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

Brigette Blalock

Complainant,

vs.

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

Defendant.

(ECP)
Case No. C.12-03-013
(Filed March 19, 2012)

**ANSWER OF AT&T MOBILITY WIRELESS OPERATIONS HOLDINGS INC.,
D/B/A AT&T MOBILITY (U 3021 C) TO COMPLAINT**

April 24, 2012

Pursuant to Rule 4.4 of the Commission's Rules of Practice and Procedure, AT&T Mobility Wireless Operations Holdings Inc. d/b/a AT&T Mobility (U 3021 C) ("AT&T") hereby answers the Complaint of Brigette Blalock ("Complaint") in the above-captioned matter.

I. INTRODUCTION

The Complaint filed by Brigette Blalock ("Complainant") against AT&T alleges that she disagrees with her "new balance [of] \$739.22." While the grounds for the complaint are not clearly stated, Complainant appears to contend that AT&T overbilled her for "plans [and] service fees" after she sent AT&T a "30-day cancellation letter" in September 2011. Complainant alleges that it would be a financial burden to pay her bill in full. She asks for a refund of an allegedly overbilled amount of \$589.40.

AT&T denies that it overbilled Complainant. Complainant was properly billed charges for wireless service, including a fee she previously agreed to pay for early termination of a two-year wireless service term commitment. However, in an attempt to resolve this matter, AT&T has credited Complainant's account the full amount showing due as of April 10, 2012. The amount credited (\$644.74) actually exceeded the \$589.40 requested by Complainant, and it resulted in a zero balance on the account as of April 10, 2010. As a result, the Complaint is moot and should be dismissed.

II. ANSWER TO MATERIAL ALLEGATIONS

The material allegations in the Complaint are set forth in Section (F) of the Complaint. AT&T's answer to each of the material allegations contained in Section (F) is set forth below.

1. Answering the allegations in the first sentence¹ in Section (F) of the Complaint, AT&T admits that Complainant disagrees with her balance. AT&T admits and avers that

¹ "I disagree with my new balance \$739.22."

Complainant had a balance due as of December 4, 2011 of \$739.22. AT&T denies every other allegation contained in the first sentence of Section (F) of the Complaint.

2. Answering the allegations in the second sentence² in Section (F) of the Complaint, AT&T admits and avers that Complainant's service was stopped for non-payment. AT&T admits and avers that after Complainant's wireless service was stopped for non-payment, Complainant received bills containing unpaid charges for wireless service, as well as a fee she previously agreed to for early termination of a two-year wireless service term commitment. AT&T denies every other allegation contained in the second sentence of Section (F) of the Complaint.

3. Answering the allegations in the third sentence³ in Section (F) of the Complaint, AT&T denies based on lack of sufficient information or belief Complainant's allegation that she was "trying to follow the guidelines." AT&T admits and avers that Complainant sent AT&T a letter dated September 23, 2011 requesting cancellation of her wireless service. AT&T denies every other allegation contained in the third sentence of Section (F) of the Complaint.

4. Answering the allegations in the fourth sentence⁴ in Section (F) of the Complaint, AT&T denies and avers that there were any amounts on her bill reflecting charges that were not appropriately billed. AT&T denies every other allegation contained in the fourth sentence of Section (F) of the Complaint.

5. Answering the allegations in the fifth sentence⁵ in Section (F) of the Complaint, AT&T denies based on lack of sufficient information or belief Complainant's allegation

² "Because when my service was stopped for nonpayment, I was still receiving bills for my wireless service."

³ "According to my contract I was trying to follow the guidelines when I sent in 30-day termination letter dated September 23, 2011 (please see enclosed), which I feel had been ignored."

⁴ "Please deduct the plans & service fees that were charged after my 30-day cancellation letter."

⁵ "I can not afford to pay \$739.22, because this would be a financial burden on my family and it would lead me and my family to be homeless."

regarding the financial burden payment of her bill would entail. AT&T denies every other allegation contained in the fifth sentence of Section (F) of the Complaint.

6. Answering the allegations in the sixth sentence⁶ in Section (F) of the Complaint, AT&T denies based on lack of sufficient information or belief Complainant's allegation concerning her ability to pay her bill. However, AT&T avers that in an attempt to resolve this matter, it has credited Complainant's account the full amount of the balance showing due as of April 10, 2012, resulting in a zero balance as of that date. The amount credited (\$644.74) actually exceeded the \$589.40 requested by Complainant. AT&T denies every other allegation contained in the sixth sentence of Section (F) of the Complaint.

7. In addition to the allegations contained in Section (F) of the Complaint, there are documents attached to the Complaint that appear to be an excerpt from the wireless service agreement between Complainant and AT&T, and two letters from Complainant to the Commission dated December 13, 2011 and November 22, 2011, respectively. To the extent these attachments to the Complaint contain material allegations, AT&T incorporates its answer in paragraphs 1 through 6 above, as if fully set forth herein. Additionally, AT&T admits that the document that appears to be an excerpt from the wireless service agreement between Complainant and AT&T accurately reflects certain terms of that agreement. AT&T denies any remaining allegations in the attachments to the Complaint based on lack of sufficient information or belief.

Except as expressly admitted herein or denied based on lack of information or belief, AT&T denies any and all allegations contained in the Complaint.

⁶ "Also, can I be put on a payment plan to pay \$40.00 a month to pay off the balance, because it's impossible for me to pay in full."

AFFIRMATIVE DEFENSES

First Affirmative Defense

The Complaint fails to state a claim upon which relief can be granted.

Second Affirmative Defense

The Complaint fails to meet the requirements of section 1702 of the Public Utilities Code, which 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.

Third Affirmative Defense

The Complaint is vague and fails to comply with Commission Rule of Practice and Procedure 4.2(a), which requires that “[t]he complaint shall be so drawn as to completely advise the defendant and the Commission of the facts constituting the grounds of the complaint, the injury complained of, and the exact relief which is desired.”

Fourth Affirmative Defense

The Complaint should be dismissed to the extent it seeks to challenge rates for wireless service. States are preempted from regulating wireless rates. 47 U.S.C. § 332(c)(3)(A).

III. COMMENTS ON PROCEDURAL ISSUES

AT&T agrees the Complaint should be classified as “adjudicatory.” A hearing is not necessary as AT&T has already credited Complainant’s account with the full amount showing due as of April 10, 2012. The amount credited (\$644.74) actually exceeded the \$589.40 requested by Complainant. As a result, the Complaint is moot and should be dismissed.

VI. DEFENDANT

Defendant avers that its name and address is AT&T Mobility Wireless Operations Holdings Inc., d/b/a AT&T Mobility (U 3021 C), 525 Market Street, San Francisco, CA 94105.

WHEREFORE, AT&T denies that Complainant is entitled to the relief sought, or any other relief, and respectfully requests that the Complaint be dismissed.

Dated this 24th day of April 2012 at San Francisco, California.

Respectfully submitted,

By: /s/
SHERRY WINBUSH

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VERIFICATION

KENNETH P. MCNEELY, under penalty of perjury, certifies as follows:

I am an officer, to wit, President of AT&T Mobility Wireless Operations Holdings Inc., a corporation doing business in California as AT&T Mobility, 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., D/B/A AT&T MOBILITY (U 3021 C) TO COMPLAINT**, and know the contents thereof, and the facts therein stated are true to the best of my knowledge, information and belief.

Dated at San Francisco, California this 24th day of April 2012.

/s/

Kenneth P. McNeely