

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Carole Grant Hall)	
-vs-)	
SBC Long Distance, LLC)	
d/b/a SBC Long distance)	
)	Docket No. 05-0754
Complaint as to service in Chicago,)	
Illinois)	

**VERIFIED MOTION OF AT&T ILLINOIS
TO DISMISS AMENDED COMPLAINT**

Illinois Bell Telephone Company (“AT&T Illinois”) hereby moves to dismiss this case on the grounds that the claims asserted are outside the Commission’s jurisdiction and otherwise are moot. In support of this motion, AT&T Illinois states as follows.

INTRODUCTION

1. Carol Grant Hall filed a Complaint against SBC Long Distance, LLC (“SBC LD”) on December 1, 2005, disputing charges for international calls billed to her account in the spring of 2005. The Complaint consisted of the Commission’s two-page, pre-printed form for Formal Complaints, plus two attachments: 1) an October 11, 2005, letter from Annelle Rago of the SBC Executive Office; and 2) an undated statement signed by Ms. Hall.

2. On January 24, 2006, Ms. Hall filed an Amended Complaint, through which she apparently intended to add AT&T Illinois as a defendant. The Amended Complaint consists only of the two-page, pre-printed form for Formal Complaints and does not include the two attachments. The pre-printed form is essentially identical to the

original Complaint, aside from a reference to SBC Illinois¹ in the “Reason for Complaint” section. AT&T Illinois’ name does not appear on the line of the complaint form identifying the utility against which the case is brought, and the Amended Complaint was not served on AT&T Illinois.²

3. In essence, the Complaint and Amended Complaint allege that Ms. Hall wanted to block her line from making international calls and that she subscribed to a Call Control service offered by AT&T Illinois to block such calls. See Complaint Attachment 2. The Call Control service allegedly failed to block the dialing of international calls from Ms. Hall’s residence. Id.

4. The Call Control service was added to Ms. Hall’s account with AT&T Illinois on April 23, 2005. See Affidavit of Leslie A. Wilson ¶ 4 (“Wilson Aff.”) (attached as Appendix 1). The monthly rate for the service was \$7.95, excluding taxes. Id.; see also Complaint Attachment 2.

5. Ms. Hall’s telephone service was disconnected on June 20, 2005. Wilson Aff. ¶ 4. AT&T Illinois billed her account a total of \$15.37 (excluding taxes), for the Call Control service between April and June 2005. Id.

6. On October 11, 2005, AT&T Illinois issued a goodwill adjustment to Ms. Hall’s account in the amount of \$14.05, including taxes. This adjustment represented a credit for the cost of 45 days of the Call Control service. Wilson Aff. ¶ 5; see also Complaint Attachment 1. On October 28, 2005, AT&T Illinois issued another goodwill

¹ Effective January 1, 2006, Illinois Bell Telephone Company has identified itself as “AT&T Illinois” instead of “SBC Illinois”.

² Although AT&T Illinois has not been properly added as a defendant and has not been served with the Amended Complaint, it has filed an Appearance here for the limited purpose of filing its motion to dismiss.

adjustment of \$18.76 (including taxes), as a credit for two months of Call Control Service. Wilson Aff. ¶ 5.

7. The account currently has an unpaid balance of \$3,079.30. AT&T Illinois charges comprise \$165.39 of that total, while the remainder consists of charges from SBC LD. Wilson Aff. ¶ 6.

8. In the Complaint and Amended Complaint, Ms. Hall does not identify any provision of the Public Utilities Act, the Commission's rules, or the AT&T Illinois tariff that she claims has been violated. The only specific relief requested in the Amended Complaint is that the Commission should enter an order giving her "credit for the international calls." Amended Complaint, p. 2.

ARGUMENT

The Commission should dismiss the Amended Complaint for two reasons. First, the Commission lacks jurisdiction over the Amended Complaint because the claims it asserts are not cognizable here and, in any event, are inapplicable to AT&T Illinois. Second, Ms. Hall already has received the only compensation recoverable under the AT&T Illinois tariff, so her claims are moot.

Lack of Jurisdiction

The only relief explicitly requested in the Amended Complaint is that the Commission award Ms. Hall "credit for the international calls." Amended Complaint, p. 2. Disputes regarding charges for international calls are outside the Commission's authority. See, e.g., Citizens Utility Board v. Illinois Commerce Comm'n, 315 Ill. App. 3d 928, 936 (3rd Dist. 2000) (stating that ICC has regulatory power only over intrastate telecommunications rates). Moreover, SBC LD – not AT&T Illinois – was the company

that provided the international long distance service for which Ms. Hall seeks reimbursement. The Commission has no authority to require AT&T Illinois to provide a refund for services provided by another carrier. See 220 ILCS 5/9-252.1 (stating that Commission can order utility to refund overcharge for “service provided”). Accordingly, the Commission should dismiss the Amended Complaint as to AT&T Illinois.

Mootness

Even assuming that the Commission had jurisdiction over Ms. Hall’s claims, she already has received from AT&T Illinois the only remedy she could obtain from this Commission. Under the terms of the AT&T Illinois tariff, the company’s liability for service errors³ that is limited to the amount of the charges for the defective service billed to the customer for the period of the error. See Tariff No. 20, Pt. 2, § 2, ¶ 3.1 (attached as Appendix 2). The tariff thus clearly precludes recovery for any consequential damages arising from the disputed conduct here.

Both the Illinois Supreme Court and this Commission have ruled that this limitation of liability provision in the tariff precludes a customer from recovering any amount in excess of the cost of service for the term of the mistake supposedly made by the company. See In re Illinois Bell Switching Station Litigation, 161 Ill. 2d 233, 244, 641N.E.2d 440, 445 (1994); Order, Woods v. Illinois Bell Telephone Co., Ill. C.C. Dkt. 01-0127 (Sept. 26, 2001) (attached as Appendix 3). In Woods, the Commission denied a complaint seeking economic damages such as wage compensation, travel time, and the cost of replacement telephone service, relying on the limitation of liability provision in

³ For purposes of this motion, AT&T Illinois accepts as true any allegation that the Call Control service malfunctioned. It reserves the right to contest such an allegation in the event that this case proceeds to hearing.

AT&T Illinois' current tariff. Appendix 3 at 2. As the Commission ruled, the tariff "does not provide a remedy for the economic loss damages sought by Complainant." Id.

Ms. Hall's request to be reimbursed because of costs she incurred because of the supposedly ineffective Call Control service is comparable to the claims rejected in Illinois Bell Switching Station Litigation and Woods. Paragraph 3.1 of AT&T Illinois' General Terms and Conditions of Service (Appendix 2), the validity of which has been confirmed by the Illinois Supreme Court and this Commission, clearly precludes the relief she seeks.

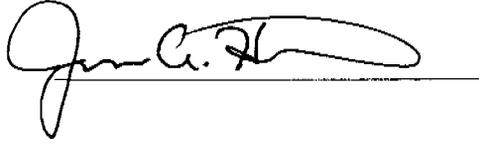
AT&T Illinois has issued \$32.81 in credits to Ms. Hall's account, more than the amount that she was billed for Call Control during the period she subscribed to that service. See Wilson Aff. ¶ 5. Because Ms. Hall can obtain no other relief from the Commission under the terms of the applicable tariff, her claim is moot. See Mecartney v. Hale, 318 Ill. App. 502, 506, 48 N.E.2d 570, 571 (1st Dist. 1943).

Moreover, the terms of the tariff governing the Call Control service state that subscription to the service "does not relieve the customer for responsibility for calls charged" to her telephone number. See Tariff No. 19, Pt. 8, § 2, ¶ 1.2(C) (attached as Appendix 4). Neither the Complaint nor the Amended Complaint denies that the calls at issue were placed from Ms. Hall's residence. As a result, Ms. Hall can be held responsible for the disputed calls.

CONCLUSION

For all the foregoing reasons, the Amended Complaint should be dismissed.

Respectfully submitted,

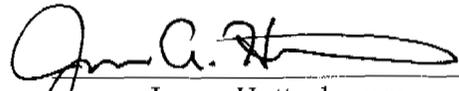
A handwritten signature in black ink, appearing to read "James A. Huttenhower", is written over a horizontal line.

James A. Huttenhower
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)
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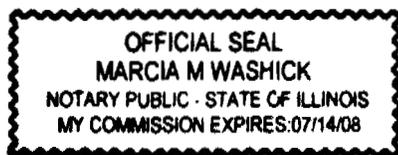
VERIFICATION

I, James Huttenhower, state that I am an Attorney for Illinois Bell Telephone Company (“AT&T Illinois”), that I have read the above foregoing **VERIFIED MOTION OF AT&T ILLINOIS TO DISMISS AMENDED COMPLAINT** and know the contents thereof, and that the same are true to the best of my knowledge, information and belief.


James Huttenhower

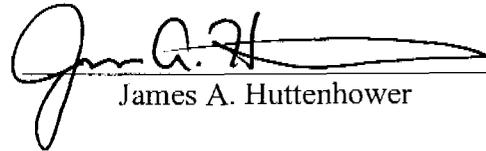
Subscribed and sworn to before
me this 19th day of April, 2006.


Notary Public



CERTIFICATE OF SERVICE

I, James A. Huttenhower, an attorney, certify that a copy of the foregoing
VERIFIED MOTION OF AT&T ILLINOIS TO DISMISS AMENDED
COMPLAINT was served on the service list via U.S. Mail and/or electronic
transmission on April 19, 2006.


James A. Huttenhower

Service List ICC Docket No. 05-0754

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