

Decision 09-05-004 May 7, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Utility Consumer's Action Network (UCAN),

Complainant,

vs.

AT&T Mobility LLC dba New Cingular
Wireless PCS, LLC, fka Cingular Wireless and
related entities collectively "AT&T", U3060C,

Defendant.

Case 07-08-033
(Filed August 31, 2007)

DECISION APPROVING SETTLEMENT

1. Summary

This decision approves a Settlement Agreement between the Utility Consumers' Cingular Wireless (AT&T) and dismisses this complaint with prejudice. In this complaint, UCAN charges AT&T with (1) imposing unauthorized international roaming charges on customers who had not affirmatively enabled the service nor received adequate notice that AT&T was enabling the service in violation of Public Utilities Code Section 2890(a), (2) charging customers for calls never placed while traveling abroad in violation of Section 2890(a), (3) violating General Order 168 (GO 168) by not resolving customer complaints within 30 days, and (4) violating GO 168 by refusing to

cease collection actions while conducting an investigation into a charge disputed by its customer.¹

Under the Settlement Agreement, attached hereto as Attachment A, AT&T agrees to provide its customers affirmative notification when it activates the pay-per-use International Roaming service on a subscriber's account, to implement new procedures to allow residential customers to opt-out or block the service, and to affirmatively manage their usage.² In addition, customers will be informed that under the service, AT&T can charge them for incoming phone calls that go directly to voicemail when their phone is turned on in a foreign country.

Finally, the two residential customers UCAN discusses in the complaint have both had their accounts credited in full. The Settlement is effective on the date it is approved by the Commission and will terminate one year following AT&T's implementation of on-line usage notification or July 1, 2012, whichever is earlier.

2. Background

On August 31, 2007, UCAN filed this complaint and a request for a cease and desist order against AT&T for imposing unauthorized charges on

¹ UCAN cites to two customers in its complaint. One customer was billed over \$20,000 and the other customer over \$8,000 for thousands of calls while they were on short visits to Ethiopia. UCAN asserts that neither customer was aware it had international roaming or had made a phone call while in Ethiopia. The Ethiopian phone company is an affiliate of AT&T.

² International Roaming is defined in the Settlement Agreement as voice calls made and/or received while outside of the United States, Puerto Rico, and the U.S. Virgin Islands. This AT&T service is included in most customers' rate plans but is usually not activated by AT&T until after a customer has established a satisfactory payment history. The service does not have recurring monthly fees; it is a pay-per-usage service.

subscribers' cellular phone bills. The complaint was calendared on September 10, 2007 and by ALJ Resolution 176 was categorized as an adjudicatory proceeding. In its response on October 12, 2007, AT&T denied the charges in the complaint and on November 20, 2007, it moved to dismiss the complaint on three grounds: lack of jurisdiction over international telecommunications; lack of jurisdiction over commercial mobile radio service entry regulation; and failure to state a claim sufficient to establish a state law claim of "cramming" under Public Utilities Code Section 2890(a).

On November 28, 2007, a prehearing conference (PHC) was held in San Francisco. At the PHC, AT&T requested an opportunity to amend its motion to dismiss to address issues discussed at the PHC, and both parties asked to extend the 12-month statutory deadline for the proceeding in order to have additional time to engage in discovery and to use the Commission's alternative dispute resolution procedures. The parties were referred to mediation, and a second PHC scheduled.³ At the next PHC on February 29, 2008, parties requested to continue settlement discussions and also discussed the scope of issues and a procedural schedule for evidentiary hearings.⁴ On June 27, 2008, the Commission issued Decision (D.) 08-06-036, an order extending the statutory deadline of this proceeding to May 29, 2009.

³ AT&T submitted its amended motion on December 12, 2007, UCAN filed a response opposing the motion on December 27, 2007 and AT&T filed a reply on January 7, 2008.

⁴ At the administrative law judge's request, AT&T and UCAN agreed to meet to discuss a joint statement of issues and on March 14 filed a pleading stating they were unable to reach an agreement on the scope of issues to be adjudicated and, therefore, attached separate statements on each parties' respective positions.

By Administrative Law Judge ruling on August 27, 2008, AT&T's motion to dismiss the complaint was denied. The ruling found that (1) the federal telecommunications law raised by AT&T in its motion to dismiss does not preempt the Commission's jurisdiction to adjudicate this cramming complaint and (2) in its complaint, UCAN has provided a sufficient showing of potential violations of Section 2890 and General Order 168 such that the Commission must now develop the evidentiary record.

A third PHC, scheduled for September 22, 2008, was cancelled at the request of the parties. On October 17, 2008, UCAN and AT&T submitted a joint motion for approval of the Settlement Agreement. A scoping memo has not been issued in this proceeding and no evidentiary hearings were held.

3. Proposed Settlement

The Settlement Agreement, attached at Appendix A to this decision, covers all California non-business customers of New Cingular Wireless PCS, LLC and its related entities (AT&T), both existing and future customers.⁵

3.1. Standard of Review for Settlements

We review the settlement under the requirements set forth in Rule 12.1(d) of the Commission's Rules of Practice and Procedure. The rule provides that, prior to approval, the Commission must find a settlement "reasonable in light of the whole record, consistent with the law, and in the public interest."

⁵ The current AT&T wireless affiliates operating in California that are registered with the Commission, in addition to New Cingular Wireless PCS, LLC, are Cagel Cellular Communications Corporation, Santa Barbara Cellular Systems, Ltd., and Visalia Cellular Telephone Company.

3.2. Terms of the Settlement

Under the provisions of the Settlement Agreement, AT&T agrees to provide notification to existing and future customers when AT&T activates pay-per-use International Roaming that this is a service included in their rate plan and what these features could mean in potential charges for customers who carry their cell phone overseas on a trip.⁶ AT&T will also provide customers information regarding methods to manage their usage of this service, including the right to opt-out or block the service.

AT&T commits to undertake notification of existing customers through a separate mailing, followed by a prominently displayed alert on AT&T's website. AT&T will continue to notify customers in at least six bill messages within a 12-month period and it will provide notification to future customers by a text message at service activation; all notices will instruct the customer how he/she may obtain additional information about the service. Further, AT&T commits to placing a restriction on unblocking International Roaming on a secondary line of a California non-business account (*e.g.*, Family Talk), unless requested otherwise by the customer.

Under the new notification process, AT&T will inform customers that under the International Roaming Service, AT&T can charge them for incoming

⁶ AT&T maintains that its service agreement includes the capability for international roaming on a pay-per-use basis. There are no additional monthly recurring charges. AT&T states that it typically blocks or restricts international roaming and dialing outside of North America until it is established that the customer has been in good standing with the company for a period of time and/or satisfies other criteria. Further, it states that as a courtesy, and not as a part of any legal obligation, AT&T generally attempts to notify the customer when the customer's ability to dial and/or roam internationally is no longer restricted. *See* October 12, 2007 Answer to Complaint.

phone calls that go directly to voicemail when their phone is turned on in a foreign country. Customers will be provided specific rates per country and an international customer service number that may be dialed free of charge from the customer's wireless phone anywhere in the world that the customer's AT&T wireless phone can make calls. In addition, AT&T will send California customers with pay-per-use voice and pay-per-use data international roaming services a free text message when the customer arrives in a country; this text message will include the international roaming rate for that country.⁷

In negotiating the Settlement Agreement, AT&T and UCAN state that they included the input of technical experts from both parties, and this produced a creative solution: the customer specified on-line usage notification. This usage notification tool, when made available to California customers, will give consumers greater control in managing their international roaming usage and costs.⁸ The tool will allow a customer to request notification, via a text message and if requested, e-mail, when a certain threshold of international usage is reached, and to have at least five threshold options from which to choose. At AT&T's sole discretion, usage thresholds will be set based on a dollar amount or minutes of usage (MOUs).

⁷ This feature must be functional within 120 days of the date the settlement is approved.

⁸ In the settlement, AT&T commits to making Usage Notification available no later than 12 months following AT&T's receipt of usage data from other countries using a data exchange reporting procedure, Near Real Time Roaming Data Exchange (NRTRDE). The threshold for activation will be when at least 17 of the top 20 countries with which AT&T's customers have the highest International Roaming usage, based on minutes of use, are using NRTRDE.

The Settlement Agreement does not directly address UCAN's assertions that AT&T violated the Commission's GO 168 by not timely resolving the complaints of the two customers cited in this proceeding and ceasing all collections activity while a complaint investigation was pending. However, the Settlement Agreement does provide that one of the customers cited by UCAN will have her account credited in full to reflect no outstanding balance and will also be sent a letter documenting that there is no negative report by AT&T to the credit bureaus. The account of the other customer was previously credited in full.

Finally, should a breach of the Settlement Agreement occur in the future, UCAN agrees to first provide AT&T an opportunity to promptly cure the breach before filing any complaint with the Commission.⁹ The Settlement is effective on the date it is approved by the Commission and will terminate one year following AT&T's implementation of usage notification or July 1, 2012, whichever is earlier.

3.3. Discussion of Proposed Settlement

In its complaint, UCAN asserts that AT&T has violated the provisions of Public Utilities Code Section 2890(a) by activating a telephone service, international roaming, without adequate customer notification and by billing customers for international calls they did not place. The Settlement Agreement does not make a finding on whether existing customers, individually or as a class, received adequate notification or were charged for unplaced calls, but it does adopt a comprehensive system of improved customer notification that

⁹ Both parties agree the Commission shall have jurisdiction to enforce the terms of this Settlement Agreement.

should ensure non-business customers understand when the international roaming service is activated and what the features and rates are, and that customers are provided the means to effectively manage this service by choosing to opt-out, block, or set specific thresholds of usage. The Settlement Agreement also resolves all issues related to charges to the two individual customers cited in the complaint.

We find the enhanced notification and account management provisions contained in the Settlement Agreement will be extremely beneficial for all existing customers since many customers may be unaware that they have the service and/or the features it contains, thus exposing these customers to substantial charges when they travel overseas with their cell phones. The Settlement Agreement is also in the public interest as it will ensure future customers are fully informed and that AT&T is quickly alerted to any fraudulent practices that occur while its customers are overseas.

On the issue of whether AT&T violated the provisions of GO 168, our record reflects that both parties undertook extensive discovery and that the two customers UCAN cited in the complaint have had their billing disputes resolved in full. We do not have a sufficient record to make any finding of violations. Going forward, we find that the enhanced notification and account management provisions of the Settlement Agreement should reduce future customer billing disputes related to international roaming services.

Based on the above discussion, we find that the Settlement Agreement is reasonable in light of the record as a whole and in the public interest because it addresses in a comprehensive and innovative manner the issues raised by UCAN in its complaint. The Settlement Agreement is also consistent with the law as it

adopts provisions designed to better ensure compliance with the Commission's statutes and regulations. Therefore, we adopt the Settlement Agreement.

4. 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 Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were filed.

5. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Christine M. Walwyn is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. All parties have agreed to the Settlement Agreement.
2. The Settlement Agreement provides non-business California customers of AT&T wireless phone services with enhanced notification of the International Roaming service and effective means to manage the service by choosing to opt-out, block, or set specific thresholds of usage.
3. The enhanced notification and customer tools provided under the Settlement Agreement are extremely beneficial for all existing customers since many customers may be unaware that they have International Roaming service and/or the features it contains.
4. The Settlement Agreement is also in the public interest as it will ensure future customers are fully informed and that AT&T is quickly alerted to any fraudulent practices that occur while its customers are overseas.
5. Both customers cited by UCAN in this complaint have had their accounts credited in full and no negative reports made by AT&T to a credit bureau.

Conclusions of Law

1. The Settlement Agreement in this proceeding is reasonable in light of the whole record, consistent with the law, and in the public interest.
2. Evidentiary hearings are not necessary.
3. The Settlement Agreement should be approved, and should be effective immediately.
4. The complaint should be dismissed with prejudice.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement, attached as Attachment A, is approved.
2. The complaint is dismissed with prejudice.
3. Case 07-08-033 is closed.

This order is effective today.

Dated May 7, 2009, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners