

Decision 99-09-026 September 2, 1999

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Martin Davenport,

Complainant,

vs.

AT&T Communications of California, Inc.,

Defendant.

Case 99-01-015  
(Filed January 12, 1999)

**OPINION**

**Summary**

The motion of AT&T Communications of California, Inc. (AT&T or defendant) to dismiss the complaint of Martin Davenport (Davenport or complainant) is granted without prejudice.

**Background**

On January 12, 1999, Davenport filed this complaint alleging that:

"AT&T infiltrated our servers used for internet access thru a company called CRL Network Services and the AT Work Network Services."

"Fraud in billing, refusing to give us the tariff info requested, as were advised to request by the PUC, conspiracy to deny us access because we were black, industrial espionage "

The issues complainant seeks to be heard are "fraud, conspiracy, industrial sabotage, denying of information on tariffs to file a complaint. Racial slurs and arrogance."

The relief complainant seeks is "reimbursement for all funds lost and not suspend license and tariffs for internet. Also for fraud prosecute."

On March 3, 1999, AT&T filed an answer, including denials and affirmatives defenses, which in substance are as follows.

Defendant's answer denies that it has any place of business located at the address stated by complainant. Defendant further denies that AT&T Corporation, the corporate parent of defendant, has any place of business located at the address stated in Paragraph E of the complaint. Paragraph E of the complaint lists an Atlanta, Georgia P.O. Box as the address of defendant.

Defendant's answer also denies, on the basis of that it lacks sufficient information to understand what, if any, claims are being raised, the allegations contained in Paragraph F of the complaint. Paragraph F of the complaint raises claims regarding infiltration of complainant's servers, billing fraud, conspiracy because complainant is black, and industrial espionage. Additionally, defendant contends that the complaint is overly vague in nature.

Defendant admits that Davenport signed a service agreement to subscribe to EASY WORLD WIDE WEB on November 18, 1996, and retained that service until December 9, 1997. Defendant asserts that the sales, provisioning, service and billing of EASY WORLD WIDE WEB are performed by AT&T Corporation, not defendant. Defendant states that AT&T Corporation is not a California utility. Thus, defendant believes that Davenport's complaint is improperly directed at defendant, the entity subject to the Commission's jurisdiction.

Defendant also asserts that EASY WORLD WIDE WEB is not a telecommunications service. Thus, defendant contends that the Commission lacks authority over the provision of the service.

Defendant denies that complainant is entitled to any remedy or reparations in this proceeding. Instead, defendant contends that Davenport owes it a total of \$3,863.

### **AT&T's Motion**

With its answer, defendant also filed a motion to dismiss. Defendant argues that the Commission should dismiss the complaint for lack of jurisdiction. Defendant believes that complainant has identified the wrong defendant because AT&T Corporation, not defendant, provides the sales, provisioning, service and billing for EASY WORLD WIDE WEB service. Further, defendant believes that the complaint raises no issue other than claims surrounding internet service. Thus, AT&T contends that since the Commission does not regulate internet services that the subject matter is not one in which the Commission can afford relief to the complainant.

AT&T also contends that the complaint fails to state facts upon which relief may be granted. Davenport filed no response to AT&T's motion to dismiss.

### **Discussion**

Rule 9(a) of the Commission's Rules of Practice and Procedure (Rules) states that a complaint may be filed if it sets forth:

"... any act or thing done or omitted to be done by any public utility ... in violation, or claimed to be in violation, of any provision of law or of any order or rule of the Commission." (Emphasis added.)

Further, Rule 10 of the Commission's Rules requires that:

"The specific act complained of shall be set forth in ordinary and concise language. The complaint shall be so drawn as to completely advise the defendant and the Commission of the facts constituting grounds of the complaint..." (Emphasis added.)

The complaint fails to meet the requirements of Rule 9 in that it does not clearly identify a public utility as a defendant. In its complaint, in parentheses, Davenport identifies CRL Network Service and AT Work Network Services. The complaint says these are "Subcontractors of AT&T." The complaint is not clear regarding who committed the act(s) forming the basis of the complaint, defendant, defendant's corporate parent or CRL Network Service and AT Work Network Services.

The complaint also does not meet the requirements of Rule 10 in that it fails to state facts upon which relief may be granted. The complaint refers to "infiltration" of servers by CRL Network Service and AT Work Network Services. The complaint also refers to fraud in billing, conspiracy and industrial sabotage. Such allegations are general and conclusory in nature. For instance, the complaint does not describe a specific bill, who issued the bill, when the bill was issued or why the bill is fraudulent. With respect to conspiracy, the same deficiencies exist, i.e., the specific public utility involved and an explanation of what is meant by "access" being denied. The complaint also refers to racial discrimination. Although, the Commission is not the likely forum to hear a racial discrimination claim,<sup>1</sup> the complaint does not describe the specific acts constituting racial discrimination. The role of CRL Network Services and the AT Work Network Services is also unclear and ambiguous.<sup>2</sup>

---

<sup>1</sup> The Commission would entertain a complaint that a public utility under our jurisdiction is committing racial discrimination. However, our authority is limited to correcting such an unlawful practice or (in an extreme case) revoking a certificate of public convenience and necessity on the ground that an entity is unfit to offer service. The Commission does not have the authority to award damages to a specific individual.

<sup>2</sup> We make no judgment on Davenport's possible civil remedies against CRL Network Services and or the AT Work Network Services.

Although the complaint fails to explicitly state a valid cause of action, the Commission may still infer a cause of action from the facts recited in a complaint. Recently in D.99-05-008, we reiterated our liberal construction of Pub. Util. Code § 1702. In D.99-05-008, we stated that:

“When issues raised by a complaint pertain to the subject of regulation and control of a public utility, ‘[t]he complaint is not required to set forth a theory of relief; it is only necessary to allege facts upon which the Commission may act.’ (Cite omitted.) The liberal construction of complaint serves the interest of justice. (Cite omitted.)”

In the instant complaint, however, we find that Davenport neither alleges a valid cause of action or facts upon which the Commission may act.

Although we cannot discern whether the complaint is lodged against an ISP, the complainant should be advised that the Commission does not have jurisdiction over ISP service or rates. Complaints against ISPs are appropriately filed in civil court. If the complaint is amended to clarify that it concerns the acts of a California regulated utility, we will reconsider it.

We note that Davenport represents himself in this complaint proceeding and therefore may lack experience with the Commission’s protocols and standards. The Commission’s Public Advisor’s Office is available to assist the public in proceedings before the Commission.

This matter was categorized as an adjudicatory proceeding and the instructions to answer indicated that hearings were necessary. Based on our conclusion that Davenport fails to clearly set forth specific acts upon which relief may be granted, we change the prior determination from hearings are required to no hearings are required.

**Comments on Draft Decision**

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. No comments were filed.

**Findings of Fact**

1. Davenport's complaint is vague and unclear.
2. Davenport's complaint fails to clearly identify a defendant.
3. Davenport's complaint fails to state specific acts complained of in ordinary and concise language.

**Conclusions of Law**

1. Davenport's complaint fails to clearly set forth specific acts in ordinary and concise language upon which relief may be granted.
2. No hearings are required in this matter.

**O R D E R**

**IT IS ORDERED** that:

1. This complaint should be dismissed without prejudice.
2. This proceeding is closed.

This order is effective today.

Dated September 2, 1999, at San Francisco, California.

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