

September 19, 2013

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

**PETITIONERS SUPPLEMENTAL SUBMISSION IN
FURTHER SUPPORT OF ITS POSITION THAT THE PERMISSIBILITY OF APPLYING
CHARGES AGAINST END-USERS WAS NOT PERMISSIBLE.**

Declaratory Ruling must focus on NON-DISPUTED FACTS:

Here are a few clear cut ones:

When in June of 1996 AT&T placed shortfall and termination true-up charges on CCI's end-users, AT&T sent them the attached letter as CCI's customers went ballistic! You would also if you normally expected a \$60 phone bill and received a \$4,428 phone bill as the attached Florida CCI's customer received! Obviously petitioners business was destroyed when AT&T did this.

Remember NON DISPUTED FACTS:

It is not disputed by AT&T that there was a billing dispute with CCI leading up to the placing of these charges. Petitioners simply advised AT&T that the charges should not be placed at all and AT&T claimed that they were permissible in being applied.

AT&T concedes there was a dispute within the attached document (paragraph 3 last sentence)

(You should know, however, that CCI disputes these charges.)

Illegal Remedy One: When there is an acknowledged dispute AT&T must wait at minimum 30 days to clear up the dispute prior to applying charges. AT&T therefore used an illegal remedy that was unlawful under its tariff.

Illegal Remedy Two: Exhibit D within Petitioners initial brief –way back in the fall of 2006 provides what AT&T’s remedy is if shortfall is appropriate under the tariff at that time:

See:

AT&T COMMUNICATIONS
Adm. Rates and Tariffs
Bridgewater, NJ 08807
Issued: March 10, 1994

TARIFF F.C.C. NO. 2
12th Revised Page 61.17
Cancels 11th Revised Page 61.17
Effective: March 11, 1994

3.3.1.Q. AT&T 800 Customer Specific Term Plan II (continued)

Bullet 6 below of exhibit D.

- The Customer will assume all financial responsibility for all designated accounts in the plan and will be liable for all charges incurred by each location under the plan.

This means that the Customer CCI is responsible for the charges not CCI’s customers! Not the end-users!

See Last bullet on petitioners exhibit D....

Shortfall and/or termination liability are the responsibility of the Customer. Any penalty for shortfall and/or termination liability will be apportioned according to usage and billed to the individual locations designated by the Customer for inclusion under the plan. For billing purposes, such penalties shall reduce any discounts apportioned to the individual locations under the plan.

Shortfall is the responsibility of the customer –CCI---not CCI’s customers. The ONLY remedy that AT&T’s tariff avails AT&T is to simply remove the discount on the end-users bill if CCI does not initially pay AT&T. So in other words this sample bill received a \$13.21 credit on their \$66.02 gross usage. The \$13.21 credit is of course the 20% discount provided by being under the CCI

CSTPII/RVPP plan. The AT&T remedy is clearly that the \$13.21 be removed. The tariff does not permit AT&T to apply shortfall and termination true charges in EXCESS of the \$13.21 credit provided by AT&T's customer CCI. This is not a disputed fact that AT&T used an illegal remedy as the tariff is clear as to what AT&T's remedy was.

Illegal Remedy Three:

AT&T's first applied the charges to CCI's customers' bills when AT&T was supposed to first apply all charges to CCI's master account. If CCI could not pay AT&T only at that point can AT&T then remove the discounts of the end-users. Again AT&T used an illegedy.

When AT&T applied shortfall and termination charges to another aggregator, 800 Services, Inc.'s plans, AT&T did not apply the charges to the end-users. AT&T only applied the charges only to 800 Services, Inc.'s mater account. If AT&T actually believed that true up charges were due it from 800 Services, Inc., the way that AT&T did it against 800 Services, Inc was proper under the tariff.

The FCC was not challenged by the DC Court as to the FCC's rules on use of an illegal remedy. As you are aware under the law AT&T could not avail itself of its shortfall and termination charges if it utilized an illegal remedy in applying those charges. The FCC 2003 decision also noted that AT&T utilized an illegal remedy of PERMAENTLY DENYING instead of TEMPORARILY SUSPENDING SERVICE.

Therefore even if the shortfall and termination charges were permissible in being applied in June of 1996, AT&T can't rely upon its charges.

The FCC can also opine as to whether or not a pre June 1994 originated 3 year CSTPII/RVPP commitment plans was able to restructure only once after June 1994, or at any time during the 3 year commitment. Such an FCC ruling would provide Florida Department of Revenue (Florida) and IRS with a concrete finding as to whether there should have been charges in the first place.

Alternatively, the FCC can make AT&T a double loser by simply utilizing the non-disputed facts regarding the illegal remedies as described above and not deciding if the charges were permissible in the first place before remedies were used.

This would give petitioners a favorable decision as to the June 1996 charges being inflicted without addressing whether the charges were permissible. Then the Florida Department of Revenue and the IRS will be happy as the issue of whether the charges were permissible in the first place would not have been decided.

Whether or not AT&T used an illegal remedy is of no concern to Florida or the IRS. These taxing authorities are interested in whether the charges were permissible to establish a tax base. If there was not supposed to be charges placed on the plans due to the Pre-17th 1994 FCC tariff provision then there would not have been a tax base there to tax. The phone bill shows 4 different Florida taxes of \$396.76 that were obviously calculated on the AT&T shortfall and termination charges as the actual usage was only \$66.02.

TAXES ON TOTAL CURRENT CHARGES			
Federal Tax	2.23		
State Tax - FL	289.46		
Local Tax - FL	1.86		
FL GRS RCPT TX SURCH 2.56%	63.54		
FL INTRASTATE GR RCT SURCH	39.67		
		396.76	

So if the permissibility of applying shortfall and termination charges is not resolved by the FCC then the taxing authorities seemingly may proceed on AT&T's position before the Courts and the FCC that:

- 1) AT&T's charges were permissible.
- 2) AT&T's concession that AT&T was compensated by CCI for the shortfall and termination charges:

"CCI has now resolved its obligation to pay shortfall charges in some fashion says nothing about whether the requested CCI-PSE transfer complied AT&T's tariff at the time of the CCI and PSE request. -- **before these obligations had been satisfied."**

- 3) AT&T's current position before the FCC that the permissibility of applying shortfall and termination charges is not an issue before the FCC to resolve.

If the FCC rules on the pre June 17th 1994 issue as well as the illegal remedies it may clarify all issues for all parties.

Respectfully Submitted,

One Stop Financial, Inc
Winback & Conserve Program, Inc.
Group Discounts, Inc.
800 Discounts, Inc

/s/ Al Inga
Al Inga President