

Decision 12-07-013 July 12, 2012

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

James MacLean,

Complainant,

vs.

AT&T Mobility Wireless Operations Holdings  
dba AT&T Mobility (U3021C),

Defendant.

(ECP)  
Case 11-09-019  
(Filed September 30, 2011)

James MacLean, for himself, Complainant.  
Christian Martin, for AT&T Mobility Wireless  
Operations Holdings dba  
AT&T Mobility (AT&T), Defendant.  
Sherry Winbush, for AT&T, Defendant.

**DECISION DISMISSING EXPEDITED COMPLAINT**

This complaint was brought under the Expedited Complaint Procedure pursuant to Rule 4.5 of the Commission's Rules of Practice and Procedure, and Public Utilities Code Section 1702.1. A duly-noticed hearing was held on December 2, 2011. The complaint arises from Complainant James MacLean's (MacLean) allegation that AT&T Mobility Wireless Operations Holdings dba AT&T Mobility (AT&T or Defendant) failed to provide adequate service.

MacLean filed the complaint on September 30, 2011, alleging that AT&T had failed to provide adequate wireless voice and data service for over 18 months and that certain monies paid to AT&T should be refunded. On

September 6, 2008, MacLean entered into a two-year contract with AT&T after he purchased an iPhone. MacLean cancelled his contract with AT&T on June 3, 2010, after complaining to AT&T several times regarding dropped calls and poor service. MacLean reactivated service approximately three weeks later. However, on May 28, 2011, he cancelled his service with AT&T altogether and moved to Verizon Wireless. MacLean contends that AT&T should refund \$2,250 because voice and data service were either unusable or unreliable for over 18 months.

AT&T filed its answer on November 2, 2011. AT&T asserts that MacLean contacted AT&T six times to complain about service. AT&T maintains that it had determined that the problems were related to MacLean's iPhone device on four occasions. AT&T declares that it could not determine the source of the alleged issues on the other two occasions because MacLean would not cooperate in troubleshooting efforts.

AT&T states that from September 2010 to May 2011, MacLean had an average monthly usage of more than 1,300 minutes of voice usage, sent and received an average of more than 2,000 texts, and used an average of more than 130,000 kilobytes of data. AT&T questions why MacLean did not take advantage of the 30-day cancellation provision in his contract, which would have allowed him to cancel service without incurring an early termination fee.

AT&T states that it suspended MacLean's service 11 times for nonpayment, but also states that it had provided MacLean over \$230 in concessions.

The record indicates that MacLean may have encountered unreliable service with AT&T. Indeed, MacLean's billing data appears to reflect a number

of dropped calls. However, MacLean's billing data also reflects repeated usage of his phone over a number of months.

MacLean has not supported the requested refund of \$2,250 by an analysis as to why that specific amount should be refunded. Further, the record contains no analysis to establish an alternate refund amount. On this record, MacLean has presented insufficient evidence to establish that any refund amount is due, beyond the over \$230 that AT&T has already provided. The complaint is therefore dismissed.

## **O R D E R**

**IT IS ORDERED** that:

1. Case 11-09-019 is dismissed.
2. Case 11-09-019 is closed.

This order is effective today.

This order is effective today.

Dated July 12, 2012, at San Francisco, California.

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