

Decision **PROPOSED DECISION OF ALJ HYMES** (Mailed 11/10/2011)

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

Clarence Anthony Bush, Ph.D. and  
Marciana F. Bush,

Complainants,

vs.

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

Defendant.

Case 10-12-002  
(Filed December 6, 2010)

**DECISION GRANTING MOTION TO DISMISS**

**Summary**

Complainants Clarence and Marciana Bush allege that the Defendant Pacific Bell Telephone Company dba AT&T California overcharged for services and failed to provide adequate telephone service. Defendant moves to dismiss the complaint, arguing that (1) Complainants' request for relief is moot; and (2) Complainants are improperly attempting to expand the scope of their complaint beyond the limits established by statute and Commission rules. For the reasons set forth below, we grant the motion of the Defendant and dismiss the complaint. This case is closed.

**Procedural Background**

This proceeding involves a complaint filed on December 6, 2010 by Clarence Anthony Bush and Marciana Bush (Complainants), alleging that the Defendant, Pacific Bell Telephone Company dba AT&T California (AT&T) provided inadequate working telephone service during the period August 2009 through March 2010 and overcharged for these services (Complaint). Complainants request a full refund of all payments made during that time period and that AT&T construct adequate telephone facilities to serve the rural Orosi, California (CA) community.

The Commission reassigned this case to Administrative Law Judge (ALJ) Kelly A. Hymes on May 18, 2011 who, in turn, issued a Ruling on June 24, 2011, scheduling a prehearing conference. On July 29, 2011, AT&T filed a Motion requesting the Commission dismiss the proceeding (Motion).

On August 2, 2011, the ALJ held a prehearing conference at which time the parties discussed the scope of the proceeding and AT&T's Motion. The ALJ directed Complainants to file a response to the Motion no later than August 15, 2011, and permitted AT&T to file a reply to the response no later than August 25, 2011. Both parties complied. On September 22, 2011, AT&T filed an Amendment to the Motion. Complainants late-filed a response to the Amendment on October 20, 2011, and AT&T filed a reply to the response on October 21, 2011.

**The Complaint**

Complainants assert that upon moving into their residence located in rural Orosi, CA, they contacted AT&T to inquire about telephone service and explained to AT&T that they required very reliable telephone service because of a family member's health condition. Complainants allege that from August 2009

through most of March 2010<sup>1</sup>, they experienced unreliable and essentially non-working telephone service and could not make or receive calls.

Complainants further allege that AT&T billed for information calls<sup>2</sup> that they did not place. Referencing photos attached to the Complaint, Complainants also claim that despite receiving support from the Federal Universal Service Fund, AT&T has not constructed appropriate facilities to provide quality telephone service in rural California. Complainants state that because AT&T is the carrier of last resort and mobile telephone service is nonexistent in the area, AT&T's landline telephone service is a lifeline.<sup>3</sup>

Complainants request a refund for all payments made to AT&T for services between August 2009 and March 2010. Complainants also ask that AT&T provide adequate phone service in Orosi, CA.

### **AT&T's Motion to Dismiss, Amendment, and Associated Responses**

AT&T requests the Commission to dismiss this proceeding on two grounds. First, AT&T claims that, pursuant to Public Utilities Code Section 1702, Complainants fail to state a cause of action for which relief can be granted because the request for relief is moot. Second, AT&T alleges that Complainants illegally attempt to expand the scope of this proceeding beyond the original complaint.

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<sup>1</sup> The Complainants cancelled their service with AT&T effective March 2010.

<sup>2</sup> Telephone calls made by dialing 4-1-1.

<sup>3</sup> Complaint at 2.

AT&T states that its records indicate Complainants reported telephone service problems on December 4, 16, and 28, 2009, and March 8, 2010.<sup>4</sup> However, AT&T contends it restored service to Complainants in each of these cases and compensated Complainants \$208.41 for the interruptions in service.<sup>5</sup> AT&T asserts that, in March 2011, it provided further compensation to Complainants in the form of a check for \$255.94 to reimburse Complainants for all payments made to AT&T during the August 2009 through March 2010 service period.<sup>6</sup> AT&T indicates that Tariff Rule 14 provides that liability for a service interruption shall not exceed the total amount of the charges to the customer for services during the period affected by the interruption.<sup>7</sup> AT&T asserts that Complainants have received the relief they sought in the Complaint, making the Complaint moot and, therefore, the Commission should dismiss the Complaint.<sup>8</sup>

Accusing the Complainant of turning the Complaint into a service quality and rate case for rural California telephone service, AT&T argues that Complainant is legally precluded from doing so because complainants may not bring actions on behalf of other people and Complainant does not satisfy the requirements to challenge AT&T rates.<sup>9</sup> Furthermore, AT&T points out that the

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<sup>4</sup> AT&T California Motion to Dismiss, August 29, 2011, at 3.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

<sup>7</sup> *Id.* at 4.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Id.* at 6.

Commission monitors and establishes standards for AT&T's telephone service quality.<sup>10</sup>

Complainants oppose AT&T's Motion and dispute that AT&T has reimbursed them for all payments made during the August 2009 to March 2010 service period. Further, Complainants state that AT&T referred their telephone service account to a collection agency in August 2010 thus harming Claimant's credit standing. Complainants argue that AT&T's allegation of expanding the scope is unfounded since the same telephone facilities that provide service to Complainants also provide service to surrounding rural communities.

In reply to Complainants' August 15, 2011 response, AT&T provides a copy of a check for \$255.94 from AT&T written to and endorsed by Clarence Bush.<sup>11</sup> While maintaining that the Commission has consistently denied payment of damages in complaint proceedings, AT&T claims to have withdrawn the Complainants' account from the collection agency as of January 2011.

In a September 22, 2011, Amendment to the Motion, AT&T claims that, through discovery, Complainants admitted receiving and endorsing the AT&T check for \$255.94.<sup>12</sup>

## **Discussion**

In order to address AT&T's Motion to dismiss this proceeding, we first address the requirements for a complaint. Public Utilities Code Section 1702

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<sup>10</sup> *Ibid.*

<sup>11</sup> AT&T Reply to Complainant's August 15, 2011 Response to Motion to Dismiss, filed on August 25, 2011, Attachment A.

<sup>12</sup> AT&T Amendment to July 29, 2011 Motion to Dismiss, filed on September 22, 2011 at 2-3.

sets the parameters for complaints before the Commission. Notably, Section 1702 states who may make a complaint, how the complaint may be made, and what should be included in the complaint. Specifically, Section 1702 states that a complaint must:

...set forth any 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.

Complainants' initial filing alleges that AT&T did not provide adequate service from August 2009 through March 2010. This portion of the complaint complies with Section 1702.

Regarding the complaint of inadequate service quality in the vicinity of Oroshi, CA, the Commission is responsible for ensuring adequate service quality in rural California. In the Oroshi area, AT&T is the carrier of last resort to provide landline telephone service. As far as alternative telephone service, Complainants mention that mobile phone service reception in this area is difficult due to the rural terrain. Thus, Complainants have access to no other options for telephone service. Given the lack of other service options, we agree with the Complainants that AT&T's landline telephone service is a lifeline. However, we find that the complaint of inadequate service quality in rural California is more appropriately addressed within the confines of a Commission investigation or rulemaking.

As AT&T has correctly pointed out,<sup>13</sup> General Order (GO) 133-C<sup>14</sup> allows the Commission staff to investigate carrier service quality reporting and recommend to the Commission to open a formal investigation. On December 1, 2011, the Commission approved the opening of a new rulemaking to review carrier's performance, including AT&T, in meeting GO 133-C service quality performance standards in 2010, and to assess whether the existing standards meet the goals of the Commission. The new rulemaking, R.11-12-001, is the more appropriate venue to determine whether AT&T provides adequate telephone service quality in rural California.

In its Motion, AT&T contends that full reparation for the service interruptions has been provided to Complainants in the form of bill credits and checks. Complainants allege that while they received credits on their bill equaling \$208.41, they did not receive a check from AT&T for \$255.94 as AT&T claims.<sup>15</sup> In the Amendment to the Motion, AT&T asserts that in discovery, Complainants confirm they received and cashed a check for \$255.94.<sup>16</sup> Complainants do not deny receiving and/or cashing the check in the response to

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<sup>13</sup> AT&T Comments to Proposed Decision, December 5, 2011 at and AT&T Reply to Complainant's Opposition to Motion, August 25, 2011 at 8.

<sup>14</sup> GO 133-C is the minimum set of service quality standards and measures for installation, maintenance, and operator services for local telephone service.

<sup>15</sup> Complainants' Reply to Motion, filed on August 15, 2011 at 4.

<sup>16</sup> AT&T Amendment at 2-3.

the Amendment, but now request that AT&T cease and reverse collection actions.<sup>17</sup>

As shown by AT&T, Tariff Rule 14 specifically indicates the limitations of liability:

[D]amages arising out of mistakes, omissions, interruptions, delays, errors or defects in any of the services or facilities furnished by the Company...shall in no event exceed an amount equal to the pro rata charges to the customer for the period during which the services or facilities are affected by the mistake, omission, interruption, delay, error or defect,...but in no event shall the liability exceed the total amount of the charges to the customer for all tariffed services or facilities for the period affected by the mistake, omission, interruption, delay, error or defect.

We find that Complainants have received full reparation for all payments made to AT&T during the August 2009 to March 2010, as requested in the original complaint. Complainants subsequently requested that AT&T cease and reverse collection actions. While AT&T claims to have ceased collections, we note that Tariff Rule 14 does not require AT&T to provide for further reparation other than reimbursement of all payments made from the Complainants. Thus, we find that AT&T has provided the Complainant reparation to the extent the law allows, and therefore, we find the Complaint moot. This proceeding is closed.

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<sup>17</sup> Clarence and Marciana Bush response to AT&T September 22, 2011 Amendment to July 29, 2011 Motion to Dismiss, late-filed on October 20, 2011 at 2.

**Category and Need for Hearing**

On December 14, 2010, by Chief Administrative Law Judge Ruling, this proceeding was categorized as adjudicatory. An evidentiary hearing became unnecessary based upon our decision to grant AT&T's Motion to Dismiss.

**Comments on Proposed Decision**

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on November 30, 2011 by Clarence Anthony Bush and reply comments were filed on December 5, 2011 by Pacific Bell Telephone Company d/b/a AT&T. Revisions have been made in the final decision as appropriate in response to the comments received.

**Assignment of Proceeding**

Timothy Alan Simon is the assigned Commissioner and Kelly A. Hymes is the assigned ALJ in this proceeding.

**Findings of Fact**

1. Complainants received bill credits from the Defendant totaling \$208.41.
2. Complainants do not deny receiving and endorsing a check from AT&T for \$255.94.
3. Complainants received payment for the full amount paid to AT&T during the time period August 2009 up to March 2010.
4. Tariff Rule 14 limits liability for damages arising out of mistakes, omissions, interruptions, delays, errors or defects in any of the services or facilities furnished by AT&T to the total amount of the charges to the customer for all tariffed services or facilities for the period affected by the mistake, omission, interruption, delay, error or defect.

**Conclusions of Law**

1. The complaint regarding inadequate rural service is more appropriately addressed in the rulemaking reviewing AT&T's performance in meeting General Order 133-C service quality standards.
2. Complainants received reparation to the extent the law allows.
3. The complaint is moot.
4. The complaint should be dismissed, and this proceeding should be closed, effective immediately.

**O R D E R**

**IT IS ORDERED** that:

1. The motion by Pacific Bell Telephone Company dba AT&T California to dismiss this complaint is granted.
2. No hearing is necessary in this proceeding.
3. Case 10-12-002 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.