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01/11/08
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FCC Contractor
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Re: WC Docket No. 06-210
CCB/CPD 96-20

FURTHER COMMENTS REGARDING
800 SERVICES, INC.'S FORMAL MOTION
TO INCREASE SANCTIONS AGAINST AT&T
IN THE AMOUNT OF \$20 BILLION

Dear FCC Staff

800 Services, Inc., would like to respond to AT&T's Jan 10th 2008 letter. 800 Services, Inc can not speak for Mr Kearney, or CCI but 800 Services, Inc., wants the FCC, the public, and the Courts to know that it has substantial interest in the FCC interpreting petitioner's case issues. In its Jan 10th 2008 FCC filing AT&T asserted:

None of those other persons and entities has any cognizable interest in this proceeding. For example, 800 Services recently requested sanctions against AT&T, but as AT&T explained in its January 5, 2007 submission, 800 Services sued AT&T unsuccessfully years ago, asserting various claims concerning AT&T's Tariff No. 2 service to 800 Services, including that AT&T improperly allocated shortfall charges to 800 Services' locations. In August 2000, the District Court dismissed 800 Services' claims and awarded AT&T a judgment of \$2.2 million (which remains unsatisfied), and the Third Circuit affirmed the District Court's judgment in all respects in February 2002.

AT&T's Jan 10th 2008 FCC Comments that 800 Services, Inc does not have any interest in the FCC's interpretation of these issues is far from the truth.

The only reason that 800 Services, Inc has participated in these FCC filings is to benefit 800 Services, Inc. 800 Services, Inc is not getting paid by petitioners to pursue 800 Services, Inc interests or the Inga Companies interests by participating as a public commenter.

From what 800 Services, Inc.'s counsel has explained, 800 Services, Inc., has an excellent chance under the Rules of Civil Procedure to have its case re-opened. 800 Services, Inc. will show intentional fraud made by AT&T upon the Court, as well as the discovery of additional evidence which was not previously available to 800 Services, Inc.

It is true that AT&T won the case that 800 Services, Inc had with AT&T but fortunately there is considerable light at the end of 800 Services. Inc.'s tunnel.

It only recently that 800 Services, Inc has discovered that the only reason AT&T won the case was due to 1) intentional lies to the Court that 800 Services, Inc was not aware of, 2) the fact that the AT&T was not explicit, 3) AT&T controlled the cash and interpreted the tariff however it wanted 4) 800 Services, Inc was also the first aggregator to restructure twice after June 17th 1994 so there was no precedent to refer to and 5) statute of limitations issues that are now resolved.

Here as exhibit A is Judge Politan's August 28th 2000 Decision page 8. Statement of facts:

800 Services subscribed to inbound service offered by AT&T pursuant to Tariff No.2 from 1990 through 1994. However, the allegations of the Complaint concern service to which 800 Services **subscribed to after August 1, 1994.** On or about July 22,nd 1994 Phillip Okin (hereinafter "Okin"). President of 800 Services, executed a Network Services Commitment Form for AT&T's CSTPII Plan

The Judge Politan decision rested in part upon the recently discovered intentional AT&T lie that 800 Services, Inc.'s, plans were no longer pre June 17th 1994 immune from shortfall and termination charges. As of July 1995 the only tariff section was the June 17th 1994 provision and

that provision certainly was not explicit. See the June 17th 1994 immunity provision at exhibit A in the Oct 10th 2007 FCC filing.

The original June 17th 1994 provision gave AT&T wiggle room to lie; especially when AT&T controlled the cash:

CSTPII Plans in effect on or prior to June 17th 1994 are not subject to condition 2, preceding.

AT&T was collecting the cash and advising 800 Services Inc., that penalties were going to hit its end-users. 800 Services, Inc was put out of business by AT&T in July 1995 4 months prior to the much more explicit November 9th 1995 tariff section 2.5.18 which contained the pre June 17th 1994 immunity provision.

The problem 800 Services, Inc had was that it had already been put out of business for four months by the time the November 1995 section 2.5.18 revision was issued. Even if 800 Services, Inc. found the November 9th 1995 provision during the time of its lawsuit against AT&T, still today AT&T falsely asserts that only one penalty free post June 17th 1994 restructure was allowed.

In retrospect if the June 17th 1994 provision as of June 17th 1994 actually did what AT&T claims it did there wouldn't be any need to revise the pre June 17th 1994 provision in November 1995; that's just common sense.

Tariff changes are prospective in nature so you would have to excuse 800 Services, Inc.'s counsel for not looking at revised tariff provisions **months after** it had already been put out of business by AT&T. In effect what happened was the Nov 9th 1995 tariff provision conclusively confirmed that the immune "terms and conditions" passed from restructure to restructure after June 17th 1994 through the first post Nov 9th 1995 restructure. The November 9th 1995 provision clarified the June 17th 1994 provision; but 800 Services, Inc. could not have known this in the summer of 1995.

AT&T authoritatively tells you we are AT&T, we wrote the tariff, and we know what it is “suppose to mean”, and if you do not like it, sue us, and we will tie your “now” poor butt up in Court forever; as AT&T has already done to Mr Inga and continues to brag to Mr Inga that it intends to keep doing.

The following evidence shows that AT&T intentionally misinterpreted the tariff on July 25th 1995 when AT&T advised 800 Services Inc., that it was not able to restructure its CSTPII/RVPP plans “without penalty.” Attached here as **exhibit B** is the letter from 800 Services, Inc.’s AT&T account manager Anna Nicolletti. 800 Services, didn’t believe Ms Nicolletti wrote the letter, so it asked her who wrote it and she advised 800 Services, Inc. that it was written by AT&T’s attorneys.

The exhibit B letter opens with the statement:

Your July 21st letter asks whether 800 Services, Inc., will be allowed to restructure its existing CSTPII “**without any penalty.**”

The reason why 800 Services, Inc needed to ask AT&T the above question was that the June 17th 1994 provision was not explicit as required by law. 800 Services Inc., had actually been asking its AT&T account rep for months prior to July 21st 1995 about the pre June 17th 1994 provision and put it in writing because there were conflicting interpretations being decimated by AT&T.

The July 25th 1995 AT&T letter (exhibit B) at page two interprets the June 17th 1994 provision in this manner:

In all events, if 800 Services discontinues its CSTPII without liability, **800 Services will be required to pay any difference between its pro-rated annual commitment and its actual charges through the date of discontinuance for the plan year in which in which the discontinuance is effective.** (See Tariff F.C.C. No. 2, Section 3.3.1 Q4 pages 61.19-61.19.1)

Additionally AT&T's July 25th 1995 letter asserted:

If 800 Services, discontinues its CSTPII without liability during the first year of its term, but fails to meet the annual revenue commitment, **it will be required to repay the credits, provided under the Spring Promo.** (See Tariff F.C. C. No., 2 Section 8.1.1.165 page 261.186)

The reason why there was so much confusion and questions surrounding the June 17th 1994 provision in 1995, was not only wasn't the tariff explicit, but other aggregators like Mr Inga's companies were being advised by different AT&T account managers that its pre June 17th 1994 plans could be continually restructured without penalty.

Exhibit GG in petitioners 9/27/06 filing is a professionally done transcription of conversations in which AT&T, and the District Court also have copies of the audio tapes, between Mr Inga and his companies AT&T account manager Joseph Fitzpatrick and other AT&T managers. **Exhibit GG** shows Mr Inga's companies were being advised by its AT&T account manager Joseph Fitzpatrick that a restructured RVPP ID would always remain immune from penalties. Here is a tape excerpt:

Joe Fitzpatrick: If you get a new VPP number, you get a new plan. If you keep the same VPP number only with a new start date, **it's not a new plan.** So if they should give you a new plan VPP number....

Mr. Inga: Yeah

Joe Fitzpatrick You were given a new plan.

Mr. Inga: Alright but say the VPP stays the same.

Joe Fitzpatrick: Stays the same, all you have then is a new TASD –Term Assumption Starting Date, you have and original plan whatever TAS you wanna call that an ABC plan or whatever but its, its just a new TAS date. If you were grandfathered, you know how that game is played.

Mr. Inga: Now what I am saying is this, theoretically, there can never be a penalty assessed on a restructured plan because that plan—because AT&T has already interpreted that a restructure is not a new plan, that TAS date will start but the VPP ID, VPP dictates whether it's a new plan or not.

Joe Fitzpatrick: If you kept the same VPP number---

Mr.Inga Yes.

Joe Fitzpatrick: The plan that you started prior, you know in June of '94, prior to 6/17 **as long as that VPP number doesn't change,**

they can track back in the system and say that was a –they can show when it was originally started, it was a pre 6/17 plan, it's **grandfathered**. True, you may get new TAS dates every time you restructure and as long as you do the restructure---if you time it right, if you screw up somehow and don't time it right, that system is gonna kick in and hit you for shortfall. So you just need to, you know, keep your clock there to tell you when to **restructure**.

As the exhibit GG in the Inga Companies 9/27/06 filing shows it wasn't just Mr Fitzpatrick that was advising the Inga Companies that it would remain pre June 17th 1994 immune, but many others: (Lisa Hockert, Joyce Suek, Debra Kibby, Tom Umholtz, Maria Nascimientto, Cheryl Baldwin, Greg Brown, Ron Orem, Tom Freeburg). 800 Services, Inc did not communicate with these AT&T managers which the Inga Companies had. 800 Services, Inc got stuck with Anna Nicolletti. The FCC can see what she had her lawyers write to intentionally mislead 800 Services, Inc.

The problem that 800 Services Inc. had with the confusion between what Mr Inga was being told and what 800 Services, Inc was being advised in writing was that 800 Services, Inc.'s plans were being restructured for the second time after June 17th 1994 as of July 1995; whereas the Inga Companies second post June 17th 1994 restructure did not occur until March 1996. 800 Services, Inc was not aware that the Inga Companies to protect itself from multitudes of conflicting tariff interpretations from AT&T were taping Mr Fitzpatrick. Also 800 Services Inc. would be the very first company to test the waters and restructure for the second time after June 17th 1994.

800 Services Inc., has discovered that AT&T intentionally misrepresented its tariff. 800 Services, Inc., was misled that it should pay annual true up shortfall and termination charges and repay the promotional Spring Pro bonus.

Here as exhibit C is the 800 Services, Inc's AT&T Network Services Commitment form signed by 800 Services, Inc president Phillip Okin on July 22nd 1994 and AT&T's Scott London on August 2nd, 1994.

What is critical about this form is that it was for a **restructured pre June 17th 1994 plan**--as it was clearly checked off as an **upgrade**-not a new order plan. As the Commission can see by exhibit C the upper right hand corner indicates that the same pre June 17th 1994 RVPPID (003093) was being used.

The word upgrade is the term used for what is referred to in the tariff as a Discontinuation without Liability. The term “restructure” is what the business term people used instead of “Upgrade” or “Discontinuation w/o Liability”. See here as **exhibit D** is a recently discovered letter to the Inga Companies that is dated the same month as the Anna Nicolletti July 25th 1995 letter. Notice that the letter from the Inga Companies contact states what Mr Inga’s company is doing is a “restructure” and that the plan is starting again; but it is not a new plan.

Page two of the exhibit is the AT&T Network Services Commitment Form that the letter references. **Exhibit D** shows on the Network Services Commitment Form the box “upgrade” is checked –not the “new order” box in association with the restructure term used by Ms Suek’s letter. Additionally Mr Fitzpatrick used the term “restructure” to explain what was immune from penalty.

See here as **exhibit E** is the tariff page at 3.3.1.Q.4, which is the Discontinuation Without Liability Section. The reason why AT&T used the term upgrade is simply that when you do a restructure/discontinuance of a CSTPII/RVPP plan the overall remaining commitment increases.

Therefore since 800 Services, Inc clearly indicated on its July 1995 AT&T Network Services Commitment Form that it was doing an “upgrade” and not a “new order” the plans were to remain pre June 17th 1994 immune from penalty on its July 1994 restructure and carried the immune “terms and conditions” to subsequent restructures.

It is only recently that 800 Services, Inc, has discovered that the pre June 17th 1994 immunity to shortfall and termination charges “terms and conditions” passed through to this 3 year plan which started in August 1994. As CCI’s Oct 10th 2007 FCC filing indicated the penalty immune "Terms and Conditions" passed from restructure to restructure through the second restructure after Nov. 9th 1995 under 2.5.18 para 2B.

Additionally, even after the first post November 9th 1995 restructure the penalties are waived at 2.5.18 para 3C, for the remaining balance of the three year plan that started prior to November 9th 1995.

800 Services, Inc asked AT&T in the summer of 1995 if it could restructure in 1995 its pre June 17th 1994 CSTPII plan. As the evidence shows AT&T on July 25th 1995 advised 800 Services, Inc that if it restructured the end-users would get hit with millions in charges. AT&T's letter was based upon AT&T's intentional misrepresentation that its tariff only allowed one post June 17th 1994 restructure and that first post June 17th 1994 was done July 1994.

What 800 Services Inc., now finds out ---which as of this July 25th 1995 date 800 Services, Inc had no way of knowing ---was that AT&T's July 25th 1995 penalty warning letter was done **after** AT&T had already pulled Tr.8179 as of June 2nd 1995 **and stated it was replacing it with Tr. 9229.**

What is significant about this is that the Tr. 9229 was the same law that became the November 9th 1995 2.5.18 **explicit tariff provision** showing 800 Services, Inc.'s plans were still eligible to restructure in the summer of 1995 without penalty. Not only did AT&T know on June 17th 1994 how the provision should be interpreted; but AT&T definitely knew by July 1995 how the June 17th 1994 provision actually worked because the Tr. 9229 transmittals were being revised in the beginning of June 1995 when AT&T pulled Tr. 8179. Additionally Judge Politan remarked in his March 1996 opinion that Tr. 9229 was huge with no index and covered 6 tariffs.

See the Inga Companies 1/31/07 FCC Filing for Judge Politan's March 1996 Decision at page 13-14; See exhibit F here to save the FCC some time.

Judge Politan's March 1996 Decision shows that Judge Politan was very angry at AT&T. Judge Politan believed AT&T's Tr. 9229 "clarifying" and "fine tuning" of the replaced Tr.8179 was an intentional delay so AT&T could not only put the Inga Companies out of business, but many other aggregators like 800 Services, Inc which also wanted to do penalty free restructures during 1995.

Suffice it to say that AT&T misspent over one hundred and forty days (from June 5th to Oct 26th, 1995) **'fine tuning'** and **"clarifying"** its transmittal.

If the tariff was explicit it would not have needed to be fine tuned and clarified and allowed AT&T to intentionally delay for 5 months. 800 Services, Inc. was not aware of any of this going on at the time.

The November 1995 section 2.5.18 eventually did further clarify that 800 Services, Inc., would have retained its pre June 17th 1994 immune status if it had restructured in the summer of 1995. It would not have lost its penalty immune status as of the second post June 17th 1994 restructure. AT&T simply lied to 800 Services, Inc.

Prior to the July 25th 1995 letter 800 Services, Inc also attempted to transfer its traffic to CT516. Attached here as **exhibit G** is the AT&T TSA that was signed by 800 Services, Inc as the former Customer on 4/26/95. The TSA was given to Mr Inga who was working with CCI's Mr Shipp to get accounts transferred to PSE's CT 516.

As the TSA shows the directions were that it was a "traffic only" transfer as the document indicates:

Move All Accounts except Main 181 # Keep plan 3093 In Effect.

The main billed number staying behind on the non transferred CSTPII/RVPP plan is what keeps the plan structure in place as conceded by AT&T Mr. Fash letter at exhibit H in the Inga Companies 9/27/06 filing.

AT&T did not transfer the accounts but Mr Shipp testified at deposition that he gave the TSA to PSE and they submitted it to AT&T, and AT&T confirmed receiving it, but AT&T never provisioned the accounts.

Based upon AT&T's July 25th 1995 written position, 800 Services, Inc., attempted to delete all the accounts off its plan because AT&T advised 800 Services, Inc that it was going to hit all of the end-users with the charges, which AT&T did, but which now appears that AT&T shouldn't have done.

Furthermore, AT&T then did not remove many of the end-users off 800 Services, Inc.'s, plan. Those end-users were hit with charges well in excess of the discount cap under 3.3.1.Q para 10. 800 Services, Inc can seek damages if the FCC decides the Inga Companies Declaratory Ruling Request which asserts that AT&T used a remedy that was illegal.

800 Services Inc., also had additional claims before Judge Politan that AT&T was providing its data to Transtech a telemarketing company that was affiliated with AT&T. However 800 Services only heard of this through Mr Inga and Judge Politan decided there was no evidence. Unfortunately 800 Services, Inc did not have here as exhibit H a transcription of an AT&T telemarketer Clarence, Mr Inga, and AT&T account manager Joseph Fitzpatrick. Joseph Fitzpatrick concedes that he was aware that AT&T for years was unlawfully providing aggregator's end-user data to its telemarketing company, and other aggregators were advising him of this also. With the new evidence that was previously unavailable 800 Services, Inc can now make its claims.

Additionally, AT&T does not point out that most of the claims that 800 Services, Inc made were knocked out due to the 2 year statute of limitations. 800 Services, Inc filed in April of 1998 its claims and the last illegal action was in July 1995. 800 Services tried to invoke the Continuing Wrong Doctrine alleging AT&T was still benefiting from the end-users who returned to AT&T in July 1995. The Court stated that use of the Continuing Wrong Doctrine to toll the statute of limitations was not applicable because 800 Services, Inc had to show that AT&T did the same thing to another party.

At the time 800 Services, Inc was not aware that in June 1996 AT&T hit the Inga Companies and CCI's plans with shortfall charges and the Inga brought claims due to this. 800 Services, Inc.'s April 1998 filing would have been within the two year statute of limitations by two months as the Continuing Wrong Doctrine would extend the statute of limitations to 2 years from June

1996 to June 1998, and therefore 800 Services, Inc's, April 1996 filing could have been in compliance with the statute of limitations if it brought the same claims.

800 Services Inc has also recently learned from counsel that it can extend its statute of limitations under section 415(d) of the Communications Act. Section 415(d) allows the claimant to file within 90 days from partial payment accepted on the **overcharges**.

415((b) Recovery of damages. All complaints against carriers for the recovery of damages **not** based on **overcharges** shall be filed with the Commission within two years from the time the cause of action accrues, and not after, **subject to subsection (d) of this section**

415(d) Extension: If on or before expiration of the period of limitation in subsection (b) or (c) of this section a carrier begins action under subsection (a) of this section for recovery of lawful charges in respect of the same service, **or**, without beginning action, **collects charges in respect of that service, said period of limitation shall be extended to include ninety days from** the time such action is begun **or such charges are collected by the carrier.**

415(g) "Overcharges" defined: The term "overcharges" as used in this section shall be deemed to mean charges for services in excess of those applicable thereto under the schedules of charges lawfully on file with the Commission.

As AT&T's letter indicates there is still an...

"AT&T a judgment of \$2.2 million (which remains unsatisfied),"

Therefore all 800 Services Inc., has to do is make a partial payment towards the overcharge and file its claims. 800 Services, Inc never brought claims forth to the District Court for AT&T violating its tariff by not restructuring its plan without penalty due to failure to adhere to the pre June 17th 1994 provision. 800 Services, Inc was simply intentionally lied to by AT&T as AT&T intentionally misrepresented the non explicit June 17th 1994 provision.

800 Services, Inc never brought claims forth to the District Court on the illegal remedy of applying shortfall simply because there had never been any case law showing that AT&T was found in violation of its tariffs by using an illegal remedy by billing in excess of the discount cap under 3.3.1.Q para 10. See petitioners exhibit D in its 9/27/06 filing

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

800 Services Inc has lots more evidence against AT&T that it will save for its own case. What 800 Services, Inc has done here is to show the FCC what happens when you do not have explicit tariff provisions. Additionally, AT&T’s assertion that 800 Services, Inc.’s sanctions motion request is from a party that does not have “any cognizable interest in this proceeding” is a total farce.

There was one moment of grace within AT&T’s Jan 10th 2008 letter. It was when it announced it was not going to file anymore. Thank God we don’t have to hear for the 4th AT&T brief about the IRS, non issue. Words can not describe the enjoyment that 800 Services, Inc. has gained in witnessing AT&T’s army of lawyers getting totally slaughtered by mainly the Inga Companies. Goes to show you how one Inga truth can trounce many AT&T lies. However it comes a time when all good things must end.

800 Services, Inc respectfully requests the Inga Companies to stop filing, as the case has been won a long time ago. 800 Services, Inc., can sympathize with Mr Inga’s frustration with AT&T, but it will be even more satisfying when the Inga Companies receives its well earned compensation and it doesn’t have to deal with AT&T’s sanctionable absurdity any longer.

800 Services, Inc respectfully requests the Commission to interpret all declaratory ruling requests so it will not have to deal with 800 Services, Inc and other aggregators in the future. 800 Services, Inc respectfully requests the Commission to impose sanctions against AT&T and its counsel. What AT&T has been allowed to get away with up till now is a travesty upon the judicial system. AT&T must pay for its abuse of the Commission. The FCC needs to make AT&T think long and hard the next time that it lies to a District Court to get a case to the FCC.

Respectfully submitted,
800 Services, Inc.
/S/ Phillip Okin
Phillip Okin President