



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

FILED
10-10-16
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Brian Hom,

Complainant,

vs.

AT&T Mobility Wireless Operations Holdings,
dba AT&T Mobility (U 3021 C)

Defendant.

(ECP)
Case No. C.16-09-009
(Filed September 12, 2016)

**ANSWER OF AT&T MOBILITY WIRELESS OPERATIONS HOLDINGS INC.
(U 3021 C) TO EXPEDITED COMPLAINT OF BRIAN HOM**

October 10, 2016

AT&T Mobility Wireless Operations Holdings Inc. (U 3021 C) (“AT&T Mobility”) hereby answers the Complaint of Brian Hom (“Complaint”), filed September 12, 2016.

I. INTRODUCTION

The Complainant alleges that, when contracting with AT&T Mobility for wireless service in January 2015, he was “made an offer for monthly service at a rate of \$50...and instead charged ... a price of \$75 for [his] service,”¹ and seeks “to have AT&T remedy this situation by providing [him] with the offer [he] was advertised and refunding the difference.”² AT&T Mobility disputes those claims, as explained in greater detail below. Complainant is not entitled to any additional relief, and the Complaint should accordingly be dismissed.

II. ANSWERS TO SPECIFIC ALLEGATIONS

1. In response to paragraph A of the Complaint, which identifies Brian Hom as the Complainant, AT&T Mobility lacks information or belief sufficient to answer the allegations of this paragraph, and basing denial on this ground, denies each and every allegation thereof.

2. In response to paragraph B of the Complaint, which identifies “AT&T Mobility Wireless Operations Holdings, Inc.” as the defendant, AT&T Mobility admits that AT&T Mobility Wireless Operations Holdings Inc. (U 3021 C) is a proper defendant in this Complaint. Moreover, AT&T Mobility Wireless Operations Holdings Inc. (U 3021 C), a proper defendant in this Complaint, is the entity that has been instructed formally to answer the Complaint.

3. In response to paragraph C of the Complaint, AT&T Mobility admits Mr. Hom still has service from AT&T Mobility, but denies all other allegations on lack of information and belief.

¹ Complaint, ¶ F.

² Complainant subsequently claims in section F that his rate should be reduced “to the agreed upon price of \$45 per month.” *Id.*

4. In response to paragraph D of the Complaint, AT&T Mobility denies all allegations on lack of information and belief.

5. In response to paragraph E of the Complaint, AT&T Mobility denies that “AT&T” is a proper defendant in this Complaint. AT&T Mobility avers, however, that AT&T Mobility Wireless Operations Holdings Inc. is a proper defendant to the Complaint.

6. Answering the allegations contained in the first paragraph of Paragraph F of the Complaint (as contained in Attachment “F”) (hereinafter Paragraph F and Attachment F are referred to as “Attachment F”), AT&T Mobility denies those allegations and avers that it entered into a service agreement with Complainant containing the terms set forth in the customer service summary (“CSS”) provided to Complainant, and the terms and conditions set forth in Wireless Customer Agreement # FMSTCT06144448E. The CSS specifies that the monthly charges for two “Mobile Share” phone accounts, including 2GB of data, was not the \$50 Complainant alleges he was offered. AT&T Mobility further avers that the CSS’s terms and conditions allowed Complainant, if he so desired, to cancel his service within 14 days of service activation without paying an early termination fee.

7. Answering the allegations in the second paragraph of Attachment F to the Complaint, AT&T Mobility lacks sufficient information and belief concerning the allegations in the first and fifth sentences in the paragraph and, on that basis, denies those allegations. AT&T Mobility avers that it has credited Complainant’s account in an amount equal to \$128.97 (\$100 on January 13, 2015 and \$28.97 on January 23, 2015). AT&T Mobility denies the remaining allegations in the paragraph.

8. Answering the allegations in the third paragraph of Attachment F to the Complaint, AT&T Mobility admits that since January 2015, Complainant has called AT&T

Mobility periodically concerning the rates for his service. AT&T Mobility avers that Complainant was informed during these calls that AT&T Mobility did not have an offer that would cost Complainant only \$50 per month for the services he wanted. AT&T Mobility further avers that the price for Complainant's plan was as specified in the CSS but that Complainant has been given an additional \$15 discount on each of his monthly bills since February 2015. AT&T Mobility lacks sufficient information or belief to answer the allegations in the last two sentences of the paragraph and, on that basis, denies those allegations. AT&T Mobility denies all remaining allegations in the paragraph.

9. Answering the allegations in the fourth paragraph of Attachment F to the Complaint, AT&T Mobility admits that Complainant called AT&T Mobility's Office of the President concerning his service and spoke with an AT&T Mobility representative in that office about his service. AT&T Mobility admits that Complainant made allegations about an offer from Sprint and alleged that AT&T Mobility should match that offer. AT&T Mobility avers that an Office of the President representative advised the Complainant that his plan, as configured, costs \$70 per month and, if the basic phone on the Complainant's account were upgraded to a smartphone, would increase to \$75. AT&T Mobility denies that its executive office representative who spoke with the Complainant stated that she was able to listen to a recording of a call between the Complainant and an AT&T representative. AT&T Mobility avers that the executive office representative told the Complainant that calls are recorded at random for quality purposes and she was unable to locate that specific call. AT&T Mobility lacks sufficient information or belief concerning the remaining allegations in the paragraph and, on that basis, denies those allegations.

10. Answering the allegations in the fifth paragraph of Attachment F to the Complaint, AT&T Mobility admits that it has been contacted by the CPUC Consumer Affairs Branch (“CAB”) about the Complainant’s allegations. AT&T Mobility admits that an Office of the President representative advised the Complainant that his plan, as configured, cost \$70 per month and, if the basic phone on the Complainant’s account were upgraded to a smartphone, would increase to \$75. AT&T Mobility further admits that on March 4, 2016, AT&T Mobility responded to CAB that “Mr. Hom has added no new information. Our position remains unchanged.” AT&T Mobility lacks sufficient information or belief concerning the remaining allegations in the paragraph, including the attachment referenced therein, and, on that basis, denies those allegations.

11. Answering the allegations in the sixth paragraph of Attachment F to the Complaint, AT&T Mobility denies all allegations in this paragraph and denies that Complainant is entitled to any and all relief requested.

12. In response to paragraph G of the Complaint, AT&T Mobility admits that the Complaint is adjudicatory, but avers that neither hearings nor a Prehearing Conference are needed, and admits that the Complaint should be categorized as an “Expedited Complaint.” AT&T Mobility also denies that Complainant is entitled to the relief requested in paragraph (G)(4) in the Attachment to the Complaint, or any other relief.

13. In response to paragraph H of the Complaint, AT&T Mobility denies that Complainant is entitled to the relief sought in paragraph H of the Complaint (including the Attachment section H), or any other relief.

14. Paragraphs I and J of the Complaint are administrative and require no response from AT&T Mobility.

III. STATEMENT OF COMPLIANCE WITH RULE 4.4 OF THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE

Rule 4.4 of the Commission's Rules of Practice and Procedure requires AT&T Mobility to state in its Answer any comments or objections regarding the Complaint on the need for hearing, the issues to be considered, and the proposed schedule. AT&T Mobility agrees the Complaint should be classified as adjudicatory, and AT&T Mobility believes a hearing is not necessary to resolve an expedited complaint such as this.

IV. AFFIRMATIVE DEFENSES

First Affirmative Defense

AT&T Mobility asserts that to the extent this Complaint attempts to regulate the rates or rate structure of a commercial mobile radio service provider like AT&T Mobility, the subject of this Complaint is beyond the jurisdiction of the California Public Utilities Commission. *See, e.g.*, 47 U.S.C. § 332(c)(3)(A) (“...no State or local government shall have any authority to regulate the entry of or *the rates charged by any commercial mobile service* or any private mobile service...” (emphasis added)).

Second Affirmative Defense

The Complaint fails to state a cause of action because it does not set forth any act or thing done or omitted to be done, which is claimed to be in violation of any provision of law or any order or rule of the Commission. Section 1702 of the Public Utilities Code provides in part that a Complaint must set forth:

[A]ny act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission. Rule 4.1(a) of the Commission's Rules of Practice and Procedure provides in part:

A complaint may be filed by any corporation or person . . . setting forth any act or thing done or omitted to be done by any public utility . . . in violation, or claimed to be in violation, of any provision of law or of any order or rule of the Commission.

A complaint will be dismissed if it does not allege that the utility violated a provision of law or order of the Commission.³ The charges assessed on Complainant's bills were contractually agreed upon by Brian Hom when Complainant entered into a service agreement with AT&T Mobility on January 13, 2015.

Third Affirmative Defense

The activities of AT&T Mobility alleged in the Complaint conformed to the statutes, government regulations and terms of the service agreement between Complainant and AT&T Mobility existing during the relevant time period alleged in the Complaint.

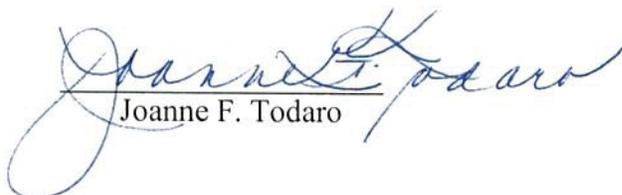
³ *Blincoe, et al. v. Pac. Tel. & Tel. Co.*, Decision No. 64737, 60 Cal. P.U.C. 432, 434 (Jan. 8, 1963).

VERIFICATION

Joanne F. Todaro, under penalty of perjury, certifies as follows:

I am an officer, to wit, Assistant Secretary for AT&T Wireless Operations Holdings Inc., and make this verification for and on behalf of said corporation. I have read the foregoing **ANSWER OF AT&T MOBILITY WIRELESS OPERATIONS HOLDINGS INC. (U 3021 C) TO EXPEDITED COMPLAINT OF BRIAN HOM**, and the contents thereof, and the facts therein stated, are true to the best of my knowledge, information and belief.

Dated at Atlanta, Georgia, this 10th day of October 2016.


Joanne F. Todaro

Sworn to and Subscribed before me this 10th day of October 2016.


Notary Public
My Commission Expires: may 1, 2017

