

Decision 12-04-031 April 19, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Albert Balassy,

Complainants,

vs.

Sprint Telephony PCS, LP (U3064C)

Defendant.

(ECP)

Case 11-11-015

(Filed November 22, 2011)

Albert Balassy, for himself, Complainant.

Corey Kinman, for Sprint Telephony PCS, LP, Defendant.

DECISION APPROVING SETTLEMENT OFFER

Complainant, Albert Balassy, asserts that Defendant, Sprint Telephony PCS, LP (Sprint), has improperly levied overage charges on his mobile phone service plan. Complainant also alleges that Sprint has engaged in various conspiratorial actions designed to increase his telephone bill and cause his account to appear delinquent. Complainant further claims that Sprint personnel have treated him in an unprofessional and discourteous manner and that hours spent on the phone with Sprint customer service personnel has resulted in his developing a tumor on his ear. In addition Complainant asserts that Sprint has conspired with the Commission and the U.S. Postal Service to prevent him from attending the initial hearing in this matter which was set for December 23, 2011. Finally, Complainant asserts that Commission’s Expedited Complaint Proceeding process is flawed and unfair and that the assigned Administrative

Law Judge (ALJ) in this proceeding is biased, corrupt and acting in collusion with the Defendant.

Complainant requests that all overage charges be removed from his account and that he be awarded \$50,000,000 in damages. Sprint denies Complainant's allegations. Sprint responds that Balassy owes \$298.37 in past due charges and indicates that the matter has been sent to a collection agency, Allied Interstate.

Sprint acknowledges that Balassy has been a long-time customer. Sprint states that since September 2005, Balassy has been on its "Fair and Flexible" 400 minute plan. The plan provides 400 anytime minutes, unlimited night and weekend minutes after 9:00 p.m., and an additional charge of \$5.00 for every 50 minutes exceeding the allotted anytime minutes up to 500 minutes. Any additional usage over 500 minutes is charged at \$0.10 per minute. The plan was modified in December 2010, providing Balassy an additional 100 anytime minutes for a period of two years, giving him a total of 500 anytime minutes. Balassy does not dispute this description of his mobile phone service plan with Sprint.

In its Answer to the Complaint and in its testimony at hearing, Sprint asserted that Balassy routinely exceeded his allotted anytime minutes and incurred overage charges. Sprint asserts that Balassy was offered rate plans with more minutes but that he declined. Balassy asserts that he exceeded his minutes because he was homeless and looking for an apartment in a building which would take Section 8 housing vouchers and accommodate his three cars, one of which is a large van. He asserts that he paid Sprint any and all money he owed them in a timely manner. He states that he wrote "paid in full" on the checks he

sent to Sprint and that by cashing the checks Sprint acknowledged that his total bill was paid and current.

At the hearing Sprint provided copies of Balassy's billing records for the past two years. There was clear and convincing evidence that Balassy had incurred the overage charges he has been billed. Balassy failed to demonstrate that the charges were anything but proper, arguing instead that he did not fully understand his plan and/or Sprint had changed the terms of his agreement. Despite the fact the Complainant has not met his burden of proof, Sprint has offered to credit Balassy's account \$298.37 and remove the account from the collection agency. We approve of Sprint's offer to the Complainant and stress that there is no evidence of improper billing practices or inadequate customer service by Sprint. Given the circumstances, we also find that Sprint is under no obligation to retain Balassy as a customer. As for Complainant's claim for damages the "Commission has uniformly held that it has no jurisdiction to award damages as opposed to reparations." (PT&T Co., 72 CPUC 505, 509(1971)) (citing Jones v. PT&T Co., 61 CPUC 674 (1963)) and there is no evidence that either is warranted in this proceeding. Complainant was advised, at the hearing, concerning his procedural rights to appeal the instant decision because of alleged bias and/or unfairness on the part of the Commission or the assigned ALJ.

On March 6, 2012, the Commission received a letter from the Complainant, purporting to be an "appeal" of the instant decision. This letter does not function as an appeal as it was received before the instant decision was issued and is not in the correct format. Pursuant to Rule 4.5(h),¹ Complainant has the right to file

¹ All references to Rules are to the Commission's Rules of Practice and Procedure, which are available on the Commission's website.

an application for rehearing, pursuant to Pub. Util. Code § 1731, said application will serve as an appeal of the decision.

O R D E R

IT IS ORDERED that:

1. Sprint Telephony PCS, LP's offer of settlement to Albert Balassy is approved.
2. Sprint Telephony PCS, LP is not obligated to retain Albert Balassy as a customer.
3. All relief not granted in Ordering Paragraphs 1 and 2 is denied.
4. Case 11-11-015 is closed.

This order is effective today.

Dated April 19, 2012, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners