

August 28, 2014  
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 Re: WC Docket No. 06-210  
 CCB/CPD 96-20

Petitioners Comments and Providing Evidence of  
 AT&T's Intentional Frauds upon the DC Circuit Court

- 1) The following is a review of the DC Circuit Decision Errors caused by the intentional frauds engaged in by AT&T's counsels that led to the DC Circuit's Decision which is filled with Critical Errors.

The DC Circuit references are in RED and other references are in black.

**DC Circuit Page 2**

ROBERTS, *Circuit Judge*: AT&T Corporation petitions for review of a Federal Communications Commission order interpreting AT&T's tariff on resales of 800 telephone service. A provision of that tariff allows resellers to transfer their business, "so long as the recipient assumes **all of the transferor's obligations.**"

Right off the bat Judge Roberts misstates and misinterprets section 2.1.8 of AT&T's tariff. The tariff does not say **all of the transferor's obligations**" it actually states:

"all obligations of the **former** Customer"

2) There is critical difference. The transferor is not a **FORMER AT&T Customer** on that which it does not transfer! The transaction at issue here involved the transfer of "traffic only" NOT the plan. The obligations on the non transferred plan (revenue and time commitment and their associated obligations for shortfall and termination obligations) as per the tariff must stay with the NON transferred plan. If the AT&T Customer doesn't transfer its plan it remains an AT&T Customer not a **FORMER CUSTOMER**. Plan obligations only transfer when the plan is transferred because only then would the party transferring the plan be a FORMER CUSTOMER. It's very simple when people point it out but here Judge Roberts got totally scammed as AT&T of course understands its tariff. The assuming party is only obligated to assume all obligations for the service of the FORMER CUSTOMER –they are **not** obligated to assume obligations on the plan that does not transfer. Below it will be explained in common sense market conditions and it will make much more sense. We have already submitted substantial evidence regarding this and below is more.

3) Under Justice Roberts “all obligations of the transferor” scenario: AT&T customer A with \$100 million commitment and 50,000 end-user accounts transfers to AT&T Customer B with \$1,000 commitment say 10 accounts totaling 1,000 in usage. Under Justice Roberts “all obligations of the transferor” error ---Company B must assume \$100 million in volume commitment despite receiving only \$1,000 in volume!

4) Likewise Company A **gets to completely shed its commitment of \$100 million by transferring \$1,000!** How ridiculous would this be in the real world? That’s why AT&T provides zero evidence—there isn’t any evidence to support such a tariff interpretation despite the fact that tens of thousands of these type transactions take place every year.

### **DC Circuit page: 3**

Alfonse Inga, a New Jersey businessman who owned several aggregator companies, was one such reseller. In 1994, Mr. Inga undertook a series of transactions designed to move his business from Tariff No. 2 to a more lucrative contract tariff. First, his companies — each of which operated under CSTP II, a type of plan offered under Tariff No. 2 — **transferred all nine of their plans** to a new entity, Combined Companies, Incorporated (CCI). As required by Section 2.1.8 of Tariff No. 2, **CCI expressly agreed to assume all obligations of the transferor companies.**

5) In the above Judge Roberts again misstates the tariff as “all obligations of the **transferor companies**” The 1<sup>st</sup> transfer between Mr Inga’s and CCI’s Mr Shipp were PLAN TRANSFERS. Therefore in the first transfer CCI did ASSUME and Inga Companies did transfer the plans revenue and time commitments as plans were transferred and the Inga Companies were at that point FORMER CUSTOMERS on those plans. Customer plan obligations (Revenue & Time Commitment) only transfer when the plan transfers.

6) So under the tariff “all obligations of the **former customer**” the PLAN transfer mandated that the Inga Companies were indeed a **former** AT&T customer on the **plans transferred** ----and therefore the plans revenue and time commitments and associated obligations for shortfall and termination obligations did indeed transfer to CCI.

### **DC Circuit Decision Page: 4 describing the 2<sup>nd</sup> transfer which was a “traffic only” non plan transfer...**

“Meanwhile, CCI’s negotiations for its own contract tariff failed and CCI entered into the second transfer, moving substantially all the 800 service in its CSTP II plans to PSE. As with the first transfer, the CCI-PSE agreement called for PSE to pass much of the realized profit back to CCI. The second transfer, however, differed from the first in an important respect. The parties attempted to structure the transaction to avoid Section 2.1.8 of Tariff No. 2, so that PSE would not have to assume CCI’s obligations on the transferred service. To do this, the parties asked AT&T to move just the service to particular end-user businesses — the “traffic” under CCI’s plans — and to leave the plans themselves otherwise intact. The parties hoped that, as a result, 800 service would be billed under PSE’s substantially lower contract tariff rates, while CCI would remain responsible for the obligations to the carrier under Tariff No. 2. AT&T balked at this second transfer as well.

7) The DC Circuit decision inexplicably states that CCI's transferring traffic to PSE utilizing the standard AT&T transfer form is somehow trying to **AVOID** Section 2.1.8. The evidence in the record is overwhelming that Section 2.1.8 was not being avoided it was being strictly adhered to by co-petitioners Inga and CCI that transferred traffic to PSE.

8) What happened is that the FCC made an error in believing that 2.1.8 did not allow for "traffic only" transfers under 2.1.8. Despite the fact that CCI-PSE traffic only transfer strictly adhered to 2.1.8 as the record evidence before the NJ District Court clearly shows the DC Circuit erroneously believed that petitioners were engaging in a transaction outside of 2.1.8. Critical Error resulted due to scam by AT&T counsel and not understanding the 2.1.8 tariff language.

The following quotes from the record clearly show the transfer was done **as per the tariff**

1<sup>st</sup>) Inga Para 53 JA 446: The AT&T TSA is section 2.1.8

"In fact the tariff and AT&T's own form, the Transfer of Service or Assignment (TSA) form, made it possible. We did an assignment of end-user accounts **as per the tariff** and what had been commonly accepted in the marketplace for years."

2<sup>nd</sup>) Inga Para 58 JA 448:"

AT&T's right to collect from the aggregator if the end-user didn't pay their bill **followed each new plan** to which the end-user accounts were being transferred or assigned. AT&T was totally protected."

3<sup>rd</sup>) Inga Para. 63 JA 450:

"AT&T's is in a Better Security Risk Position after Assignment. The Court's understanding that there was no credit risk was right. The subject accounts continued to be billed by AT&T and the volume was so large that **bad debt** was not capable of becoming an issue. Moreover, the **credit risk went with the accounts** no matter who owned them."

9) All parties, **including AT&T**, acknowledged **prior to DC Circuit Court** filings that all the obligations on the AT&T TSA, which mimicked 2.1.8 verbatim, were transferred and assumed by PSE. Judge Roberts simply got scammed by AT&T without AT&T providing any evidence that 2.1.8 was being avoided.

### **DC Circuit Decision Page 4 last para:**

AT&T balked at this second transfer as well. AT&T maintained that Section 2.1.8 applied to the transaction, and that PSE thus had to assume CCI's obligations in order for the transfer to go through. **In addition**, AT&T argued that the proposed transfer **violated the tariff's "fraudulent use" provisions**, as CCI almost certainly would fall short of its volume commitments once the traffic was moved to PSE's account, and AT&T had reason to believe that CCI would not have sufficient assets to pay the resulting penalties.

10) Judge Roberts apparently did not read the NJ District Court Decisions and totally overlooked the following statement from the FCC 2003 Decision. Otherwise he wouldn't have fallen for AT&T's 2005 DC Circuit briefs asserting that there were other defenses in 1995 that AT&T raised to deny the 1995 "traffic only" transfer. The only defense was its bogus "fraudulent use" defense---- which was shot down by FCC.

FCC 2003 Decision Page 10 para 13:

Because AT&T did not act in accordance with the "fraudulent use" provisions of its tariff, which did not explicitly restrict the movement of end-user locations from one tariff plan to another, AT&T cannot rely on them as authority for its refusal to move the traffic from CCI to PSE. **AT&T does not rely upon "any other provisions of its tariff" to justify its conduct.**

11) AT&T scammed the DC Circuit in its 2005 briefs into believing that it denied the CCI-PSE "traffic only" transfer due to revenue commitments and time commitments were required to be transfer. The 3<sup>rd</sup> sentence starts off with the words "In addition" which obviously means to Judge Roberts that AT&T had more than one defense to deny the "traffic only" transfer. The NJ District Court Decisions and the FCC 2003 Decision explicitly states that AT&T's fraudulent use defense was AT&T's **ONLY** defense as AT&T in 1995 asserted **no other reason** to deny the "traffic only" transfer.

12) The previous "2.1.8 being avoided defense" previously cited by Judge Roberts was due to AT&T 2005 scam on the DC Circuit. Judge Roberts was simply scammed by AT&T into believing there was an attempt to avoid 2.1.8. There was no such assertion that AT&T made in 1995 that 2.1.8 was being avoided. Section 2.1.8 was in fact strictly adhered to.

13) It is hard to fathom that Judge Roberts would actually believe that Judge Politan in 1995 wouldn't have simply dismissed the case ----if section 2.1.8 was somehow being **avoided** or **amended** in any way! What Judge in their right mind would send a primary jurisdiction referral to the FCC to **interpret a tariff** if there was actually before it **a fact** that the "traffic only" transfer request was in any way **an attempt** to rearrange tariff obligations under the tariff? It makes absolutely no sense as the case record shows nothing at all regarding the "traffic only" transfer trying to be done outside the scope of 2.1.8.

14) AT&T's sole defense argued that the proposed transfer violated the tariff's "fraudulent use" provisions—which is a different tariff section than 2.1.8. AT&T argued "fraudulent use" because under the tariff **AT&T conceded** that the non transferred plan's revenue and time commitments and its associated obligations for shortfall and termination charges **don't** transfer on a "traffic only" transfer! Judge Roberts did not understand that AT&T couldn't even have argued "fraudulent use" in 1995 to the District Court unless **AT&T conceded** that Customers plan obligations don't transfer on "traffic only" transfers.

15) The DC Circuit Decision states "In Addition AT&T argued," because it erroneously believed AT&T in 1995 denied the transaction due to 2.1.8 being avoided. It was impossible to simultaneously make a "fraudulent use" argument **which concedes** that under Section 2.1.8 the plan commitments **don't transfer** on "traffic only" transfers---while simultaneously making an argument that on the "traffic only" transfer the plans revenue commitments **do transfer**. The arguments are **mutually exclusive as their premise conflicts**. It is hard to believe that John Roberts did not understand that the 2 defenses that he believed AT&T asserted could not actually co-exist as they conflict.

16) Judge Roberts critical “all obligations of the transferor” error led him to erroneously believe that plan commitments transfer on “traffic only” transfers.

AT&T’s actual position before the DC Circuit regarding what “all obligations of the former customer meant” was that only on a plan transfer do the plan commitments transfer.

17) AT&T’s Counsel David Carpenter tried to explain this to Judge Roberts several times that what obligations transfer **DEPEND UPON** what is transferred ---Judge Roberts still built his own language into the tariff—“all obligations of the transferor”—that just isn’t there!

DC Circuit Oral Argument:

JUDGE ROBERTS: Why not? The tariff says they have to **assume all the obligations**. (DC Circuit Oral: Pg 12, Line 9) MR. CARPENTER: “**Yes, but what it means to assume all the obligations**. What obligations apply **may vary depending on what's transferred**. “In some cases the **only obligation** that may be transferred is **going to be the outstanding indebtedness.**”

Mr. Carpenter: Yes, but what it means to assume **all the obligations**. What obligations **apply** may vary **depending on what's transferred**. (11/12/04 US COURT OF APPEALS pg.12 Line 22 Exhibit W)

Mr. Carpenter: Now what obligations they are going to end up assuming **will vary depending** on what service is being transferred. (11/12/04 US COURT OF APPEALS pg.12 Line 12 Exhibit W.)

AT&T Counsel David Carpenter during Third Circuit Oral Argument:

We point out in our brief that there’s a **distinction** between transfers of entire plans, and transfers of individual end-users locations. That when the “**plan**” is transferred, **"all the obligations"** have to go along with it. (exhibit V, Pg 15 line 9)

18) Despite the overwhelming record evidence of the 2 NJ District Court Decisions, Petitioners briefs and documents submitted, the FCC Decision and AT&T’s counsel **trying to make Judge Roberts understand** that you don’t transfer plan commitments when the plan is not transferred -----Judge Roberts still got bamboozled by the confusing tariff. Judge Roberts is brilliant and deserves to be the current Supreme Court Justice of the United States---if he can’t figure out the tariff---that is the ultimate definition that the tariff was NOT EXPLICIT! By law if a tariff is not explicit it must be ruled against the maker of the tariff, AT&T.

### DC Circuit Page 6:

The Commission's order in this case is **entirely predicated** on its determination that Section 2.1.8 of Tariff No. 2 does not apply to the movement of traffic.

19) The FCC 2003 Decision erroneously believed that 2.1.8 allowed for the transfer of PLANS only and not "traffic only" transfers. However the FCC **did use section 2.1.8 to determine the allocation of obligations for "traffic only" transfers**---so to say that the FCC's Decision was ENTIRELY PREDICATED on its determination that Section 2.1.8 does NOT apply to the movement of traffic is 1/2 accurate.

20) The FCC's theory on HOW the accounts could move by deleting from one plan and adding the accounts to the new plan did not affect the FCC's interpretation of allocation of which obligations transferred for a "traffic only" transfers.

21) The FCC 2003 decision agreed with NJ Federal District Court's **use of 2.1.8** to analyze which obligations transfer. The District Court, the FCC, AT&T and Petitioners all agreed with the non appealed First District Court Decision in 1995 that on "traffic only" transfers the non transferred plans commitments stay with the non transferred plan!---that is why AT&T only argue fraudulent use in 1995.

22) Look at the FCC 2003 Decision as it quotes the joint and several liability section of 2.1.8 regarding allocation of obligations for the "traffic only" transfer. There isn't a joint and several liability section if the accounts were deleted and added.

23) The FCC Decision was not Entirely Predicated on its determination that 2.1.8 does not apply to the movement of traffic as it ACTUALLY USED 2.1.8 to interpret the allocation of obligations---agreeing with the non vacated-non appealed First District Court Decision that USED 2.1.8 to interpret which obligations transfer.

24) The following are just a few statements from many in the FCC 2003 Decision that Judge Roberts disregarded. The key here is that the first one listed below the FCC is clearly agreeing with the First District Court Decision which was not appealed by AT&T and which **used section 2.1.8** to determine obligations allocation for traffic only transfers:

FCC 2003 Decision Page 7 FN 51

**See First District Court Opinion at 5.** Exhibit G to the Petition, a letter agreement between CCI and PSE dated January 16, 1995, explains that, once the traffic was moved: (1) CCI's end-users (formerly the Inga Companies' end-users) would "be billed by AT&T at the prevailing AT&T Tariff 2 CSTP rates, less twenty three percent (23%) Customer Specific Term Plan (CSTP) discount, and 5.5% Revenue Volume Pricing Plan (RVPP) discount"; (2) CCI would get 80 percent "earned credit" for this traffic from PSE; (3) **CCI would continue to be responsible to AT&T for any commitment associated with the CSTP II Plans (which would not be discontinued);** and (4) PSE would assist in moving accounts back to CCI upon written notice from CCI that AT&T required **CCI to meet its commitments. See Exhibit G to the Petition. Thus, the traffic would be discounted 66 percent instead of 28 percent and the end-users would receive a discount off AT&T's standard tariffed rates greater than the portion of the 28 percent they had received when their traffic was associated with the CSTP II plan.** See *First District Court Opinion* at 3-5. The discount differential would be apportioned between CCI and PSE according to their letter agreement. See also n.66, *infra*.

25) Obviously the Judge Roberts did not understand that although the FCC used a different section of the tariff to explain that accounts could be deleted and added the FCC actually used 2.1.8 to interpret the allocation of obligations agreeing with the non appealed First District Court Decision.

Here's more from the FCC confirming that CCI keeps the revenue commitments on the "traffic only" transfer:

FCC 2003 Decision Page 7 FN 50

CCI and PSE did agree that the traffic could be returned to CCI upon 30 days written notice from CCI that AT&T required **CCI to meet its commitments**. See Exhibit G to Petition. Accordingly, at least theoretically, the traffic might have been returned to CCI at some point to enable it to **meet any CSTP II obligations**. Cf. Reply at 10 (arguing CCI would receive more net income, and thus have more money available to pay any charges, after the traffic was moved to PSE). We do not speculate whether the traffic ever would have been moved back or whether it or some other development would have satisfied **CCI's CSTP II commitments** because AT&T did not move the traffic from CCI to PSE.

26) The traffic moved to PSE would get 66% and because PSE was assuming the obligations listed on 2.1.8, PSE would be responsible for bad debt or unpaid bills of the new end-users. This decision was not challenged by AT&T and thus AT&T agreed and confirmed to the Federal District Court how the obligations allocation works under tariff 2.1.8.

First NJ Federal District Court Decision at page 5 footnote 5 **as cited by FCC:**

As in the plaintiffs' case **AT&T deducts from the RVPP discount/rebate remitted to PSE any bad debt or unpaid bills accrued by its end users.**

FCC 2003 Decision PAGE 8 para 11.

If AT&T had moved the traffic from CCI to PSE, then all of the traffic that CCI had used to meet its CSTP II/RVPP commitments would be associated with PSE's CT 516. **Further, CCI (as well as the Inga companies), but not PSE, would continue to have been responsible for any shortfall obligations under the CSTP II/RVPP plans.** Once all of its traffic was moved to PSE, **CCI might have needed to amass new traffic in order to meet its commitments under its CSTP II plans.**

27) Notice above the FCC is stating that CCI as well as the Inga Companies are responsible for shortfall. This is due to the joint and several liability language **within Section 2.1.8** that was used by the First District Court and agreed upon by the FCC. The FCC has already interpreted the obligations allocation UNDER 2.1.8. – Judge Roberts simply missed this and was also totally confused by the tariff language and the scams by AT&T.

FCC 2003 Decision Page 7

**CCI and PSE retained the benefits and obligations of their respective agreements with AT&T.** We note in this regard that both the forms submitted to AT&T and the agreement between CCI and PSE stated that CCI would continue to subscribe to its existing CSTP II plans. **Thus, CCI still would have to meet its tariffed commitments,** without the use of the traffic moved to PSE, and AT&T also would remain obligated to CCI under the terms of Tariff No. 2. The moved traffic would be used to meet PSE’s CT 516 volume commitments and, once moved, would no longer be associated with CCI’s CSTP II. If the traffic were moved away from CCI under Tariff 2, to PSE under Contract Tariff 516, **AT&T would get less money for the same traffic – the traffic would be discounted 66 percent instead of 28 percent.**

28) The 20 year AT&T fraud is all about the money! AT&T simply denied the “traffic only” transfer because this time the accounts were being moved to a plan that cost AT&T another 38%. Revenue and time commitments and their associated obligations for shortfall and termination obligations are Customer plan commitments.

29) Here the FCC points out that the termination obligation stays with CCI’s non transferred plan and states that AT&T in 1995 had already conceded this point:

FCC Decision Page 8 FN 56

Opposition at 5. Although AT&T also argues that the move also avoided the payment of tariffed *termination* charges, *id.*, it separately states that termination liability (payment of charges that apply if a term plan is discontinued before the end of the term) is not at issue here. **Opposition at 3 n.1.** That is consistent with the facts of this matter; **petitioners never terminated their plans. Accordingly, termination charges are not at issue in this matter.**

### **DC Circuit Page 7:**

The 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.

30) This is also an error as section 2.1.8 does indeed differentiate on its face that “**any number(s)**” of accounts can be transferred. Petitioners have already submitted a detailed explanation of this. Obviously anything less than **ALL NUMBERS** means traffic as opposed to the plan can transfer. The fact that this section also was not explicit that “traffic only” could transfer resulted in the FCC not seeing in 2.1.8 HOW accounts could transfer under 2.1.8. Despite petitioners using 2.1.8 to transfer “traffic only” the FCC ruled in petitioners favor because the delete and add section of the tariff allowed “traffic only” transfers. If the FCC should have simply followed the law that tariffs must be EXPLICIT and ruled against AT&T. No one could argue that this tariff language was not explicit as many Judges and FCC and the current Supreme Court Justice John Roberts couldn’t understand it.

## DC Circuit Decision page 7-8

The Commission does not respond directly to AT&T's argument. Instead, both in its brief before this court and in its order below, the FCC relies on a statement made by AT&T in comments submitted in the administrative proceeding. There, AT&T noted in passing that **“in this case the relevant WATS services are the CSTP II Plans.”** Comments of AT&T Corp. in Opposition to Joint Petition for Declaratory Ruling and Joint Motion for Expedited Consideration at 10. The Commission interprets this statement as conceding that Section 2.1.8 can only be triggered by the wholesale transfer of tariffed plans, and not by the transfer of component parts such as individual billed telephone numbers. *See* FCC Order at 6–7; FCC Br. at 16–18. AT&T, however, argues persuasively that the FCC misinterpreted its comment. Immediately following the alleged concession, AT&T's submission noted that: [Section 2.1.8], by its terms, **allows a transfer of CCI's service** to PSE only if PSE agreed to assume **all obligations under those plans.** *Yet CCI explicitly amended the transfer of services form to read “Traffic Only.”* By expressly declaring that it did not intend to effectuate a transfer of all obligations **under the plans** to PSE . . . *the proposed transfer, on its face, violated the terms of Section 2.1.8.*

31) AT&T intentionally mischaracterized the transaction as a plan transfer to the FCC—it was not just done just **“in passing.”** AT&T's intentional fraud to the FCC was that CCI-PSE transfer was a PLAN TRANSFER---- **“in this case the relevant WATS services are the CSTP II Plans.”** Not a “traffic only” transfer under the plans! AT&T is assessing what happens as per its tariff under PLAN transfers.

32) AT&T intentionally mischaracterized the transaction as a PLAN transfer as opposed to a “Traffic Only” transfer then only **if** it was a PLAN transfer states: by its terms allows a transfer of “CCI's service” to PSE only if PSE agreed to assume all obligations under “those plans”.

33) AT&T is not stating that plan commitments transfer on a “traffic only” transfer. AT&T is saying CCI transfers all its service and this only would happen under a plan transfer. CCI would no longer have any AT&T service---but because CCI is keepings its home lead accounts and its plan, CCI would still have service with AT&T—and on the “traffic only” transfer would not be a **FORMER CUSTOMER---CCI would still be an AT&T Customer.**

34) AT&T's mischaracterization was not only pathetic argument but was never made within the 15 days statute of limitations period under section 2.1.8. There is nowhere in the 1995 record in which AT&T claimed that the “traffic only” transfer order was an attempt to amend i.e. violate the tariff. Evidence has already been submitted showing PSE stating that it was a normal “proper order”.

CCI explicitly amended the transfer of services form to read “Traffic Only” is not an attempt to avoid or an amendment of the tariff. PSE's cover letter that was given to AT&T with the “traffic only” transaction explicitly states PSE is doing a **“proper”** submission as it had done many times before. The paperwork submitted to AT&T which (on page 4 of exhibit F to petitioner's initial filing) PSE states:

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)

Additionally the District Court's non vacated May 1995 Decision confirmed AT&T's tariff was being followed to the letter of the law. There were no attempts to amend or avoid 2.1.8 in any way:

The Inga Companies and CCI **followed the transfer section of the tariff to the letter.**

35) The FCC 2003 Decision agreed with the NJ District Court and accurately stated that the "Traffic Only" notations were to move traffic and not the plan. It obviously was to explain the transaction request was a **"traffic only"** transfer and **not a plan transfer**. AT&T counsel Mr. Carpenter at Oral argument minted a new defense and said the traffic only meant transfer "traffic only" –no obligations. The sentence was not just traffic only. AT&T Counsel Carpenter at oral argument short quoted the sentence to "Traffic Only" then changed the meaning 10 years after the transfer. Then told Judge Roberts that this was AT&T's reason for denying the transfer! The FCC understood "traffic only" not the plan. See FCC page 3 para 4

Accordingly, CCI and PSE jointly executed and submitted to AT&T nine TSA forms for each of the nine plans. 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.**

36) AT&T's sole 1995 defense of fraudulent use was predicated on its concession that plan commitments don't transfer when the plan does not transfer. The case would never have needed tariff interpretation if the transaction itself was an attempt to amend the language of tariff.

37) AT&T also bogusly asserted during oral argument that petitioners attempted to transfer "no obligations" as in ZERO OBLIGATIONS. This also was a brand new 2005 created AT&T defense created 10 years into the case.

### **DC Circuit Court Page 9:**

The reason AT&T seemed to **equate the transfers in this case with a transfer of plans** is that CCI sought to move **virtually all** of the billed telephone numbers in each of its CSTP II plans. Thus, for each of the nine plans, CCI asked AT&T to move all but one, or all but two, of the telephone numbers included in that plan. *See* Transfer of Service Agreement Forms.

38) If Judge Roberts understood the actual obligations language of the tariff he would have understood why AT&T intentionally “mischaracterized” the transaction as a plan transfer as opposed to a “traffic only” transfer. Judge Roberts erroneously believed that the obligations sentence as “all obligations of the transferor” instead of the actual words “all obligations of the **former customer.**”

39) Given the fact that Judge Roberts erroneously believed that customers revenue and time commitment plan obligations also transfer on “traffic only” transfers in addition to plan transfers ---the question becomes: Why didn’t Judge Roberts question himself as to **the reason why** AT&T was mischaracterizing the “traffic only” transaction as a plan transfer—**unless there was some benefit to AT&T?**

40) Under Judge Roberts understanding there was no obligation allocation difference between the 2 types of transfers! It should have dawned on Judge Roberts that there **must be a difference** in the obligations transferred between “traffic only” and plan transfers—because AT&T is trying to mischaracterize the transaction ---but it just shows you how totally confused Judge Roberts was regarding allocation of obligations. **AT&T caused the confusion.**

41) Further evaluation of Judge Roberts pg 9 comment:

Virtually all does not mean all. As explained by AT&T’s Counsel Fred Whitmer as long as the lead account remains it is considered a “traffic only” transfer and not a plan transfer. In an effort to assert AT&T’s bogus claim of “Fraudulent Use” to deny the “traffic only” transfer AT&T counsel Fred Whitmer made the following statement on 3/21/1995 upon cross examination of Mr. Inga before Judge Politan in NJ Federal District Court to confirm for Judge Politan that under 2.1.8 tariff CCI keeps the plan commitments on the traffic only transfer:

Q: 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?**

42) AT&T executive Joseph Fitzpatrick advised petitioners that it could move virtually all the accounts except for the home lead account and Fred Whitmer confirmed this. Therefore this idea that **virtually all** means that the “traffic only” transaction is somehow equated/reclassified as a “plan transfer” is complete nonsense.

43) Under Judge Roberts’ erroneous scenario it wouldn’t make one bit of difference whether a “traffic only” transfer or a “plan transfer” is being ordered as it relates to allocation of obligations. Under Judge Roberts’ mistake of “all obligations of the transferor” -----**either** “traffic only” OR “plan transfers” would mandate that the revenue and time commitments with their associated obligations for shortfall and termination must transfer.

44) This also begs the question: If AT&T actually believed that plan obligations transfer on non plan “traffic only” transfers .....Why then did AT&T find it absolutely necessary to so called “equate” the “traffic only” transfer as a plan transfer ----if the plan obligations were supposed to transfer under a “traffic only” transfer anyway?

45) The answer is obvious why AT&T “mischaracterized” the “traffic only” transaction as a plan transaction—AT&T conceded in 1995 in asserting its “fraudulent use” defense that under its tariff the revenue and time commitments with their associated obligations for shortfall and termination must transfer **ONLY** on PLAN TRANSFERS. These plan commitments do not transfer on “traffic only” transfers. AT&T in 1995 simply argued that the plans commitments would transfer if it was a PLAN transfer---but of course it was **not** a plan transfer.

46) The following is statement made by AT&T counsels David Carpenter, D. Cameron Findlay, Frederick Whitmer, and the “Richard Brown” on April 25<sup>th</sup> 1996 to the Third Circuit Court.

“CCI Notes that a transfer of service can apply either to individual end user locations or to entire plans. See CCI Br. At 31-32 & n13. CCI then, incongruously, seeks to defend the District Court by citing “record evidence” that addressed transfers individual end user locations (not entire plan liabilities), and showed that the **only “obligation” transferred to the “new customer” in that event is the unpaid liability associated with the individual end user location that is transferred. But that is self-evident under the tariff.** By contrast, when all the plan’s traffic and locations are being transferred to a new customer and the “plan” would then exist only as an **empty shell**, then the “new customer” would not be assuming “all” the associated “obligations” unless it assumed the “existing customer’s” shortfall and termination commitments.”

47) **ALL** accounts were **not** transferred in the “traffic only” transfer to PSE Enterprises. There wasn’t a so called “**empty shell**,” due to the fact that the home lead accounts were specifically left on the non transferred plan—as per AT&T executives instructions to us and confirmed by AT&T counsel Fred Whitmer.

48) AT&T Counsel Fred Whitmer conceded in the 1995 NJ District Court that the lead account remained so the plan and their commitments did not transfer. The AT&T fraud above was to simply lie as to the facts of the case that all traffic was transferred—it was not as the AT&T transfer forms clearly indicate the lead account remained with the non transferred plan.

49) AT&T counsel Mr Carpenter engaged in the same mischaracterization of petitioners’ transaction as a plan transfer when he conceded that AT&T lost its AT&T’s TR8179 Substantial Cause Pleading.

Third Circuit Oral Pg 43 here as exhibit O. AT&T’s Counsel David Carpenter:

The FCC asked us to withdraw the complaint because the FCC thought we had done more in the tariff language than codify what the tariff already meant because it went beyond prohibiting these **sorts of transfers of “plans”** that would affect transfers of individual locations.

50) Mr Carpenter again bogusly asserted that petitioner’s transaction was a **plan transfer** and confirms that AT&T was trying to do more before the FCC in its substantive Cause Hearing for TR8179 than clarify how 2.1.8 worked. AT&T tried to get a retroactive tariff change that when a certain amount of accounts transfer it constituted a plan transfer –but was denied by the FCC. But it was again a further admission of the status quo—that plan commitments don’t transfer.

51) All this information about Transmittal 8179 was also in the record but apparently the DC Circuit simply disregarded it—but remarkably the DC Circuit considered AT&T’s 2005 verbal created scam assertions with no document support as credible evidence.

AT&T obviously understood the difference between which obligations transfer depended upon whether it was a “traffic only” transfer or an entire plan transfer.

### DC Circuit page 9

In so doing, CCI asked AT&T to move nearly all the services — all the benefits —associated with its CSTEP II plans. What was left behind were CCI’s obligations — the burdens under the plans.

52) Of course the so called revenue and time commitment “burdens” are left—it can’t be any other way! Under Judge Roberts ridiculous “all obligations of the transferor” misreading of the tariff an AT&T aggregator transferor could transfer a few accounts to some bogus shell corporation and get rid of all its commitment and keep \$100 million in traffic with no commitment left to AT&T and then take all the traffic and switch to Verizon.

53) Of course the transferor AT&T customer under the tariff must keep its plan commitments no matter how much traffic it transfers! AT&T’s real concern would be if the transferor could simply transfer away its obligations to some bogus shell corporation with no assets for AT&T to go after!

54) The best scenario of course is the way the tariff actually works where the transferor can’t transfer away its commitments on a “traffic only” transfer! Judge Roberts scenario in which it is “somehow better” for AT&T that CCI could get rid of \$100 million commitment no matter how many accounts it transferred of course is not how the tariff worked. Common Sense!

55) That is why AT&T can’t produce any evidence of such a ridiculous tariff interpretation because such an interpretation actually would lead to abuse upon AT&T if it were a reality. Simple—you make the commitment you must meet the commitment and not shed it by transferring accounts from the plan that must keep its commitments! Common Sense!

56) NJ District Court Judge Politan clearly understood the traffic only transfers ramifications under the tariff. 1996 Politan Decision (Petitioners 1/31/07 filing exhibit Reply B page 19 para 1)

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

District JA pg 66:

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

District Court JA 169 -170:

“Commitments and shortfalls are little more than **illusionary concepts** in the reseller industry—concepts which constantly undergo renegotiation and restructuring. The only “tangible” concern at this juncture is the service AT&T provides. The Court is satisfied that such services and their costs are protected. To the extent however that **AT&T’s demand for fifteen million dollars’ security is premised on the danger of shortfalls**, the Court finds that threat neither pivotal to the instant injunction **nor properly substantiated by AT&T.**

57) In *this case* Judge Roberts again totally ignored the fact that the NJ Federal District Court found that the non transferred plans were pre June 17<sup>th</sup> 1994 ordered and therefore were immune from shortfall and termination charges when timely restructured. The record shows AT&T asked Judge Politan for a \$15 million deposit and since it was predicated on the forecast of shortfalls AT&T did not receive 1 cent. There were no so called BURDENS!

58) The plans had already met their fiscal year commitments and could be restructured without liability. The plans were grandfathered to **many benefits** with little traffic on them—so there were no so called burdens. The plans could be rolled into a new contract tariff without having to post millions of dollars of security deposits. The record shows that these plans at issue did not have the burdens that Judge Roberts speaks of; in fact these grandfathered plans were **loaded with grandfathered benefits.**

59) Additionally AT&T had its “fraudulent use” provision so if there actually was a transaction that was being designed where AT&T actually suspected fraudulent use, AT&T could avail itself to that provision to protect itself as long as it does not use an illegal process in applying the remedy as it did in *this case*!

60) Judge Roberts is also not taking into consideration that many aggregators which did not have “penalty immune grandfathered plans” as petitioners, may calculate that the additional revenue generated by transferring the accounts to a deeper discount plan **could more than cover** any shortfall liability.

61) When the transmittal 8179 was struck down by the FCC it noted that there were many legitimate reasons for temporarily transferring “traffic only” and keeping the plan with little traffic on it. If an aggregator has already met its fiscal year obligation for shortfall why shouldn’t it maximize revenue by transferring traffic to obtain greater margins? This is done constantly in the reseller aggregator industry.

62) Judge Roberts simply bought AT&T's rhetoric hook, line and sinker. AT&T's argument was a specious attempt to confuse the Court as AT&T's goal was simply to avoid paying an additional 38% compensation on \$50 million in yearly traffic--\$20 million per year. AT&T was hell bent of scamming any and every Judge it could in order not to process the "traffic only" transaction that strictly adhered to tariff section 2.1.8.

### DC Circuit 9-10

Accordingly, even if small scale transfers of traffic were outside the scope of Section 2.1.8, allowing this transaction to go through would create an obvious end-run around the unquestioned rule that new Customers had to "assume all obligations" in transferring WATS plans. "Any reseller" could circumvent Section 2.1.8 simply by asking AT&T to move its business one billed telephone number at a time. Using such a scheme, a reseller could move every component of a plan, save its obligations to AT&T. The transfer provision would then have no effect except in those cases where the transferor foolishly fell within its scope by phrasing its request in terms of the tariffed plans themselves.

63) The above passage is predicated on Judge Roberts critical error that revenue and time commitments on the non transferred plan transfer on "traffic only" transfers. What Judge Roberts erroneously believes is that if a reseller transferred "traffic only" under 2.1.8 the plan commitments would transfer but if accounts were deleted and added outside 2.1.8 no plan commitments would transfer. In reality whether an aggregator used 2.1.8 to transfer "traffic only" or just deleted the accounts from the plan and resigned the accounts to a different plan, the revenue commitments and time commitments would stay with the plan that the accounts came from.

64) The above DC Circuit passage is not even relevant to the CCI-PSE mass "traffic only" transfer and therefore anyone reading the above passage should not be confused as Judge Roberts is not only talking about a transaction OUTSIDE THE SCOPE OF 2.1.8 but his obligations analysis is talking about plan transfers not "traffic only" transfers.

65) Additionally the passage references OTHER RESELLERS whose transactions are "outside the scope of Section 2.1.8" by deleting accounts from one plan and adding accounts to another plan one billed number at a time. The issue in the CCI -PSE transaction has DOES NOT INVOLVE transferring WATS PLANS ---nor does it involve deleting and adding accounts one number at a time outside the scope of 2.1.8 ---because the "traffic only" transfer in the CCI -PSE transaction was done as a mass transfer using 2.1.8. All this confusion was due to AT&T counsels' intentional misrepresentations, mischaracterizations, changing assertions that conflict etc.

66) In 1995 the NJ Federal District Court, petitioners and AT&T all agreed 2.1.8 was used. So the above Judge Roberts passage is simply about speculation of possible resellers that could chose to circumvent 2.1.8., **and is not at all** relevant to the case at hand.

### DC Circuit Court page 10

The FCC itself recognized that the “purpose” of Section 2.1.8 “was to maintain intact the balance of obligations and benefits between parties under the tariff when one customer stepped into the shoes of another.” FCC Order at 7. The Commission’s interpretation eviscerates this very purpose, allowing PSE to take up essentially all of CCI’s resale business without assuming so much as one of CCI’s obligations to AT&T.

67) Judge Roberts again got scammed by David Carpenters words without reading the voluminous record that has dozens of documents that prove Carpenter’s assertion was an intentional fraud. There is absolutely nowhere in the 1995 record that states the “traffic only” transfer transaction was being ordered with zero obligations expected to be assumed by PSE /transferred by CCI/Inga co-petitioners.

68) AT&T counsel simply created this fraud in 2005—ten years into the case during Oral Argument and the DC Circuit got scammed. AT&T had conceded in 1995 & 1996 to Judge Politian’s NJ District Court and during AT&T’s FCC substantive cause case with the FCC on transmittal 8179 that the two obligations listed on 2.1.8 were indeed transferred to PSE and the plan commitments don’t transfer for traffic only transfers.

69) AT&T’s argument in 1995 was simply that because the plan commitments do not transfer on a “traffic only” transfer AT&T depended upon its “fraudulent use” provision that it would not be able to collect shortfall charges. Remember these plans that CCI were able to hold with little traffic had already met the fiscal year commitments and were immune from charges because they could be restructured without penalties as pointed out by NJ Federal District Court in 1995 and 1996.

70) AT&T was asked to provide evidence of its zero obligations transferred assertion in 1995 and of course did not do so because no such evidence exists –because no such “zero obligations” transaction was ever ordered.

### DC Circuit Court page 10:

Second, the FCC’s interpretation, permitting the movement of benefits without any assumption of obligations, would render the transfer provision meaningless

71) Nowhere in the non appealed NJ Federal District Court or in the FCC 2003 decision does it state that “traffic only” can be assumed by PSE without any obligations! This statement is absolutely contradictory to what the FCC actually states in its 2003 decision and what it stated in its briefs to the DC Circuit. Judge Roberts simply took AT&T’s newly created defense on AT&T’s word and disregarded the evidence.

72) The FCC Decision agreed with the NJ Federal non appealed 1995 District Court Decision and AT&T's own 1995 "fraudulent use" concession. It stated that only the two obligations listed on 2.1.8 were transferred on a "traffic only" transfer. It is of course agreed that you can't transfer zero obligations on a traffic only transfer. The 2 obligations actually listed on 2.1.8 were transferred by petitioners and properly assumed by PSE.

73) The DC Circuit simply fell for the AT&T scam job in 2005 **despite AT&T providing zero evidence.** The DC Circuit literally did not take into consideration the non appealed First District Court Decision, petitioners brief, the FCC's extremely detailed obligation allocation which it also stated it agreed with the non appealed First NJ District Court Decision that used 2.1.8. Judge Roberts simply bought into the 2005 created fraud that AT&T counsel Mr. Carpenter served him that zero obligations were being transferred.

### **DC Circuit page 11:**

We also do not decide precisely which obligations should have been transferred in this case, as this question was **neither addressed by the Commission** nor adequately presented to us.

74) The FCC did indeed address the DC Circuit and explained in depth in its FCC 2003 Decision that it used section 2.1.8 to interpret the allocation of obligations. The FCC stated it used 2.1.8 obligations section to interpret "traffic only" transfers----so 2.1.8 only had meaning due to the obligations section--- not due to how the accounts could move.

75) The FCC 2003 Decision clearly addressed which obligations got transferred and which obligations do not get transferred on a "traffic only" transfer at issue---agreeing with the 1995 & 1996 decisions of the NJ Federal District Court Judge Politan. It was AT&T counsel in 1995 that advised Judge Politan exactly how 2.1.8 is interpreted regarding obligation allocation for "traffic only" transfers when AT&T argued its "fraudulent use" defense.

76) Obviously AT&T's 2005 created defenses of zero obligations were transferred or its "plan commitments are required to be transferred on traffic only transfers are complete frauds. AT&T agreed with Judge Politan's obligations allocation in the First District Court Decision which AT&T did not appeal and thus became the "Law of the Case."

77) Petitioners can't imagine how much more detailed the FCC could have been in explicitly stating its interpretation of allocation of obligations **under 2.18** for "traffic only" transfers.

### **DC Circuit page 11:**

All we decide is that Section 2.1.8 cannot be read to allow parties to transfer the benefits associated with 800 service **without assuming any obligations**. The petition for review is granted.

78) Again we see how the DC Circuit got scammed by AT&T's 2005 created zero obligations were transferred defense as the DC Circuit says "without assuming any obligations".

**DC Circuit page 11 footnote:**

At oral argument, AT&T's counsel repeatedly stated that Tariff No. 2 expressly required PSE to assume **the volume commitments that form the heart of AT&T's concern in this case.** See Transcript of Oral Argument at 11, 13. 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."

79) AT&T's counsel Mr Carpenter was misquoting the second obligation listed within 2.1.8 for "any applicable minimum payment period---as a volume obligation. For example, during oral argument Mr. Carpenter described what 2.1.8 required.

Mr. Carpenter: "The tariff says you have to assume both the outstanding indebtedness and the un-expired part of the volume commitments." (Tr.11, line 22, emphasis added.)

"Our tariff says you have to assume the obligations for the indebtedness and the un-expired portion of the volume commitments." (Tr.13, line 3, emphasis added.)

80) This was AT&T's "Double Fraud" Scam:

Mr Carpenter understood that section 2.1.8 did not list on its face (revenue volume and time commitments) and their associated obligations for shortfall and termination obligations. So what Mr. Carpenter did was deliberately misquote the second obligation. AT&T bogusly asserted that the second obligation was the **volume commitment** obligation in order to then bogusly assert that volume commitments/shortfall obligations were required **on the face** of 2.1.8.

81) Apparently AT&T was concerned that because 2.1.8 does not actually list the obligations for transferring revenue commitments and time commitments on its face that this would be questioned by the DC Circuit. AT&T probably believed that most Judges would simply determine that all obligations of the former customer were limited to all that was listed within section 2.1.8. for traffic only transfers.

82) AT&T's counsel David Carpenter knew that if he bogusly asserted that the second obligation was actually the volume commitment, Mr Carpenter would also need to lie to the DC Circuit that zero obligations were being transferred in the transaction. Why?

83) Because if the DC Circuit erroneously fell for AT&T's mischaracterizing of the 2<sup>nd</sup> obligation and erroneously believed that the two obligations listed within the face of 2.1.8 actually included volume commitments ----and those 2 obligations were all the obligations required to be transferred---- then AT&T would have been arguing that **volume commitments were actually transferred by petitioners** because the AT&T forms obviously show these 2 obligations were transferred by petitioners and properly assumed by PSE.

84) AT&T therefore needed 2 lies for this scam to work: First mislead the Court that the second obligation was a revenue volume commitment so as to include it into 2.1.8 on its face when it was not there! Then simply lie that “zero obligations” were being transferred. Not only were these both fraud defenses but they were created 10 years after the “traffic only” transfer was ordered! AT&T’s Counsel Mr. Richard Brown tried the same scam on multiple times as outlined in previous submissions.

85) Petitioners sent in a post oral argument brief to advise the DC Circuit that petitioners did the transaction under 2.1.8 and transferred the 2 obligations listed on 2.1.8 and explained that the second obligation was not volume commitments to shoot that AT&T scam down. AT&T of course argued against petitioner’s brief being made part of the record because it caught AT&T counsel making numerous misrepresentations.

86) At the time of the post oral argument brief petitioners had not yet discovered the “all obligations of the **former customer**” tariff analysis. If this was explained to the DC Circuit it probably would have made things much easier for the DC Circuit to see where its confusion was--- AT&T’s scams certainly did not help the DC Circuit either.

87) To follow are also 2 AT&T statements showing AT&T’s position **PRIOR to DC Circuit**, which PSE was assuming all obligations of the former customer listed in 2.1.8 as AT&T was arguing its “fraudulent use” defense. AT&T never argued in 1995 to Judge Politan’s NJ Federal District Court that the obligations listed in 2.1.8 were not being transferred and did not appeal the First District Court Decision which detailed the allocation of obligations.

1<sup>st</sup>) AT&T Joint Appendix 250: "the transfer of traffic and not the underlying plans was with the intent to **avoid the payment of AT&T's tariffed shortfall and termination charges.**"

2<sup>nd</sup>) AT&T Footnote 9 JA 535 “In fact as explained in its initial comments, the basis for AT&T's "fraudulent use" claim was that the proposed transfer would have transferred the entire revenue stream to PSE without the corresponding obligations to **pay any shortfall and termination charges** under the CSTPII plans.”

88) To follow AT&T again mischaracterizes the “Traffic Only” transfer to a **PLAN** transfer under the tariff --not a “traffic only” transfer. Notice AT&T does not argue that the two obligations listed on 2.1.8 weren’t being transferred. AT&T concedes that the two obligations listed on 2.1.8 were being transferred. AT&T is stating below that **if** it was a plan transfer the obligations on 2.1.8 in addition to shortfall and termination obligations also would get transferred—but of course it was not a plan transfer so those plan commitments don’t transfer since the plan did not transfer:

AT&T Joint Appendix 533: Petitioners were precluded under the governing tariff from transferring their **CSTP II plans** to PSE unless PSE agreed to assume all of the Petitioner's obligations under those same plans, **including tariffed shortfall and termination charges.** **[No emphasis added on italics]**

89) AT&T's position **prior to the DC Circuit Court** was PSE assumed both bad debt and unexpired time obligations, only required by 2.1.8, but **ALSO** wanted shortfall and termination obligations.

Obviously the NJ Federal District Court never heard AT&T's "zero obligations defense as District footnote number 5 at Joint appendix 59 understands that the obligation for bad debt was being transferred to PSE:

"As in the plaintiffs' case AT&T deducts from the RVPP discount/rebate remitted to **PSE any bad debt** or unpaid bills accrued by its end user."

90) These quotes clearly show bad debt was going with the traffic to PSE. The following 3 Inga quotes also show the "traffic only" transfer was done **as per the tariff** and all obligations required were to be assumed by PSE:

1<sup>st</sup>) Inga Para 53 JA 446:

"In fact the tariff and AT&T's own form, the Transfer of Service or Assignment (TSA) form, made it possible. We did an assignment of end-user accounts **as per the tariff** and what had been commonly accepted in the marketplace for years."

2<sup>nd</sup>) Inga Para 58 JA 448:"

AT&T's right to collect from the aggregator if the end-user didn't pay their bill **followed each new plan** to which the end-user accounts were being transferred or assigned. AT&T was totally protected."

3<sup>rd</sup>) Inga Para. 63 JA 450:

"AT&T's is in a Better Security Risk Position after Assignment. The Court's understanding that there was no credit risk was right. The subject accounts continued to be billed by AT&T and the volume was so large that **bad debt** was not capable of becoming an issue. Moreover, the **credit risk went with the accounts** no matter who owned them."

91) All parties, **including AT&T**, acknowledged **prior to DC Circuit Court** filings that all the obligations on the AT&T TSA, which mimicked 2.1.8 verbatim, were transferred and assumed by PSE. AT&T's 405 violation "No Obligations" assumed defense is so preposterous that it showed how desperate AT&T is for a defense. To cause the deception AT&T first "short quoted" the actual notations on the TSA, then incredibly makes the **late** and bogus argument that we only wanted to move traffic and we weren't assuming not one of the obligations on the traffic.

92) AT&T never asserted in 1995 that PSE wasn't assuming all of the obligations on the Transfer of Service Agreement (TSA). The 9 TSA's actually state "Traffic only move all BTN's except 181-000-0142-457, 131-134 0230-254 CSTP/Keep Plan # 3663 Intact. The lead accounts were kept on the plan so it remained a traffic only transfer as AT&T counsel Fred Whitmer explained to Judge Politan. AT&T Counsel Carpenter short quoted the above sentence to "Traffic Only" and then changed its meaning to Traffic Only –No Obligations.

93) The DC Circuit Court simply took into consideration a bogus AT&T 405 violation defense that as evidenced is contrary to all parties beliefs including several of AT&T's own statements. The following case law shows this Court should not have relied on AT&T's defense: *Bartholdi Cable v. FCC*, 114 F.3d 274, 279-80 (D.C. Cir. 1997); *Coalition for Noncommercial Media v. FCC*, 249 F.3d 1005, 1009 (D.C. Cir. 2001); *Verizon Telephone Cos. v. FCC*, 292 F.3d 903, 909-910 (D.C. Cir. 2002); and *AT&T Wireless v. FCC*, 365 F.3d 1095, 1099 (D.C. Cir. 2004).

### Conclusion

94) The DC Circuit Decision contained critical errors in large part due to AT&T's intentional frauds on the DC Circuit Court, Judge Roberts failure to read or understand the record, and the fact tariff was not explicit. All this led to the reevaluation of what obligations get transferred on a "traffic only" transfers when **in 1995 there was NEVER AN ISSUE of what obligations gets transferred for traffic only transfers**, as AT&T never appealed the First District Court Decision which contained the obligations allocation.

95) The DC Circuit got it correct that 2.1.8 allows "traffic only" transfers under 2.1.8 as petitioners and PSE had done numerous times prior. But this time AT&T simply didn't like the fact that the accounts were going from 28% discount to 66% discount---It's all about the money!!!

96) AT&T's "fraudulent use" defense was its only bogus defense in 1995 as the FCC Decision clearly stated. AT&T's concession in 1995 was that section 2.1.8 was being strictly adhered to! AT&T's **only defense** in 1995 was its "fraudulent use" provision based upon bogus speculation that the non transferred plans would not be able to meet the tariffed obligations. There was never a defense that there were missing obligations being assumed/transferred in the "traffic only" transfer requested. The DC Circuit Decision stated that there were so called burdens on the non transferred plan but the record clearly shows the plans were Pre June 17<sup>th</sup> 1994 grandfathered, which meant the plans could be restructured without liability-----and had already met fiscal year revenue commitments anyway! AT&T has come up with several new bogus defenses 10 years and later to justify why it did not transfer the end-user accounts in 1995.

97) The bottom-line is AT&T simply scammed the DC Circuit and the DC Circuit ignored concrete documents and decisions in favor of AT&T's fraudulent oral assertions created 10 years after the transfer. After the DC Circuit Decision AT&T again changed its defense from its bogus "zero obligations" were transferred defense to the new post DC Circuit scam of "all obligations of the former customer now include customer plan commitments," on "traffic only" transfers. Obviously the new AT&T defense was changed because **AT&T saw how Justice John Roberts misread the language of the tariff without considering common sense market place conditions**. The DC Circuit also completely ignored the evidence in the record of the NJ Federal District Court's 1995 non appealed decision. The DC Circuit also did not see that the FCC agreed with the obligations allocation that was done under 2.1.8 by the First NJ Federal District Court Decision.

98) The DC Circuit Decision **totally ignored AT&T Tariff Transmittal 8179** which AT&T's Counsel Richard Meade conceded AT&T lost its substantive Cause Proceeding at the FCC and conceded plan commitments do not transfer on traffic only transfers. TR8179 was an attempt by AT&T to retroactively change 2.1.8 so when a large percentage of accounts were transferred the plan must transfer with the plan obligations. AT&T lost that decision in 1995. Transmittal 8179 was AT&T's concession of how the obligations allocation in 2.1.8 works and AT&T conceded that there was nothing in 2.1.8 to prevent a large percentage of accounts from being transferred without the plan-----that is why AT&T tried to retroactively change 2.1.8. It's always the attempt to cover-up the solves the infraction. Tens of thousands of companies sell off divisions and mergers and acquisitions where toll free service is transferred daily. AT&T's executives have never practiced in the marketplace AT&T' counsels 2005 post DC Circuit "Judge Roberts" influenced erroneous interpretation that Customers plan commitments must transfer on "traffic only" transfers of the **non transferred** plans!

99) Petitioners have no doubt that the DC Circuit will now understand where it went wrong and realize that AT&T scammed the hell out it ---as it scammed all the courts and the FCC for 20 years and counting. The real travesty here is the FCC Commissioners and FCC Inspectors obviously know AT&T counsels have engaged in numerous intentional frauds -----and yet the FCC has allowed the case to go for **20 years** without AT&T and its counsels being punished for its obvious intentional frauds. The FCC is responsible for 15 years waiting of the 20 years. CCI and Inga Companies were CO-Petitioners and CCI took AT&T's hush money and the Inga Companies have also been approached by AT&T to take its hush money but the Inga Companies want a justice and that means a final decision in its favor. That means it needs a Judge who will not just take AT&T's word as Gospel and disregard multitudes of conclusive of evidence.

100) Special Counsel Nancy Dunn you must step in and revoke all licenses of AT&T's counsels that worked in concert to pull off these changing frauds. You know AT&T's counsels are all sitting around laughing how they were able to scam the hell out of Supreme Court Justice Roberts. AT&T's counsels need to have their licenses revoked for what they did to not only your DC Circuit Court but all Courts and the FCC. Why is the FCC burying the AT&T fraud is what petitioners would like to know!

**Petitioners would like that the DC Circuit set up a briefing schedule and reopen the case and reissue a decision to correct the critical errors that the DC Circuit Court made due to the intentional fraud AT&T counsels engaged in.**

The DC Circuit does not need to wait for the FCC to act because the FCC has already clearly stated the obligations allocation agreeing with NJ District Court --which was done under 2.1.8. It is the DC Circuit Court which created an "obligations allocation" issue when there wasn't any issue at the time of the transfer. The DC Circuit ignored the evidence from 1995 & 1996 NJ Federal District Court. The DC Circuit instead considered new AT&T defenses 10 years after the permissible transaction was requested! The DC Circuit substituted language into the 2.18 that just wasn't there! It is unfortunate that many of these AT&T frauds were discovered well after the DC Circuit Court time frame. However there should not be a statute of limitations on fraud upon your Court.

Petitioners were intentionally scammed because **your Court was intentionally scammed!** Please rectify the situation. AT&T's counsels licenses need to be revoked and the case re-opened by the DC Circuit Court.

Respectfully Submitted,  
Group Discounts, Inc.  
/s/ Al Inga  
Al Inga President