

Decision 99-05-021 May 13, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rodney George,

Complainant,

vs.

Sprint PCS,

Defendant.

ORIGINAL

(ECP)

Case 99-01-040

(Filed January 20, 1999)

Rodney George, for himself, complainant.
Alison Salinger, for Sprint PCS, defendant.

O P I N I O N

Summary

This decision requires Sprint PCS to provide cellular telephone service to complainant on the terms and conditions which it offered and which were accepted by its customer.

Procedure

This complaint was filed under the Expedited Complaint Procedure set forth in Section 1702.1 of the Public Utilities Code and Rule 13.2 of the Commission's Rules of Practice and Procedure.

A duly noticed public hearing was held in San Diego on February 23, 1999. Complainant testified in his own behalf. Defendant offered no evidence other than its filed answer and motion to dismiss. The matter was then submitted for decision.

Promises by Sprint PCS (Sprint)

Rodney George (George) complains that he telephoned Sprint in April 1998 to apply for cellular phone service. Sprint's representative offered him a plan whereby he would receive 40 minutes of air time for \$20 dollars a month. George accepted the offer. This conversation was recorded by Sprint.

Upon receiving his first monthly statement, George saw that he was being billed for \$20 but was being allowed only 20 minutes of airtime. George contacted Sprint to question the invoice, giving the name of the Sprint salesperson and asking that Sprint review the recording made of the sales transaction. George believed that the matter would easily be resolved in his favor because the transaction was recorded.

Sprint next informed George that the tape recording of the sale was not available, but that Sprint would provide a recurring credit of \$6 dollars each month to equate to the 20 additional calling minutes at issue. This offer was made by a named employee of defendant's customer care department on May 1, 1998 and was accepted by George on that date.

On May 7, 1998, defendant's executive office advised George that Sprint was confirming the \$6 dollar per month credit agreement, but only for a period of six months.

Complainant believes that Sprint made two agreements with him and refuses to follow through on both of those agreements: first, an agreement to provide 40 minutes per month of cellular telephone service for \$20 dollars per month for an indefinite time; second, an agreement to provide a good will credit of \$6 dollars per month for an indefinite time.

Hearing

The history presented in the previous section was verified by George at the public hearing held in this case on February 23, 1999.

Sprint sent a representative to the hearing, but only for the purpose of delivering defendant's Answer to Complaint and Motion to Dismiss. Asked if she knew any reason why the Commission should not believe George's uncontradicted testimony about the events at issue, the representative stated that she personally knew of no such reason.

As defendant has elected not to offer any testimony or evidence at hearing in opposition to that of complainant, we accept George's evidence as the true account of the facts relevant to this case.

Motion to Dismiss

Together with its answer, Sprint moves to dismiss this case on the ground that granting the relief sought would require the Commission to establish a particular rate which would be beyond its jurisdiction. Defendant states that it is a commercial mobile radio service (CMRS) provider and, under 47 U.S.C. § 332(c)(3)(A), has the authority to regulate its rates. Sprint points out that the Commission itself has stated that it will not entertain disputes regarding the level or reasonableness of any rate (Decision (D.) 96-12-071, December 20, 1996).

47 U.S.C. § 332(c)(3)(A) provides as follows:

"No State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a state from regulating the other terms and conditions of commercial mobile services."

In accordance with these principles, the instant complaint should be dismissed if it involves the regulation of rates and it should be decided by the Commission if it involves regulating other terms and conditions of commercial mobile services.

It is clear that this consumer complaint is within Commission jurisdiction as no rate would be regulated by granting the relief requested. Defendant's rate structure is not affected by our deciding George's complaint in accordance with applicable legal principles. Rather, we are being asked to resolve a customer complaint as to whether the carrier is fulfilling its obligations under the undisputed terms and conditions agreed upon by the carrier and customer. Our conclusion that the carrier did not provide the level of service at the rate agreed-upon is not rate regulation, and is permissible under federal law.

The motion to dismiss is denied.

We will order Sprint to apply the promised \$6 dollar credit against its billing of \$20 for 20 minutes to Rodney George each month for as long as complainant elects to receive defendant's cellular service, as agreed between the parties.

O R D E R

IT IS ORDERED that:

1. Sprint PCS shall apply a \$6 dollar credit against its billing of \$20 for 20 minutes to Rodney George each month from the commencement of cellular service to him and for as long as complainant elects to receive defendant's cellular service, as agreed between the parties.

C.99-01-040 ALJ/WRI/jva

2. Case 99-01-040 is closed.

This order is effective today.

Dated May 13, 1999, at San Francisco, California.

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