

Decision 99-08-027

August 5, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rodney George,

Complainant,

vs.

Sprint PCS,

Defendant.

(ECP)

C.99-01-040

(Filed January 20, 1999)

**ORDER DENYING IN PART AND GRANTING IN PART
REHEARING OF DECISION 99-05-021, MODIFYING THE
DECISION AND DENYING THE REHEARING
OF THE MODIFIED DECISION**

I. SUMMARY

In Decision (D.) 99-05-021, the Commission granted the complaint of Rodney George regarding the terms of his agreement for cellular telephone service with Sprint Spectrum L.P. d/b/a/ Sprint PCS (Sprint). The Commission ordered Sprint to "apply a \$6 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." (D.99-05-021, Ordering Paragraph 1.) The Commission also denied Sprint's motion to dismiss the complaint on jurisdictional grounds.

Sprint timely filed an application for rehearing of this order claiming the order exceeded the Commission's authority and ignored all the factual defenses of Sprint. Upon reviewing the issues raised, the Commission finds that no legal error has been substantiated with respect to the Commission's jurisdiction to hear

and resolve the consumer billing complaint. Nor has Sprint shown legal error with respect to the fact that our decision was rendered without consideration given to Sprint's verified answer to the complaint and the documentary evidence submitted as part of that answer. We find, however, legal error insofar as our decision may be read to decide that the customer had a unilateral right to terminate or continue the service agreement with Sprint for as long as he wants. The Commission, therefore, denies rehearing with respect to the Commission's authority to hear this case, and grants rehearing to modify the order to correct this error. Rehearing of the modified decision is denied.

II. BACKGROUND

In January 1999, Rodney George filed a complaint with the Commission alleging Sprint failed to honor a verbal agreement entered into on March 25, 1998 for cellular phone service whereby he was to receive 40 minutes of air time for \$20 per month. Mr. George alleged that Sprint breached the agreement when they billed him instead for \$20 per month for only 20 minutes of air time. In addition, according to Mr. George, when he called Sprint on May 1, 1998 to complain, a company representative promised him a "recurring" \$6 credit on his monthly billings. The term "recurring" is used in notes of the conversation made by Mr. George, as is memorialized in a document dated September 25, 1998, which Mr. George included in the Commission's file of his complaint.

In addition, in the documents submitted with his complaint, Mr. George refers to conversations with another representative of Sprint on May 7, 1998 and May 8, 1998, within 6 and 7 days of the May 1 call. According to Mr. George, the second Sprint representative explained to him that the \$6 credit would apply to each billing for six months only.

Mr. George's formal complaint was served on Sprint on February 1, 1999. A hearing on the matter was conducted on February 23, 1999 pursuant to

the expedited complaint procedures of Section 1702.1 of the California Public Utilities Code and Rule 13.2 of the Commission's Rules of Practice and Procedure. Mr. George appeared to testify. A Sprint representative also appeared, but only to present an answer to the complaint and a motion to dismiss the complaint on jurisdictional grounds.

Citing Sprint's election not to "offer any testimony or evidence at hearing" in opposition to the complaint, the Commission indicated in D.99-05-021 that it would accept only Mr. George's evidence as a true account of the relevant facts.

In its application for rehearing, Sprint argues that:

- 1) the Commission does not have authority to hear the complaint and the remedy provided in granting Mr. George's complaint is beyond the Commission's jurisdiction, and
- 2) the Commission erred in requiring that Sprint continue to provide service for an indefinite period to any particular customer and in refusing to consider Sprint's answer and accompanying documents as evidence.

III. DISCUSSION

Commission Jurisdiction

In contesting the Commission's jurisdiction to decide the complaint, Sprint relies on 47 U.S.C. §332(c)(3)(A) of the Federal Communications Act as amended in 1993 by the Budget Act. This clause provides:

"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 regulation the other terms and conditions of commercial mobile service."

Sprint does not succeed, however, in applying the statutory language to the subject matter of this case which does not involve the regulation or establishment of rates. Instead, the complaint raises a billing issue and presents the question whether the service and rates promised the customer have been provided. It is the fairness of the billing practice, not the rates themselves which is at issue in the instant case.

Billing disputes and consumer protection matters, moreover, were reserved for state jurisdiction under the statutory reference to "other terms and conditions," as the legislative history makes clear. House Report No. 103-111 specifies that Congress intended to include among the "other terms and conditions:"

"...such matters as customer billing information and practices and billing disputes and other consumer protection matters...." (H.R. Rep. No. 103-111, 103rd Congress, 1st Sess. 211, reprinted in 1993 U.S.C.A.A.N. 378, 588.)¹

We affirm our finding in D.99-05-021, therefore, that in the matter of Rodney George, the question presented involved a billing dispute which this Commission is mandated by state and federal law to resolve.² Sprint's motion to dismiss was, therefore, properly denied.

Duration of the Agreement

Mr. George stated in his complaint that Sprint had agreed to provide him monthly cellular service which included 40 minutes of cellular air time for

¹ Contrary to Sprint's contentions, the Commission has previously distinguished a customer billing complaint from rate regulation in determining the extent of its jurisdiction over commercial mobile radio service providers. (D.96-12-071, 1996 Cal. PUC Lexis 1134, at *16-20.)

² The Commission authority to hear complaints is set forth in Sections 1702 to 1704 of the California Public Utilities Code.

\$20 dollars. Mr. George was billed, however, \$20 for 20 minutes of air time. When Mr. George complained, he was told that he would be provided a recurring credit of \$6 each month to equate to 20 additional calling minutes. Complainant filed the complaint alleging that Sprint failed to follow through on either agreement. As a remedy, the Commission ordered Sprint to apply the promised \$6 credit for as long as complainant elects to receive defendant's cellular service, as agreed between the parties.

Sprint alleges error, on the grounds that the Commission exceeded its jurisdiction by setting a service rate. However, this allegation is without merit. The Commission is fully within its authority to enforce the terms of the agreement for cellular service, based on what we heard from the parties at the hearing on the expedited complaint.³ In doing so, the Commission did not set a rate for service.

However, we agree with Sprint that insofar as the decision implies that Mr. George is entitled to service for as long as he wants, the Commission erred. Sprint does not have to continue to provide service for an indefinite period of time to Mr. George, just as Mr. George is free to terminate his service at any time. We accordingly grant rehearing and modify the decision to order that Sprint PCS shall apply a \$6 credit against its billing to Rodney George each month from the commencement of cellular service to him and for the duration of the agreement between the parties. We, therefore, will amend our order in D.99-05-021 as shown below and deny rehearing of the order as modified.

³ Contrary to Sprint's allegations, the Commission did not err in refusing to consider Sprint's answer and accompanying letters as testimony. First, under our Rules of Practice and Procedure, the attempted verification (by Sprint's attorney) does not comply with Rule 2.4(e). Second, even if we were to treat Sprint's answer as properly verified, the information contained in Sprint's answer cannot properly be relied upon, since Mr. George, who was present at the hearing, had no opportunity to cross-examine Sprint's representative who prepared the answer. Moreover, the expedited complaint procedure, which works like small claims court, bars representation of a party by an attorney, except when the attorney is appearing on behalf of himself or herself. See Rule 13.2(b).

IT IS THEREFORE ORDERED that:

1. Rehearing is denied with respect to our denial of Sprint's motion to dismiss on jurisdictional grounds.

2. Rehearing is granted to supersede Ordering Paragraph 1 of D.99-05-021 at p. 4 with the following order:

Sprint PCS shall apply a \$6 credit against its billing to Rodney George each month from the commencement of cellular service to him and for the duration of the agreement between the parties.

3. Case 99-01-040 is closed.

This order is effective today.

Dated August 5, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
CARL W. WOOD
Commissioners