ALJ/PAB/sid

Mailed 2/4/99

Decision 99-02-018 February 4, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Harold K. Ostin,

Complainant,

vs.

AT&T Communications of California, Inc. (U 5002 C),

Defendants.

ORIGINAL

(ECP)
Case 98-03-048
(Filed March 5, 1998)

OPINION DISMISSING COMPLAINT

Summary

Harold K. Ostin (Ostin) alleges that AT&T Communications of California, Inc. (AT&T) unlawfully billed him between July 1 and December 31, 1997 for service it offered at a 50% discount. Ostin alleges the excessive billing to be $994.01.

AT&T alleges that the disputed discount was offered February, March and April 1997. In response to a complaint by Ostin, AT&T extended the discount an additional three months, May, June and July 1997.

AT&T counterclaims that Ostin owes a balance of $989.02.

Procedural History

An expedited prehearing conference under Resolution ALJ 163, the Commission's procedures for expedited complaints, was held on April 1, 1998. At this time, Ostin orally made a Motion to Strike AT&T's Answer, a Motion To Recuse the Assigned Administrative Law Judge (ALJ) and a Motion To

Recalendar The Matter As A Regular Complaint. Ostin's motion to strike AT&T's answer was denied because, unlike Ostin's allegations of ex parte contacts, AT&T's oral request to the ALJ to file its answer one day late was a procedural issue not subject to ex parte rules. In addition, AT&T communicated with Ostin as requested by the assigned ALJ. Ostin was immediately informed of the contact and presented no evidence of being inconvenienced by the late filing. This motion was orally denied.

Regarding recusal of the ALJ, the ALJ informed Ostin this motion must be in writing, filed and served pursuant to the Commission's Rules of Practice and Procedure. No such motion was filed.

The motion to recalendar as a regular complaint was taken under submission.

Subsequently, AT&T filed a Motion to Dismiss alleging that the complaint involved an interstate service subject to the sole jurisdiction of the Federal Communications Commission (FCC). Ostin timely opposed this motion.

Discussion

AT&T attaches to its motion copies of an FCC Tariff No. 27 which describes the 50% discount for domestic calls billed to an AT&T calling card.

Thus, the charges in question are for interstate calls, therefore, subject to FCC jurisdiction. Accordingly, the complaint in this proceeding must be dismissed.

Findings of Fact

The complaint in this proceeding involves disputed charges for interstate calls subject to a 50% discount on calling cards. This promotional service is subject to the jurisdiction of and regulated by the FCC.

Conclusions of Law

1. The complaint in this proceeding involves charges subject to the jurisdiction of the Federal Communications Commission and not this Commission.
2. The complaint in this proceeding should be dismissed.

O R D E R

IT IS ORDERED that:

1. The complaint in this proceeding is dismissed.
2. Case 98-03-048 is closed.

This order is effective today.

Dated February 4, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners