

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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C2609012

Dennis Palacio,

Complainant,

ECP

vs.

C.26-09-012

(Filed September 15, 2026)

Pacific Bell Telephone Company d/b/a
AT&T California (U1001C) and AT&T
Mobility Wireless Operations Holdings
Inc. d/b/a AT&T Mobility (U3021C),

Defendant.

**MOTION OF PACIFIC BELL TELEPHONE COMPANY D/B/A AT&T CALIFORNIA
(U1001C), AT&T MOBILITY WIRELESS OPERATIONS HOLDINGS INC. D/B/A
AT&T MOBILITY (U3021C), AND NEW CINGULAR WIRELESS PCS, LLC D/B/A
AT&T MOBILITY (U3060C) TO DISMISS EXPEDITED COMPLAINT OF
DENNIS PALACIO**

[PUBLIC VERSION]

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On behalf of AT&T

Dated: October 26, 2026

Under Rules 11.1 and 11.2 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, Defendants Pacific Bell Telephone Company d/b/a AT&T California (U1001C) (AT&T California), AT&T Mobility Wireless Operations Holdings Inc. d/b/a AT&T Mobility (U3021C) (AT&T Mobility), and New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (U 3060 C) (New Cingular, and together, AT&T) ask the Commission to dismiss the Complaint filed by Dennis Palacio (Mr. Palacio).

I. INTRODUCTION

AT&T seeks dismissal of the Complaint in its entirety because it fails to identify a violation the Commission can remedy, is subject to binding individual arbitration or small claims court, and seeks relief barred by federal law or outside the Commission's reparations authority. AT&T also argues that certain claims are untimely and barred by laches. Alternatively, AT&T requests dismissal of certain other claims against AT&T California and AT&T Mobility as improper parties, and dismissal of AT&T California because the Complaint alleges no wrongdoing by it.

II. BACKGROUND

Mr. Palacio held an AT&T wireless account ending in number 7405 (Wireless Account) with several lines.¹ On or about June 14, 2026, line 408.594.8870, line 909.536.3430, line 951.298.7117, line 951.317.9506, line 408.329.0294, and line 951.432.1312 (6 Lines) on the Wireless Account were either ported out to another wireless carrier or canceled.² The porting or canceling of the 6 Lines accelerated the remaining balances for the six (6) device installment plans on the Wireless Account (Device Plans),³ and the Wireless Account was closed.

¹ *Complaint* ("Complaint"), Case (C.) 26-09-012, at 13-14.

² *Complaint* at 15-17, 47.

³ *Id.* at 15-17.

Before filing the Complaint, Amy Palacio, on behalf of Mr. Palacio, raised several issues informally with the Commission regarding the Wireless Account.⁴ In response, the AT&T Office of the President issued credits totaling \$589.62.⁵ Mr. Palacio subsequently filed the Complaint asking the Commission to (1) “reverse the outstanding accelerated past-due balance of \$3,167.90” to \$0.00 and “[o]rder a full corporate write-off of all remaining hardware installments as specific performance damages” for breach of contract (Device Claims) and (2) order AT&T to “refund all remaining uncredited revenue” for line 909.536.3153 (Line Claims).⁶

III. MOTION TO DISMISS

A. The Complaint Does Not State a Claim the Commission Can Hear.

Rule 11.2 of the Commission’s Rules of Practice and Procedure permits a motion to dismiss based on the pleadings. In deciding a motion to dismiss a complaint, the Commission has found:

the legal standard against which the sufficiency of the complaint is measured is whether, taking the well-pleaded factual allegations of the complaint as true, the defendant is entitled to prevail as a matter of law. . . .

. . . After accepting the facts as stated, the Commission then merely looks to its own law and policy. The question becomes whether the Commission and the parties would be squandering their resources by proceeding to an evidentiary hearing when the outcome is a foregone conclusion under the current law and policy of this Commission.⁷

⁴ *Id.* at 8 – 10, 44.

⁵ *Id.* at 13.

⁶ *Id.* at 46.

⁷ Decision (D.) 17-08-016, *Order Granting Rehearing of Decision (D.) 16-09-005, and Vacating the Decision*, C.15-12-020 at 4 (Aug. 10, 2017) (citing D.99-11-023, *Re Western Gas Resources-California, Inc.*, (1999)).

California Public Utilities Code § 1702 limits complaints to an act or omission “in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission.”⁸ Rule 4.2(a) of the Commission’s Rules of Practice and Procedure requires the Complaint to state the specific act complained of and completely advise the Commission and AT&T “of the facts constituting the grounds of the complaint, the injury complained of, and the exact relief which is desired.”⁹ In this case, the Complaint fails to identify a law, order, or rule AT&T allegedly violated. Because it does not meet the pleading standard, the Complaint should be dismissed.

B. The Complaint Should Be Dismissed in Favor of Arbitration or Small Claims.

The Device Plans require Mr. Palacio to maintain eligible wireless service for each device subject to the Consumer Service Agreement.¹⁰ The Device Plans also incorporate the Consumer Service Agreement’s dispute resolution provisions, which survive termination.¹¹ Under Section 1.3 of the Consumer Service Agreement¹² and Paragraphs 3 and 4 of the Device Plans,¹³ Mr. Palacio agreed to resolve disputes through binding individual arbitration or small

⁸ See Cal. Pub. Util. Code § 1702.

⁹ See California Public Utilities Commission Rules of Practice and Procedure, Rule 4.2(a).

¹⁰ See CONFIDENTIAL Attachment A, Device Plan (line 408.594.8870) at ¶3; CONFIDENTIAL Attachment B, Device Plan (line 909.536.3430) at ¶3; CONFIDENTIAL Attachment C, Device Plan (line 951.298.7117) at ¶3; CONFIDENTIAL Attachment D Device Plan (line 951.317.9506) at ¶3; and CONFIDENTIAL Attachment E Device Plan (line 408.329.0294) at ¶3 and Device Plan (line 951.432.1312) at ¶3.

¹¹ See CONFIDENTIAL Attachment A, Device Plan (line 408.594.8870) at ¶3; CONFIDENTIAL Attachment B, Device Plan (line 909.536.3430) at ¶3; CONFIDENTIAL Attachment C, Device Plan (line 951.298.7117) at ¶3; CONFIDENTIAL Attachment D Device Plan (line 951.317.9506) at ¶3; and CONFIDENTIAL Attachment E Device Plan (line 408.329.0294) at ¶3 and Device Plan (line 951.432.1312) at ¶3.

¹² AT&T, AT&T Consumer Service Agreement (last visited Oct. 26, 2026)

<https://www.att.com/legal/terms.consumerServiceAgreement.html>.

¹³ See CONFIDENTIAL Attachment A, Device Plan (line 408.594.8870) at ¶¶3-4; CONFIDENTIAL Attachment B, Device Plan (line 909.536.3430) at ¶¶3-4; CONFIDENTIAL Attachment C, Device Plan (line 951.298.7117) at ¶¶3-4; CONFIDENTIAL Attachment D Device Plan (line 951.317.9506) at ¶¶3-4; and CONFIDENTIAL Attachment E Device Plan (line 408.329.0294) at ¶¶3-4 and Device Plan (line 951.432.1312) at ¶¶3-4.

claims court—not through the Commission. The Federal Arbitration Act (FAA) makes that agreement “valid, irrevocable, and enforceable[.]”¹⁴ The United States Supreme Court enforced AT&T Mobility’s consumer arbitration agreement and held that the FAA preempts state rules that interfere with individual arbitration.¹⁵ Because those provisions govern both the Device Claims and the Line Claims, the Complaint should be dismissed.

C. Federal Law Bars the Commission from Changing What a Wireless Customer Owes.

Under 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[.]”¹⁶ States may regulate the “other terms and conditions” of those services, but not rates.¹⁷ Mr. Palacio asks the Commission to reduce the amounts owed on the Wireless Account to “exactly \$0.00[.]” write off all remaining device installments, and refund charges related to the Line Claims.¹⁸ That relief would not only set the price he pays for wireless service but also regulate the terms and conditions for the devices as opposed to the wireless services, contrary to Section 332(c)(3)(A). Accordingly, the Device Claims and the Line Claims should be dismissed.

D. Repairs Are Not Warranted.

The Commission’s authority is limited to awarding repairs.¹⁹ Under California Public Utilities Code §734, the Commission may order repairs only upon finding that a utility charged “an unreasonable, excessive, or discriminatory amount . . . in violation of any of the provisions of this part.” The Complaint identifies no such violation. Moreover, the relief sought

¹⁴ 9 U.S.C. § 2.

¹⁵ *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 352 (2011).

¹⁶ 47 U.S.C. § 332(c)(3)(A).

¹⁷ *Id.*

¹⁸ Complaint at 46.

¹⁹ Cal. Pub. Util. Code § 734.

for the Device Claims concerns financing obligations, not utility service charges, and thus falls outside the Commission’s reparations authority. Accordingly, Mr. Palacio is not entitled to that relief, and the Commission cannot award it.

E. The Line Claims Are Barred.

The Line Claims should be dismissed. Line 3153 was added on February 4, 2021 and removed on October 5, 2023.²⁰ Mr. Palacio did not file the Complaint until September 15, 2026—nearly three years after the line was removed and more than five and a half years after it was added. Under Section 1.7 and Section 1.10 of the Consumer Service Agreement,²¹ Mr. Palacio had 180 days from each bill date to notify customer service of or submit a Notice of Dispute concerning the Line Claims. By waiting years to raise the Line Claims, Mr. Palacio waived his rights to dispute the bills and participate in any legal action concerning them.²²

Moreover, to the extent that any requested relief amounts to reparations, Mr. Palacio was required to file his complaint “within three years from the time the cause of action accrues, and not after” pursuant to California Public Utilities Code §736.²³ Any charges billed before September 15, 2023 fall outside that period. Alternatively, even if treated as a claim on a written contract, the Line Claims are subject to California’s four-year limitations period.²⁴ Any charges billed before September 15, 2022 fall outside that period.

²⁰ Complaint at 8.

²¹ AT&T, AT&T Consumer Service Agreement (last visited Oct. 26, 2026) <https://www.att.com/legal/terms.consumerServiceAgreement.html>.

²² *Id.* at Section 1.10.

²³ Cal. Pub. Util. Code § 736.

²⁴ Cal. Code Civ. Proc. § 337(a).

F. The Line Claims Are Barred by the Doctrine of Laches.

The Commission has also applied the doctrine of laches.²⁵ As the Commission has explained, laches is an ‘unreasonable delay in asserting a right which renders the granting of relief inequitable.’²⁶ Line 3153 was removed in October 2023, and Mr. Palacio offers no reason for the delay of almost three years in raising the Line Claims. The Line Claims should be dismissed as untimely.

G. AT&T California and AT&T Mobility Are Not Proper Parties for the Device Claims.

The Device Plans identify New Cingular as the contracting AT&T entity.²⁷ AT&T California and AT&T Mobility therefore are not proper parties to the Device Claims, and the Commission should dismiss those claims against both entities.

H. AT&T California Should Be Dismissed Because the Complaint Makes No Claim Against It.

The allegations in the Complaint concern Mr. Palacio’s Wireless Account. The Commission’s Rule of Practice and Procedure 4.2(a) requires a complaint to tell each defendant what it did wrong. The Complaint does not allege that AT&T California did anything at all. At a minimum, AT&T California should be dismissed.

²⁵ D.15-05-004, *Decision Denying the City of Ontario’s Amended Petitions for Modification of Decision 09-12-044, as Modified by Subsequent Decisions, to Stay Construction of Segment 8 of the Tehachapi Renewable Transmission Project and to Underground Segment 8 in Ontario*, Application (A.) 07-06-031, at 22-23 (May 7, 2015).

²⁶ *Id.* at 22 (quoting D.02-09-025, *Order Granting Rehearing of Decision (D.) 02-04-051*, C.99-10-037, at 8 (Sept. 5, 2002); *see also* Cal. Civil Code § 3527 (stating “the law helps the vigilant, before those who sleep on their rights.”).

²⁷ *See* CONFIDENTIAL Attachment A, Device Plan (line 408.594.8870); CONFIDENTIAL Attachment B, Device Plan (line 909.536.3430); CONFIDENTIAL Attachment C, Device Plan (line 951.298.7117); CONFIDENTIAL Attachment D Device Plan (line 951.317.9506); and CONFIDENTIAL Attachment E Device Plan (line 408.329.0294) and Device Plan (line 951.432.1312).

IV. CONCLUSION

For these reasons, AT&T respectfully requests that the Commission dismiss the Complaint in its entirety. Alternatively, the Commission should dismiss the Device Claims against AT&T California and AT&T Mobility and dismiss AT&T California from this proceeding.

Dated: October 26, 2026

Respectfully submitted,

/s/ Renee Marfia

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On behalf of AT&T

ATTACHMENT A

[CONFIDENTIAL]

REMOVED IN ITS ENTIRETY

ATTACHMENT B

[CONFIDENTIAL]

REMOVED IN ITS ENTIRETY

ATTACHMENT C

[CONFIDENTIAL]

REMOVED IN ITS ENTIRETY

ATTACHMENT D

[CONFIDENTIAL]

REMOVED IN ITS ENTIRETY

ATTACHMENT E

[CONFIDENTIAL]

REMOVED IN ITS ENTIRETY