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07-03-12
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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Susan Michael Montana,

Complainant,

vs.

Pacific Bell Telephone Company dba AT&T
California (U1001C),

Defendant.

Case 12-03-010
(Filed March 16, 2012)

**ASSIGNED COMMISSIONER'S AND ADMINISTRATIVE LAW JUDGE'S
SCOPING MEMO AND RULING**

1. Introduction

This complaint relates to a dispute in which Susan Michael Montana alleges that "false" outgoing calls were included on her bills from Pacific Bell Telephone Company dba AT&T California (AT&T or Defendant). Pursuant to Rule 7.3 of the California Public Utilities Commission's Rules of Practice and Procedure,¹ this Scoping Memo and Ruling sets forth the procedural schedule including evidentiary hearings, designates the presiding officer, and addresses the scope of this proceeding following the prehearing conference held on May 14, 2012.

¹ All references to Rules are to the Commission's Rules of Practice and Procedure.

2. Factual and Procedural Background

a. The Complaint

Susan Michael Montana is a former customer of AT&T. In her complaint, she alleges that “as of 2.5 years ago, when complainant came out as transgender person, AT&T has been trumping up false phone bills as false outgoing calls by reason of Transgender prejudice and Hate. Not by AT&T in general, but unidentified personnel representing AT&T.” (Complaint at 2 (as written).)

Complainant does not reference a disputed bill or amount and Complainant does not seek reinstatement of service with AT&T. Rather, Complainant seeks “a thorough investigation by the Public Utilities Commission, by a computer expert, and by linemen from the Commission with reports provided to complainant.” (Complaint at 3 (as written).)

The complainant describes the issue to be considered as “Complainant demands that the public Utilities Commission; do as promised, that is, investigate the entire AT&T system as complainant requires and needs, in order to discover AT&T’s bad faith and professional negligence.” (Complaint at 2 (as written).)

The complaint also indicates that prior to filing the suit, Complainant tried to resolve the matter with the Commission’s Consumer Affairs staff. She did not appeal the results to the Consumer Affairs Manager.

b. The Answer

Defendant’s answer, filed on April 23, 2012, and Defendant’s prehearing conference statement, filed on May 10, 2012, set forth Defendant’s contention that Defendant has already voluntarily granted Complainant any relief to which she would be entitled if she had prevailed on the merits of her complaint.

Specifically, Defendant states that Complainant previously disputed charges totaling \$16.40. Defendant credited the first disputed amount of \$3.99 to Complainant in 2010. Defendant determined that the second disputed charge of \$12.41 was appropriate and did not credit Complainant for this amount.

In addition, Defendant states that Complainant has a current balance of \$304.77 and that Complainant has transferred her phone service to another provider.

c. The Prehearing Conference

On April 26, 2012, the assigned Administrative Law Judge (ALJ) in this proceeding issued a ruling (April PHC Ruling) which (1) set a prehearing conference for May 14, 2012, (2) required the parties to meet and confer regarding the possibility of settlement or alternative dispute resolution (ADR), and (3) required each party to submit a prehearing conference statement by May 10, 2012. The prehearing conference was scheduled to be held in the Commission courtroom in San Francisco, but the ruling allowed parties to request to participate by telephone.

AT&T timely complied with the ruling by sending a request to meet and confer to Complainant via overnight mail, submitting a prehearing conference statement, and appearing at the prehearing conference. At the prehearing conference, AT&T stated that Complainant had not responded to AT&T's request to meet and confer.

Complainant failed to respond to the request of Defendant to meet and confer, failed to submit a prehearing conference statement, and failed to appear at the prehearing conference or request to participate by telephone.

d. May 27 Letter from Complainant

On May 31, 2012, approximately three weeks after the prehearing conference, the assigned ALJ received a certified letter, dated May 27, from Complainant regarding this proceeding (May 27 Letter). The May 27 Letter states that the Complainant was unable to respond to the April PHC Ruling for medical reasons.

The May 27 Letter provides further insight on Complainant's complaint. Complainant asserts that AT&T "wrongly billed me and wrongly pursues wrongful bill . . ." (as written.)

The May 27 Letter also expands on Complainant's requested remedies. She requests that the Commission "investigate phone lines and phone line records of my area relative to service dates challenged," and/or "computer experts to investigate computer banks of defendants billing claims." She also states that she demands \$10 million in damages for defamation of character and other tort claims. A copy of the May 27 Letter is attached as Appendix A to this Ruling.

e. Communication Rules

Because this is an adjudicatory proceeding, *ex parte* rules prohibit communication with decision makers, including the ALJ, except in a hearing or on the public record. Discussion of purely procedural, non-substantive matters is permitted. The May 27 Letter addressed substantive issues such as the nature of the claim and the relief requested. The April PHC Ruling set out the prohibition on communications in detail, and they are repeated again below. Under Rule 8.3(j), if the Commission determines that there has been a violation of these communication rules, "the Commission may impose penalties and sanctions, or make any other order, as it deems appropriate to ensure the

integrity of the record and to protect the public interest.” Although Complainant has violated these *ex parte* rules, we find that because the communication has now been made available to Defendant, this communication will not harm the integrity of the record or the public interest. Therefore, it is not necessary to impose sanctions on Complainant or dismiss the case on the basis of Complainant’s improper *ex parte* communication.

Adjudicatory proceedings such as this complaint case are subject to the *ex parte* ban set out in Section 1701.2 (b) of the Public Utilities Code as further explained in the Commission’s Rules, Article 8 (beginning with Rule 8.1). The prohibition extends to communications between any party and a decision maker (including all Commissioners, Commissioners’ advisors and the assigned ALJ) concerning any substantive matter having to do with the case, unless the communication occurs in a public hearing or on the record. Accordingly, all parties are reminded that letters, e-mails, and conversations (whether by telephone or in person) that concern substantive matters, rather than purely procedural ones, are not permitted.

3. Scope of Issues

In determining the scope of this proceeding, we have considered the complaint, the answer, the prehearing conference statement submitted by AT&T, the prehearing conference, and the May 27 Letter.

In its prehearing conference statement, AT&T proposes the following issue: whether the charges are appropriate according to applicable law.

In her complaint and in the May 27 Letter, Complainant describes the issue as the Commission should “investigate the entire AT&T system as complainant requires and needs, in order to discover AT&T’s bad faith and professional negligence.”

A third issue is whether the Commission has jurisdiction to hear this claim. Based on this, the scope of this proceeding consists of the following three issues.

(1) Are the charges on Complainant's bills legal?

The burden of proof is on the Complainant to provide evidence demonstrating that the charges are not legal. This should include, at a minimum, identification of the allegedly false bill amounts and facts supporting Complainant's claim that these charges were not legal.

(2) Does the Commission have authority to order an investigation as a remedy in this proceeding?

The burden of proof is on the Complainant to provide evidence that AT&T should be investigated and that Commission has jurisdiction to do so in a complaint case. The Commission does not generally institute investigations into single non-safety customer incidents. Here, Complainant appears to believe that an AT&T employee motivated by prejudice tampered with her phone line or with computer billing records. The Commission takes allegations of discrimination very seriously and where there is evidence of a pattern of abuse the Commission can open a formal investigation into a utility's practices. The appropriate mechanism for opening such a proceeding is an order of the Commission instead of a complaint from a single individual.

(3) Is the complaint moot for lack of remedy?

The Commission has limited remedies within its authority. The Commission can order reparations for overpayment and can order reinstatement of service where service was disconnected in violation of a utility's tariff. The Commission is not permitted by law to award punitive damages, consequential

damages, or other types of damages. If there is no relief available from the Commission, the complaint is moot.

If the Commission does not have jurisdiction or authority to award remedies to Complainant through this proceeding, then this proceeding must be dismissed as moot.

4. Issues Outside the Scope of This Proceeding

Issues not included in this Scoping Memo are not part of this proceeding and should not be addressed by the parties in their testimony or briefs, or as part of the evidentiary hearing.

Parties may only address the issues listed in Section 3 above. The list of issues may only be changed by a subsequent ruling or order amending this Scoping Memo.

5. Discovery

Discovery can be conducted at any time until the discovery cut off of July 25, 2012. Discovery will be conducted according to Article 11 of the Commission Rules of Practice and Procedure (Rules). If the parties have discovery disputes they are unable to resolve through meet and confer sessions, they must raise these disputes under the Commission's Law and Motion procedure as soon as possible to avoid unnecessary delay in the proceeding. (See Rule 11.3)

6. Schedule

Event	Date
Prehearing Conference	May 14, 2012
Discovery Cut Off	July 25, 2012
Direct Testimony (served, not filed)	August 1, 2012
Rebuttal Testimony (served, not filed)	August 22, 2012
Evidentiary Hearings	September 5, 2012 at 10:00 a.m. Junipero Serra State Office Building 320 West 4 th Street, Suite 500 Los Angeles, CA 90013
Opening Briefs (filed and served)	September 26, 2012
Reply Briefs (filed and served)	October 10, 2012

This schedule provides the parties with more than two months in which to settle the case outside of the litigation process. It also allows ample time for both parties to prepare written testimony if they are unable to resolve this case through settlement discussions.

The evidentiary hearings will take place in September at the Commission's Los Angeles office, located at: Junipero Serra State Office Building, 320 West 4th Street, Suite 500, Los Angeles, CA 90013.

The schedule may be modified by the ALJ as required to promote the efficient and fair resolution of the complaint. If no testimony is received from Complainant on the date set forth above, the ALJ will consider dismissing this case for lack of prosecution. The schedule in this ruling anticipates resolution of this proceeding within twelve months of the date it was filed, pursuant to Pub. Util. Code § 1701.2.

7. Serving Prepared Testimony

Prepared testimony consists of those documents and information that a party feels are necessary to support their case. Prepared testimony can include a description of the facts related to the case.

Prepared testimony is only served. It is not filed with Docket Office. The parties must serve all prepared testimony on each other, with a copy to the assigned ALJ, by the deadlines stated in this ruling. Service must be via personal delivery, facsimile, overnight mail or by e-mail. The parties must comply with Rule 1.10 regarding the service of documents via e-mail. As previously noted, prepared testimony should not be filed with the Docket Office but is to be served on the opposing party and submitted to the assigned ALJ. Parties are encouraged to file and serve electronically, whenever possible, as it speeds processing of the filings and allows them to be posted on the Commission's website. For additional information, see the "Frequently Asked Questions" on e-filing available on the Commission's website, under the headings of "Proceeding Information" and then "E-File Documents."

8. Filing Documents

Documents such as opening briefs and rebuttal briefs must be filed with the Commission's Docket Office in accordance with the Rules. The Docket Office must review and process each document before it is accepted for filing. Article 1 of the Rules contains all of the Commission's filing requirements. The parties must serve all documents required to be filed in this proceeding on each other, with a copy to the assigned ALJ, by the deadlines stated in this ruling. Service must be via personal delivery, facsimile, overnight mail or by e-mail. Parties are encouraged to file and serve electronically, whenever possible, as it speeds

processing of the filings and allows them to be posted on the Commission's website.

The official service list for this proceeding is available on the Commission's website. Any party who is unfamiliar with the Commission's procedures or who has questions about the filing procedures should contact the Commission's Public Advisor at (866) 849-8391 or (415) 703-2074, or (866) 836-7825 (TTY-toll free), or send an e-mail to public.advisor@cpuc.ca.gov.

9. Proceeding Category and Need for Hearing

The instructions to answer categorized this proceeding as adjudicatory. No party appealed that categorization. An evidentiary hearing has been scheduled.

10. Alternative Dispute Resolution

The parties are encouraged to avail themselves of the Commission's ADR program. ADR usually shortens, and does not prolong, the proceedings, but even if a negotiated settlement takes longer, the result may be more beneficial to both parties. The ADR process requires confidentiality so that the parties' fundamental interests can be explored. Parties may jointly request ADR by e-mail or any party may file (and serve on the other party) a written request for ADR. This should also be served on ALJ Jean Vieth (ADR Coordinator). The parties may call ALJ Vieth (415-703-2194) or send her an e-mail at xjv@cpuc.ca.gov. Please include your name, telephone number, e-mail address, the proceeding number and a brief description of the dispute.

11. Assignment of Proceeding

Commissioner Catherine J.K. Sandoval is the assigned Commissioner and ALJ Jeanne M. McKinney is the presiding officer.

Therefore, **IT IS RULED** that:

1. *Ex Parte* communications are prohibited in adjudicatory proceedings, in accordance with Public Utilities Code Section 1701.2(b) and Rule 8.3(b).
2. The scope, issues, and schedule are set forth in the body of this ruling unless amended by a subsequent ruling.
3. Pursuant to Rule 13.2(a), the presiding officer is Administrative Law Judge Jeanne M. McKinney.
4. This is an adjudicatory proceeding and hearings are necessary.

Dated July 3, 2012, at San Francisco, California.

/s/ CATHERINE J.K. SANDOVAL
Catherine J.K. Sandoval
Assigned Commissioner

/s/ JEANNE M. McKINNEY
Jeanne M. McKinney
Administrative Law Judge

APPENDIX A

Appendix

05/27/2012

15/ Jeanne M McKinney
Administrative Law Judge
Public Utilities Commission
State of California

Re: "Suzan" Michael Montana
Vs Pacific Bell Telephone
Company dba AT&T
California (U1001C)

The above... defendant who
wrongly billed me and wrongly
pursues wrongful bill, and The
State of California eg agency
hereabove cited, has caused me
unappreciated and painful stress
and Medical Problems. These
problems are responsible for
my late response herewith.

(1)

The state of California
has failed to deliver
it's promise to wit;

"investigate.". The PUC
has recieved effective answer
from defendant but wrongly
takes complainants Tax money
while erroneously alleging
it has actualy investigated
while coniving. Said effective
answer to be found evidence.

The PUC has not
sent detective person-
nel of expert quality
to investigate phone
lines and phone line

records of my area
relative to service
dates challenged, Nor
computer experts to
investigate computer
banks of defendants
billing claims. I
softer damages of
unappreciated stress and
anguish of emotional
damage these related. You,
California State and
the defendant are

on notice. I demand
ten million dollars
damages, which also
includes defamation
of character as well,
and prejudice of wrong
inequity against me, ongoing
3 years past.

Truely Pro Se
Transgender

" Suzan " Michael
Montana (printed)

signature " Suzan " Michael Montana

Complainant
1637 Vine St Ste 201
Los Angeles, CA 90028

(4) cc

(END OF APPENDIX A)