the fact that One Stop Financial, Inc. (OSF) took out its plans with AT&T in 1989. In 1993 OSF transferred "traffic only" to the 3 new companies. OSF's revenue commitment and its shortfall and termination obligations did not transfer on these "traffic only" transfers as AT&T correctly processed the transfers under 2.1.8.

3/21/95 Page 34 Line 3 **Here as Exhibit**

3 MR. WHITMER: First of all, your Honor, Winback &
4 Conserve voluntarily subscribed to all of these plans and
5 took on the obligations and received promotional credits
6 from AT&T to do that. When it did that, Winback &
7 Conserve had existing traffic -- not as Winback &
8 Conserve, **but Mr. Inga had other traffic which he was able**
9 **to transfer over to these new plans.**
10 He started some of those plans not from, shall we

11 say, ground zero, **but was able to move traffic that he had**
12 **on other plans with AT&T.**

3/21/95 Oral/ AT&T's Whitmer cross examination of Petitioners president: Page 101-107:
Here as Exhibit S:

25 **Q In point of fact when you started these companies, you**
1 **moved traffic from One Stop Financial on to those plans;**
2 **isn't that correct?**
3 **A You Used a Transfer of Service Agreement to move**
4 **account locations. Not plans.**

Below AT&T counsel Mr Whitmer questioning CCI's Mr Shipp again makes it explicit that the plans liability stays with CCI and does not go to PSE's CT 516 since the plan was not being transferred.

3/21/95 Page 79 Oral Argument: **Here as Exhibit**

20 **Q You understood, did you not --at least you thought**
21 **you understood --if you transferred only the service but**
22 **not the plans, PSE would not have any liability for**
23 **shortfall and termination? Correct?**

The following questioning was by Judge Politan to plaintiff's owner Mr Inga to confirm that the Inga Companies remained jointly and severally obligated as per section 2.1.8 para C:

3/21/95 Oral Page 117 Questioning of petitioner: **Here as exhibit**

13 BY THE COURT:
14 **Q When you were going to make the transfer to CCI, did**
15 **you understand that CCI was going to assume that**
16 **obligation and that you were going to remain jointly and**
17 **severally liable for it?**
18 **A We would both be liable, yes.**
19 THE COURT: Very good. We'll take a short
20 recess.

January 23, 1996 Oral Argument Transcript:

The date is Jan 23rd 1996 and AT&T counsel is misrepresenting to Judge Politan that the tariff Transmittal (9229) (which AT&T claimed would resolve the issue before the District Court), was still pending at the FCC. However Transmittal 9229 had already went into effect on a prospective basis back in November 1995. AT&T counsel Mr Whitmer points to AT&T co counsel Mr. Meade's certification which explains the problem AT&T had with 2.1.8 and that AT&T added shortfall deposits to protect itself but because the tariff change was prospective it would not affect the "traffic only" transfer at issue. As Judge Politan reads the Mr Meade

certification Mr Meade's problem with 2.1.8 was that on large "traffic only" transfers the revenue commitment and the shortfall and termination obligations **must stay with the plan:**

22 THE COURT: The FCC permits this to go into
23 existence. This is going to give me guidance. Well, my
24 only question is: **Whence in this Bible is the guidance?**
25 That is all I want to know. **Where is it?**

AT&T counsel Mr Whitmer then directs Judge Politan to paragraph 15:

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
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.

Judge Politan then allows plaintiff's counsel Mr Helein to comment:

25 MR. HELEIN: **Mr. Whitmer said 9229 addresses the**
1 **issue.** He read from that. Mr. Meade in the following
2 paragraph of the second supplemental certification,
3 **paragraph 16, admits the transfer of 9229 will not apply**
4 **to the Court as referred to the FCC back in May.**
5 The fact is that –
6 THE COURT: **Then the matter is not before the**
7 **FCC.**
8 MR. HELEIN: **No, it is not, by Mr. Meade's own**
9 **certification.**

AT&T Counsel Meade: (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.

Mr. Meade states that AT&T was addressing “the question of intent”. What he is specifically referring to is that AT&T was trying to evaluate for the entire industry whether the transferor was intending to transfer away substantially all the traffic without intending to meet the revenue commitments which must stay with the transferor’s plans.

AT&T’s Feb 27th 1995 Reply Brief to Petitions to Reject Tr. 8179 at page 11 footnote 16: There are dozens of additional concessions from 7 different AT&T counsel that plaintiffs will be more than happy to provide the District Court but we believe the above is conclusive as to AT&T’s tariff interpretation of section 2.1.8 in Jan 1995.

The Joseph Kearney Certification **New Tariff Analysis for Section 2.1.8.**

Please review the certification of former long time AT&T sales executive and AT&T aggregator Joseph Kearney’s tariff analysis of section 2.1.8. The new evidence provided within Mr Kearney’s certification has never been presented to the Courts and will conclusively show how one key word that was overlooked has caused AT&T to no longer challenge plaintiff at the FCC.

The Court will clearly see how 2.1.8 was interpreted; however based upon such analysis the Court will also understand that the FCC decision is now moot as the case has to be decided in plaintiffs favor based upon an undeniable fact which this court can easily decide.

See exhibit

Which Obligations Transfer on the **“Traffic Only” Transfer Issue is A Moot FCC Decision**

Questioning which obligations transfer on a “traffic only” transfer a moot question given the fact that plaintiffs utilized section 2.1.8 to do its “traffic only transfer and agreed to transfer/ assume “all the obligations of the **former** customer”.

Plaintiffs simply requested that AT&T process its routine 2.1.8 permissible “traffic only” transfer as it had done many times before, and designated the accounts to AT&T that were to be transferred and the accounts to leave behind on the non transferred plan.

Plaintiffs did **not** make any special requests as to which obligations transfer on the “traffic only” transfer. The only variable is whether the parties are transferring the plan –which means the plan and all the accounts are transferred, or doing a “traffic only” transfer in which the transferor

specifies which account traffic that it was transferring as opposed to leaving with the non transferred plan.

It is an undeniable fact that there was no stipulation nor modification request of section 2.1.8 that was made upon AT&T as to the obligations. Plaintiffs did not state that it would only do the “traffic only” transfer if for example: the transferee had to take all the obligations or take no obligations, or split the obligations between the transferor and transferee in any special way. Plaintiffs only asked for a “traffic only” transfer because it wanted to keep its plan for many reasons that we will explain if the Court wishes to hear.

Plaintiffs had on numerous prior transfers to this “traffic only” transfer simply designated the accounts that were being transferred and never advised AT&T what obligations go or stay.

It is an undeniable fact that AT&T is confined by the terms of section 2.1.8 to transfer whichever obligations its tariff mandated it transfer for a “traffic only” transfer order—simple as that. It is an undeniable fact that it was AT&T that authorized and issued the AT&T Transfer of Service Form that enacted section 2.1.8., and it was properly completed as Judge Politan stated plaintiff’s adhered to the TSA letter by letter.

FCC 2003 Decision page 3 para 4:

At the bottom of each TSA, in handwriting, these parties directed AT&T to move the “traffic only” on each plan to PSE. The January 13 letter, under which these nine TSAs were forwarded, directs AT&T to “move the locations associated with these plans [but] not ... in any way to discontinue the plans.” In this way, CCI and PSE attempted to move to PSE the end-user traffic associated with each of the nine CSI CSTP II/RVPP plans, but not to move the actual plans themselves.

The Jan 13th 1995 letter written by transferee PSE to AT&T that the FCC 2003 decision references above also contains this statement:

Please find a properly executed AT&T transfer of Service Agreement (TSA) to move all of the end-user locations, except the 181 account number and the 131 lead number into PSE’s CT516. (CSTP/RVPP Plan ID #003690)

PSE and CCI did not advise AT&T that the parties wished to make stipulations nor modify the obligations transferred language---- nor did the parties request that its transfer modify any other language of section 2.1.8. It is an undeniable fact that PSE explicitly stated it is a “properly executed AT&T transfer of Service Agreement (TSA)”

As the DC Circuit recognized section 2.1.8 allowed for plan transfers as well as “traffic only” transfers and thus AT&T’s authorized TSA was of course used to effectuate either a plan transfer or a “traffic only” transfer. Because the AT&T TSA form was used for both types of transfers, CCI simply made sure that AT&T was only doing a “traffic only” order and not a plan transfer

by clearly designating the account traffic that should transfer and the accounts that stayed with the non transferred CSTPII plan.

At the time of the Jan 13th 1995 “traffic only” transfer plaintiffs TSA order was silent as to which obligations transfer ---as it should be---because which obligations transfer was not a variable it could control. It only controlled whether it wanted a plan transfer or a “traffic only” transfer.

AT&T and plaintiffs both agreed in Jan 1995 that shortfall and termination obligations do not transfer on “traffic only” transfers, but that fact was not discovered until the case before Judge Politan started months after the 15 day statute of limitations period at paragraph 2C of section 2.1.8. It is also an undeniable fact that AT&T did not act within 15 days to prohibit the “traffic only” transfer so this undeniable fact also makes the FCC decision moot.

Here is AT&T “fraudulent use” assertion that it was still arguing 10 years after the case stated in 2005 to the DC Circuit. AT&T’s initial brief to the DC Circuit page 9:

At the bottom of each of these transfer of service forms, a handwritten notation requested that AT&T move the **“traffic only” on each plan** from CCI to PSE **and keep the plan itself, including all associated commitments and liabilities,** with CCI. *Id.* CCI and PSE thereby sought to move all of the revenue producing telephone numbers in the nine CSTP II plans to PSE, but leave all of the obligations arising under those plans with CCI.

It is an undeniable fact –not a tariff interpretation that CCI agreed to transfer and PSE agreed to assume **“all obligations of the “former” customer.”** No matter what the FCC decides those obligations are---- the parties explicitly agreed to adhere to section 2.1.8. The FCC decision is writing on the wall but it is also moot as to this case.

The DC Circuit may have been under the impression that it was important for future cases to establish which obligations transfer on a “traffic only” transfer, however the CSTPII/RVPP AT&T service offering is no longer a tariffed service offering for over 6 years and deals with a tariff section almost 13 years old that was later revised in November 1995, May 1996 and June 2002 showing plaintiffs were correct. Furthermore the FCC has advised the parties that there are no other pending CSTPII/RVPP cases before the FCC, therefore there is no chance of conflicting opinions by Courts on this matter.

It is a simple undeniable fact that “all obligations of the former customer” were transferred by CCI and assumed by PSE, including the two obligations actually listed with in 2.1.8.

Equitable Estoppel- Estoppel in Pais

If the FCC were to reverse itself and interpret shortfall and termination obligations transfer on a “traffic only” transfer AT&T would lose under the Doctrine of Equitable Estoppel.

The most comprehensive definition of equitable estoppel or estoppel in pais is that it is the principle by which a party who knows or should know the truth is absolutely precluded, both at law and in equity, from denying, or asserting the contrary of, any material fact which, by his words or conduct, affirmative or negative, intentionally or through culpable negligence, he has induced another, who was excusably ignorant of the true facts and who had a right to rely upon such words or conduct, to believe and act upon them thereby, as a consequence reasonably to be anticipated, changing his position in such a way that he would suffer injury if such denial or contrary assertion was allowed.

Simply if it is determined that shortfall and termination obligations transfer on a “traffic only” transfer AT&T would clearly lose under Equitable Estoppel. AT&T has conceded to the FCC that the reason why it has no evidence of shortfall and termination obligations transferring on a “traffic only” transfer, as it concedes it did tens of thousands of “traffic only” transfers, is that it was AT&T’s practice to never transfer shortfall and termination obligations. AT&T asserts that its new section 2.1.8 tariff interpretation should prevail despite its conduct. However such an established AT&T conduct clearly self defeats AT&T under the Doctrine of Equitable Estoppel.

Therefore, even if the FCC reverses its obligations interpretation of 2.1.8 AT&T loses under Equitable Estoppel and that is an additional reason why the FCC decision on this “traffic only” transfer is a moot FCC decision.

Judicial Estoppel

While equitable estoppel focuses on the relationship and conduct of the parties prior to the subject litigation, **judicial estoppel emphasizes the connection between a litigant and its use of the judicial system.** See e.g. [Oneida, 848 F.2d at 419](#).

Judicial estoppel is generally invoked to prevent abuse of the judicial process rather than remedy prejudice or detrimental reliance by the party asserting the doctrine, **and precludes a party from asserting a position in a legal proceeding that is inconsistent with a position previously asserted by that party.** See e.g. [Hamilton v. State Farm Fire & Casualty Co., 270 F.3d 778, 782 \(9th Cir. 2001\)](#) (citations omitted); [Oneida, 848 F.2d at 419](#).

Under the doctrine of judicial estoppel, “where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him.” *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) (citations omitted).

In contrast to equitable estoppel, detrimental reliance or individual prejudice is not required in order to apply judicial estoppel. See e.g. [Ryan Operations G.P. v. Santiam-Midwest Lumber Co. et al., 81 F.3d 355, 360 \(3rd Cir. 1996\)](#) (“[w]hile privity and/or

detrimental reliance are often present in judicial estoppel cases, they are not required."); [Patriot Cinemas, Inc. v. General Cinema Corp. et al., 834 F.2d 208, 214 \(1st Cir. 1987\)](#) (same).

Judicial estoppel is simply designed to prevent abuse of the judicial process by a party taking inconsistent positions in order to obtain an unfair advantage, as AT&T has done.

There is no set formula for assessing when judicial estoppel should apply. However, several considerations inform whether the doctrine is appropriate in a particular case. First, "a party's position must be 'clearly inconsistent' with its earlier position." As the new evidence indicates AT&T has clearly changed its position initially asserting that shortfall and termination obligations DO NOT transfer on "traffic only" transfers (to assert its fraudulent use claims) and now asserting that shortfall and termination obligations do transfer on "traffic only" transfers.

Second, a court should review "whether the party has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create 'the perception that either the first or the second court was misled.'" (quoting *Edwards v. Aetna Life Ins. Co.*, 690 F.2d 595, 599 (6th Cir. 1982)). AT&T convinced Judge Politan in his non vacated May 1995 decision to only transfer the plan and not the traffic because of AT&T's fraudulent use claims asserting that it was going to be defrauded because CCI/Inga would not be able to meet its revenue commitment since Shortfall and termination obligations must not transfer on "traffic only" transfers. AT&T also convinced the Third Circuit in April 1996 which vacated Judge Politan's second March 1996 decision due to AT&T's position that S&T obligations do not transfer.

Finally, the court should evaluate whether the party advancing an inconsistent position would gain an unfair advantage if allowed to proceed with the argument.

Obviously AT&T would have an unfair advantage over petitioners.

Therefore no matter whether the FCC decides to again interpret that under 2.1.8 shortfall and termination obligations do not transfer on a "traffic only" transfer as it did in its 2003 Decision, or reverses itself, plaintiffs adhered to whatever obligations transferred that the tariff mandated; thus the Court must rule for plaintiffs no matter what the FCC decides.

The important aspect of a District Court Decision is that the District Court is not being asked to interpret the tariff. The District Court can plainly see that petitioners:

- A) The parties adhered to section 2.1.8's obligation section no matter what the obligations allocation was to be
- B) AT&T loses under Equitable Estoppel if AT&T's new position is determined and
- C) AT&T loses under Judicial Estoppel based upon the changing of this material position.

Plaintiffs have waited almost 13 years for justice. Why must this Court wait for what is in actuality a moot FCC decision?

Conclusion

The new evidence that is now available is absolutely overwhelming that shortfall and termination obligations do not transfer on a “traffic only” transfer and that AT&T unlawfully put plaintiffs out of business in June 1996 with unlawful infliction of shortfall and termination charges.

AT&T has clearly recognized that plaintiffs have provided this new evidence at the FCC which conclusively shows that AT&T multiple times violated its tariff.

The day after Oct 10th 2007 FCC filing of the new evidence, AT&T counsel Mr Brown immediately called to settle.

Mr Brown also wrote on Oct 11th 2007:

The sole reason on AT&T's part for any interest in settlement is to put an end to the ongoing **nuisance** that the case represents.

Incredibly Mr Brown stated on Oct 11th 2007 that he was replying to a settlement request made by plaintiff's 3 months earlier on July 10th 2007 in which Mr Brown had totally ignored plaintiffs. Mr Brown simply did want plaintiff's to believe that it was the additional new evidence filed at the FCC which caused Mr Brown's sudden **nuisance problem**.

Incredibly with almost 13 years of litigation AT&T “suddenly” felt the case was a **nuisance**. AT&T would like plaintiffs to believe that the filing of new evidence detailing AT&T's tariff violations on Oct 10th 2007, had absolutely nothing to do with AT&T's Oct 11th 2007 “nuisance” claim.

AT&T counsel Richard Brown advised plaintiffs counsel Mr Scala that AT&T would pay for Mr Inga's bills for his children's high school tuition as AT&T's paltry settlement payment instead of the damages which may be over \$400 million. We didn't wait around to ask AT&T if that includes the books!

Mr Brown warned plaintiffs to take AT&T's offer, or as Mr Brown asserted in his Oct 11th 2007 email:

any final resolution of that case is **several years** off

Such delay games by AT&T can not be allowed given the fact that another FCC decision and another appeal to the DC Circuit is absolutely moot--- not only as per plaintiff's claims but as to the entire industry.

Judge Wigenton AT&T's charade has to be stopped. The stay should be lifted and the case sent to mediation or damages. We will file a formal motion if it so pleases the Court.

Respectfully submitted,

ARLEO & DONOHUE, LLC

By: /s/ Frank P. Arleo
Frank P. Arleo

FPA:hm

cc: Richard Brown, Esq.
Alfonse G. Inga

Exhibit B

Certification of Alfonse G. Inga

I Alfonse G. Inga certify to the following:

- 1) The District Court Pacer system doesn't contain 1995 and 1996 records so plaintiffs were directed to Court's archives in St. Louis, Missouri, however the files could not be located.
- 2) My counsel asked your honor in May to please request that AT&T turn over its copy of certain files because AT&T was totally ignoring our professional courtesy request for these files. AT&T understanding that this Court would ask AT&T to honor such a professional courtesy request decided to give the file over in May. The file obtained in May then pointed to other briefs which plaintiffs did not have. Plaintiffs again asked AT&T for additional files and AT&T again ignored plaintiffs for weeks understanding what was contained in the files. Plaintiffs advised AT&T that it would again ask this Court for the additional files and AT&T finally provided them.
- 3) In preparing for the FCC public comments in 2003 I asked my former counsel Mr Helein of Virginia if he had the case files. He said that he did not have the files because his local co-counsel, Mr Meanor of Podvey, Sachs, & Meanor had them. However the case files from Mr Meanor all went to Mr. Coven when Mr Coven left that firm; then Mr. Coven got flooded out and all the files were totally destroyed. However this year plaintiffs got a call from Mr Helein's secretary who stumbled across a plaintiff file when looking for another clients file and called plaintiff to report what they had a copy of. Obviously, if the new evidence was available in 2005 and 2006 before Judge Bassler we would have certainly used it because it is conclusive evidence. Therefore due to 13 years, several different counsel, several of the briefs were not found until after the case left Judge Bassler's District Court.
- 4) The new evidence that was discovered also led to new 2.1.8 tariff analysis which was never presented to this court. The new tariff analysis came about due to a conversation I had with a former AT&T sales executive and former aggregator Joseph Kearney who is very familiar with the 2.1.8.tariff section at issue, and is furnishing the Court with his 2.1.8 tariff analysis via certification.
- 5) Therefore plaintiffs are providing new evidence which was previously unavailable to it. So conclusive is the evidence that AT&T has not refuted petitioner's new evidence before the FCC in months since its presentation.

I understand that I am subject to punishment for willful misrepresentations.

 /s/ Alfonse G. Inga
Alfonse G. Inga
11/20/07

Exhibit C

Certification of Joseph J. Kearney

I, Joseph J. Kearney, certify to the following:

1) I had been employed in the telecommunications industry for over twenty years, more than ten of which were spent in sales for both Bell of Pennsylvania and AT&T. I then became an AT&T aggregator of the same CSTP II services which are at issue in this case. I certify my statements without having received any compensation, and I do not expect to receive compensation.

2) I am well aware of how AT&T tariff section 2.1.8 was interpreted by AT&T at the time of the “traffic only” transfer at issue. I hope that this new tariff analysis evidence will help clarify section 2.1.8 for the District Court.

3) I have reviewed the record and see that AT&T, after the DC Circuit Decision, has changed its position regarding which obligations transfer on a “traffic only” transfer.

AT&T for the first 10 years of this case, and prior to the DC Circuit Decision, asserted correctly that the transferor’s ‘revenue commitment’ and associated ‘shortfall and termination obligations’ were to stay with the non-transferred plan on a “traffic only” transfer.

This is the same interpretation the FCC 2003 Decision made.

4) AT&T’s new assertion is that section 2.1.8 mandates for “traffic only” transfers that the transferor transfers, and the transferee assumes, all obligations of the customer; but the tariff does not say that.

AT&T now asserts (post 2005) that the transferor’s plan’s revenue commitment and associated shortfall and termination obligations must transfer on “traffic only” transfers.

However, section 2.1.8 does not say that the transferee assumes all obligations of the customer and that is where AT&T is attempting to mislead everyone.

5) Here is the actual language of the relevant sections of 2.1.8, as it was at the time of the Jan 1995 “traffic only” transfer:

A. The Customer of record (**“former” Customer requests**) in writing that the company transfer or assign WATS to the **new Customer.**

B. The “new Customer” notifies the Company in writing that it agrees to assume all obligations of the **“former”** Customer at the time of transfer or assignment. These obligations include (1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s).

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

The transfer or assignment does not relieve or discharge the **former** Customer from remaining jointly and severally liable with the new Customer for any

obligations existing at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for WATS, and (2) the unexpired portion of any applicable minimum payment period(s).

6) What AT&T has done to assert its new argument is to isolate on just two words of paragraph B.

The words: “all obligations.”

AT&T has short quoted section 2.1.8 B and asserted that section 2.1.8 says “All Obligations” must transfer and, thereby, asserts that the transferor’s shortfall and termination obligations on its non transferred plan must transfer.

7) However at paragraph B the “all obligations” are not of the customer but of the **FORMER** customer not the remaining customer (CCI) which did not transfer its plan, and remained an AT&T customer. The transferor of course is only a **former** customer on that which is transferred – whether the “entire plan” or only the “specified accounts” transferred.

As per the CSTP II general definitions under 3.3.1.Q paragraph 10 the **customer** is liable for shortfall and termination liability:

AT&T Tariff section 3.3.1.Q bullet 10 reads:

Shortfall and/or termination liability are the responsibility of the Customer.

8) Simply, the transferee (PSE) must assume all the obligations on the service being transferred (“plan” or “traffic only”) here traffic---which designates the transferor (CCI) a **former** customer as to what is transferred.

Obviously a former customer is no longer a customer as to the traffic it transferred away.

It is that simple.

9) In paragraph A of section 2.1.8 the customer is being defined as the former customer only on the WATS service that it is transferring to the new customer.

10) Because the plan does not transfer, CCI under the tariff must keep the shortfall and termination liability and can not shed its obligations on its “traffic only” transfer. The ‘revenue commitment’ and associated ‘shortfall and termination liability’ would of course transfer only if the entire plan transferred - in which case CCI would no longer be an AT&T customer, it would become a **“former”** customer of the CSTP II plan. It is that simple.

11) AT&T’s post DC Circuit tariff interpretation does not make any commercial sense.

Under AT&T’s (erroneous) post-2005 interpretation that ‘shortfall and termination liability’ transfer on a “traffic only” transfer:

Under this new-found interpretation a transferor could, for example, transfer a few accounts from a base of say 15,000 accounts and all the obligations would also transfer to the transferee.

Imagine having a transferee with a mere \$100,000 revenue commitment accepting the transfer of just a few accounts worth \$3,000 in revenue from a transferor who has a \$50 million revenue commitment. Under AT&T's new (erroneous) post-2005 interpretation the transferee must increase its commitment by \$50 million!

What transferee would ever agree to increase its commitment by \$50 million for accepting the transfer of \$3,000 of revenue?

It simply makes no commercial sense. It makes sense only in an attempt, in my opinion, to obfuscate a losing argument on AT&T's part.

This is AT&T's new post-2005 interpretation and it is absolutely absurd.

The record shows that AT&T asserted to Judge Politan's District Court that AT&T has done tens of thousands of "traffic only" transfers. AT&T never has and never will produce one example of a "traffic only" transfer in which the transferor plans 'revenue commitment' and the 'associated shortfall and termination liability' actually transferred to the transferee.

12) Additionally, the Court will notice that the AT&T authorized and issued Transfer of Service (TSA) form that AT&T mandated for use to facilitate section 2.1.8 states:

Former Customer understands and agrees that this transfer or assignment does not relieve or discharge it from remaining jointly and severally liable with the New Customer for any obligations existing at the time of transfer or assignment.

These obligations include: (1) all outstanding indebtedness for the account numbers "**specified above**" and (2) the unexpired portion of any applicable minimum payment period(s).

Based upon AT&T's own authorized and issued TSA it was AT&T's own interpretation in Jan 1995 for section 2.1.8 that the obligations to be transferred/assumed were only on what was being **specified** as being transferred between the **former** customer and the new customer.

This conclusive fact, as demonstrated in the language of AT&T's own produced TSA, is contrary to AT&T's new post-2005 position that the transferee assumes all obligations on services (the CSTP II plan) which was not specified for transfer.

CCI clearly instructed AT&T to not transfer the 'plan' by writing 'traffic only' and further advised AT&T to move all the accounts EXCEPT FOR those it explicitly instructed AT&T to leave on the non-transferred CSTPII plan, as CCI wrote keep plans intact, as was normal because 2.1.8 allowed both plan or "traffic only transfers."

Only the two obligations listed within 2.1.8 transfer whether a “plan” transfer or a “traffic only” transfer is ordered, and by signing the AT&T TSA, PSE assumed and CCI transferred, these two obligations:

(1) all outstanding indebtedness for the service, and (2) the unexpired portion of any applicable minimum payment period(s).

13) The Court should also understand the remaining ‘joint and several liability’ section of 2.1.8. within para C:

The transfer or assignment does not relieve or discharge the **former** Customer from remaining jointly and severally liable with the new Customer for any obligations existing at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for WATS, and (2) the unexpired portion of any applicable minimum payment period(s).

The remaining jointly and severally liable provision only pertains to the **former** customer for what is transferred.

14) When the Inga companies transferred its **entire plan** to CCI the Inga Companies **remained jointly and severally liable** for the CSTP II plans’ shortfall and termination obligations as the FCC 2003 decision correctly indicates.

On the Inga to CCI plan transfer, the Inga Companies became a **former** AT&T customer because the Inga Companies no longer remained an AT&T customer, although it remained liable for the CCI controlled plans in which CCI managed the shortfall and termination obligations.

15) When CCI transferred just the **specified** accounts to PSE, and not the plan, CCI remained an AT&T customer –not a **former** customer---because CCI kept the non transferred plan.

The remaining jointly and severally liable provision only pertains to the **former** customer remaining jointly and severally liable. The Inga Companies continued to have the remaining jointly and severally liable risk on the CCI to PSE ‘traffic only’ transfer.

16) Under section 2.1.8, **if** CCI had transferred the **entire plan** to PSE then PSE would assume the shortfall and termination obligations and CCI would remain jointly and severally liable for the shortfall and termination obligations because CCI would have become the **former** AT&T customer.

If CCI had transferred the entire **plan** to PSE, then the Inga Companies would have been relieved of shortfall and termination obligation risk because under 2.1.8 - the remaining jointly and severally liable provision - would then pertain to CCI alone, as the **former customer** (singular) not former customers (plural).

CCI and the Inga Companies cannot **both** be the “former” **customer** (singular) remaining liable for the plans’ revenue commitment and associated shortfall and termination obligations.

This is why AT&T counsel and Judge Politan both agreed with Mr Inga during oral argument that CCI remained liable as the “plan holder” and only the Inga Companies as the plan’s “former customer” remained jointly and severally liable for the CCI plans shortfall and termination obligations.

This new evidence statement from AT&T counsel Mr Whitmer confirming that the Inga Companies remained liable on the CCI to PSE “traffic only” transfer is a concession by AT&T that shortfall and termination obligations do not transfer on “traffic only” transfers.

17) **The party that remains jointly and severally liable no longer has control over the plan as they are a “former” AT&T customer**. In the case at hand the Inga Companies no longer controlled the plans it transferred to CCI but remained liable.

AT&T’s new (erroneous) assertion for 2.1.8 is that the shortfall and termination obligations transfer to PSE on the “traffic only” transfer and CCI would remain jointly and severally liable for the ‘shortfall and termination obligations’ that PSE assumed.

AT&T’s non-evidenced assertion can not be true because CCI obviously still remains in control over the plan that it did not transfer to PSE.

18) When the Inga Companies transferred the plan to CCI the Inga companies as a former customer could no longer delete or add traffic to the plan under 3.3.1.Q para 4, or use section 2.1.8 to transfer service on a plan it no longer owned and controlled.

Under the Jan 1995 section 2.1.8, the remaining jointly and severally liable provision means that the former customer(Inga Companies) continued to incur the risk that CCI would not meet the plans revenue commitment as CCI would control the plans and transfer its designated traffic to PSE.

19) AT&T’s (erroneous) post-2005 interpretation that the shortfall and termination obligations transfer to PSE and CCI remains jointly and severally liable is self defeating.

Under section 2.1.8E sub paragraph (c) there would be no remaining joint and several liability by June 1996, under AT&T’s (erroneous) 2.1.8 interpretation. Therefore, under AT&T’s (erroneous) assertion AT&T unlawfully put the Inga Companies and CCI out of business by imposing shortfall and termination in June 1996.

In reality the plans were immune from shortfall in June 1996 under section 2.5.18 (the restructuring provision). Therefore, even if the FCC reversed its 2003 decision and agreed with AT&T’s interpretation for 2.1.8 AT&T automatically loses the June 1996 shortfall infliction issue by AT&T’s own tariff interpretation.

20) It was the Inga Companies that made the CCI-PSE “traffic only” transfer work because it not only provided all the traffic but also the Inga Companies provided, via plan transfer to CCI, the grandfathered pre-June 17th 1994 CSTPII plans which were immune from shortfall and termination obligations when restructured.

21) The Inga companies’ pre-June 17th 1994-issued plans allowed CCI to keep the designated traffic under PSE’s 66% discount plan as opposed to the 28% CSTPII plan.

CCI’s TSA clearly indicates that it kept the main billed account number on the plan which under the tariff keeps the CSTPII plan structure in place with its revenue commitment and its shortfall and termination obligations.

22) Under paragraph C of 2.1.8 AT&T is responsible for advising the parties in writing as to the reason why AT&T was denying the “traffic only” transfer within 15 days. If AT&T failed in that obligation the transaction must go through.

It failed; therefore, the transaction was, by tariff, consummated. In this case it should have gone through in any event because it was done in adherence to section 2.1.8.

23) Finally, during my time as an AT&T sales executive and later as an AT&T aggregator I understood that, under law, if the tariff was not explicit, it must be interpreted in favor of the Customer and consequently against AT&T.

If one thing is obvious in this case, it's that after almost 13 years of depositions, reviews, multiple and conflicting interpretations by AT&T, and arguments before several Courts and the FCC, tariff section 2.1.8 is simply NOT explicit – at least not to AT&T - as demonstrated by its own multiple interpretations.

I understand that I am subject to punishment for willful misrepresentations.

Respectfully submitted,

/s/ Joseph J Kearney
Joseph J. Kearney
11/29/07