

asserts that AT&T Illinois' bills, as currently issued to customers, do not comply with the requirements of 83 Ill. Admin. Code § 735.160(a), and it requests that the Commission issue a declaratory ruling that AT&T Illinois' bill mailing practices "do not conform to the requirements" of that administrative code section. Petition ¶¶ 2, 11. The Petition is not supported by an affidavit and it is not verified by Mr. Krislov or anyone else.

2. The general topic of Section 735.160 of the Commission's rules is past due bills. The particular provision cited in the Petition discusses the due date for payment of bills: "The due date printed on the monthly bill may not be less than twenty-one (21) days after the date of the postmark on the bill, if mailed, or the date of delivery as shown on the bill if delivered by other means." 83 Ill. Admin. Code § 735.160(a).²

3. Although the Petition contains allegations regarding AT&T Illinois' current practices on the mailing of customer bills and the current appearance of the bill envelope (Petition ¶¶ 6-7 and Tab 1), it also includes allegations regarding earlier litigation involving Ameritech's bill mailing practices, the settlement of that litigation, and Mr. Krislov's efforts to enforce that settlement. Petition ¶¶ 1, 4-5.

4. The Petition provides no clear explanation of how this earlier litigation – which began in 1991 and was settled in 1993 – and Mr. Krislov's more recent efforts to enforce that settlement relate to the requested declaratory ruling, which involves AT&T Illinois' *current* bill mailing practices. The Petition simply states that it was filed because the Circuit Court of Cook County declined to refer "the matter" to the Commission. Petition ¶ 5.

² The Commission also has a rule comparable to Section 735.160(a) that is applicable to gas and electric utilities. See 83 Ill. Admin. Code § 280.90(c).

5. The Petition also fails to mention that the earlier litigation included a Commission proceeding: Morrison v. Illinois Bell Telephone Co., Docket No. 92-0403. That docket was an offshoot of a class action lawsuit Mr. Krislov had previously filed in the Circuit Court of Cook County – Morrison v. Illinois Bell Telephone Co., No. 91 CH 12529 – and the Morrison docket at the Commission also involved claims that Ameritech’s billing practices violated 83 Ill. Admin. Code § 735.160. The parties settled both Morrison actions, along with another Circuit Court lawsuit against Ameritech, in late 1993, and the Circuit Court approved the parties’ Settlement Agreement in March 1994. (A copy of the Settlement Agreement is attached as Exhibit A.)

6. Pursuant to the Settlement Agreement, the parties agreed to file a Stipulation and Joint Motion to Dismiss Docket No. 92-0403, with prejudice. Settlement Agreement ¶ 21(b).³ The Settlement Agreement also provided that, once the Circuit Court approved the settlement and the Commission dismissed Docket No. 92-0403, the class members⁴ were “permanently enjoined from bringing any claim based upon ... the lack of a dated postmark or other mark showing the actual date of mailing on customer bill envelopes.” Settlement Agreement ¶ 52. The Circuit Court retained jurisdiction under the Settlement Agreement of “all matters relating to the interpretation, administration, implementation, effectuation, and enforcement” of the agreement. Settlement Agreement ¶ 51(i).

7. In mid-2005, Mr. Krislov, in his role as class counsel for the Morrison plaintiffs in the Circuit Court lawsuit, filed a Motion to Enforce Settlement Terms in the

³ The parties to Docket No. 92-0403 filed such a stipulation, which the Commission granted on May 18, 1994. A copy of the Notice of Commission Action is attached as Exhibit B.

⁴ In general terms, the class consisted of Ameritech customers of record as of the date in 1994 when the company provided the bill credit required by the settlement, as well as certain former Ameritech customers. See Settlement Agreement ¶ 11.

Circuit Court, alleging that, at some point after 1999, AT&T Illinois changed its practices with regard to the presentation of information on the customer's bill envelope about the mailing date of the bill, and that this change meant that AT&T Illinois was in violation of the Settlement Agreement.⁵ Among other things, Mr. Krislov argued that AT&T Illinois' obligations under the Settlement Agreement were indistinguishable from the obligations imposed by 83 Ill. Admin. Code § 735.160(a). Following extensive briefing and the deposition of an AT&T employee responsible for bill production software, the Circuit Court, on May 9, 2006, denied Mr. Krislov's motion to enforce the settlement. The court found that AT&T Illinois' current bill mailing practices complied with the terms of the Settlement Agreement. The court also denied Mr. Krislov's request to refer the issue of AT&T Illinois' compliance with Section 735.160(a) to the Commission. A copy of the Circuit Court's order is attached as Exhibit C.

8. On May 30, 2006, Mr. Krislov filed this Petition, the caption for which identifies him as the petitioner "for himself and as Class Counsel." On June 8, 2006, he filed a Notice of Appeal of the Circuit Court decision.

ARGUMENT

1. The Petition Is Not a Proper Use of the Declaratory Ruling Process.

The Commission should dismiss the Petition, with prejudice, because the request Mr. Krislov presents in the Petition is not an appropriate invocation of the declaratory ruling process. Under the relevant administrative code provision, the Commission has discretion to issue a declaratory ruling with respect to "the applicability of any statutory

⁵ For administrative reasons, Mr. Krislov's filing was given a new case number in the Circuit Court: Docket No. 05 CH 013088.

provision enforced by the Commission or of any Commission rule to the person(s) requesting a declaratory ruling.” 83 Ill. Admin. Code § 200.220(a). As a general matter, this process has been used by a public utility, or a company that might be viewed as a utility, to ask whether a particular statute or rule would apply to the petitioning company if it engaged in a certain course of conduct. See, e.g., Order, ISG Hennepin, Inc. and Illinois Power Co., Docket No. 02-0549 (Oct. 1, 2002) (holding that 83 Ill. Admin. Code § 452.230(b) did not bar utility’s assignment of service agreement); Order, Metricom, Inc., Docket No. 00-0234 (Sept. 20, 2000) (holding that Article XIII of Public Utilities Act was not applicable to petitioner’s services); Order, CogenAmerica (Morris) LLC, Docket No. 98-0630 (Nov, 18, 1998) (holding that petitioner was not “alternative retail electric supplier” under 220 ILCS 5/16-102).

Mr. Krislov’s Petition is different. It does not ask the Commission to make a declaration about how the relevant code provision (83 Ill. Admin. Code § 735.160(a)), applies to Mr. Krislov, the person submitting the request. Instead, the Petition asks the Commission to make a declaration on how the code provision affects a *third party*: AT&T Illinois. See Petition ¶ 11 (requesting ruling that AT&T Illinois billing practices “do not conform to the requirements” of 83 Ill. Admin. Code § 735.160(a)). Such a request is improper, since Section 200.220(a) can only be used to obtain a declaration about how a statute or rule applies to the person filing the petition. See Resource Technology Corp. v. Commonwealth Edison Co., 343 Ill. App. 3d 37, 44, 795 N.E.2d 936, 942 (1st Dist. 2003) (finding that so-called declaratory ruling was improper because person that would be “affected” by declaratory ruling was not entity that filed declaratory

ruling petition); Order, Illinois Industrial Energy Consumers, Docket No. 98-0607, 1999 Ill. PUC Lexis 202, at *10 (Mar. 10, 1999) (attached as Exhibit D).

In some sense, the question of the applicability of 83 Ill. Admin. Code § 735.160(a) can be answered simply by reference to another code provision. Section 735.30 of the Commission's rules states that the Part 735 rules apply "to all telephone companies under the jurisdiction" of the Commission (83 Ill. Admin. Code § 735.30(a)), so that there is no question that Section 735.160(a) applies to AT&T Illinois.⁶ See Order, Illinois Power Co. v. Town of Normal, Docket No. 98-0329, 1998 Ill. PUC Lexis 969, at *5 (Nov. 5, 1998) (refusing to enter, as needless "tautology," requested declaratory ruling that Public Utilities Act applied to Illinois Power) (attached as Exhibit E). Conversely, the explicit applicability of the Part 735 rules only to telephone companies confirms that the Petition is improper. Because those rules apply only to telephone companies, a declaratory ruling request from a customer such as Mr. Krislov about the applicability of Section 735.160(a) to himself could only be answered with a declaration that the rule is inapplicable. Indeed, each of the four subsections in Section 735.160 sets guidelines for the conduct of the telephone company, not the customer.

Finally, if Mr. Krislov's declaratory ruling request is inappropriate under Section 200.220, the Commission has no other source of authority to consider his request. Cf. Harrisonville Telephone Co. v. Illinois Commerce Comm'n, 176 Ill. App. 3d 389, 392-93, 531 N.E.2d 43, 45 (5th Dist. 1988) (holding that Commission's sole authority to make declaratory rulings derives from adoption of rule allowing such rulings). Accordingly, the Commission should dismiss the Petition with prejudice.

⁶ This statement does not constitute an admission that AT&T Illinois' current bill mailing practices fail to comply with Section 735.160(a).

2. The Declaratory Ruling Process Should Not Be Used to Re-Examine Issues That Have Already Been Decided.

Mr. Krislov filed the Petition because his efforts to enforce the Settlement Agreement in the Circuit Court were unsuccessful. Although the motive for the Petition is not entirely clear, the Petition may be an attempt either to re-litigate matters resolved by the Morrison settlement or to obtain a ruling that AT&T Illinois is violating the Settlement Agreement. The Commission, however, does not have the ability to render a decision under either scenario.

On the one hand, the Petition may be an effort to re-open issues that were closed by the 1993 settlement of the Morrison actions in the Circuit Court and at the Commission. Both the Morrison complaint and the current petition raised issues regarding whether Ameritech or AT&T Illinois had to include a dated postmark on its bills to comply with 83 Ill. Admin. Code 735.160(a). The Petition refers to Mr. Krislov as “Class Counsel” and alleges that he represents a “certified class of customers.”

Petition ¶ 1. Given that the only class certified was the settlement class in Morrison, such references certainly give the impression that the Petition is trying to get the Commission to examine matters that were raised – and resolved – in Morrison. Under the Settlement Agreement, however, settling class members were “permanently enjoined” from bringing any claim based on “the lack of a dated postmark or other mark showing the actual date of mailing on customer bill envelopes.” Settlement Agreement ¶ 52. As a result, the only class that Mr. Krislov could represent here has given up any claim regarding the

presence of a dated postmark on AT&T Illinois' bills.⁷ The Commission thus cannot consider such a claim.

On the other hand, the Petition may be a back-door effort to obtain a ruling that AT&T Illinois is violating the Settlement Agreement. In the Motion to Enforce Settlement Terms that Mr. Krislov filed in the Circuit Court last year, he argued that AT&T Illinois' obligations under the Settlement Agreement were indistinguishable from the obligations imposed by 83 Ill. Admin. Code § 735.160(a) and that, because AT&T Illinois' current bill mailing practices allegedly did not comply with Section 735.160(a), the company was violating the Settlement Agreement. The Circuit Court rejected this argument, concluding that the company was *not* violating the agreement.

The Settlement Agreement gives the Circuit Court jurisdiction over “all matters relating to the . . . enforcement” of the agreement. Settlement Agreement ¶ 51(i) (emphasis added). That court has ruled against the position of Mr. Krislov and the class he purports to represent, and he has taken an appeal of that decision. Given Mr. Krislov's theory that the Settlement Agreement and Section 735.160(a) impose identical obligations on AT&T Illinois, he should not be allowed to use the Commission's authority to make declaratory rulings as an alternate way to obtain an adjudication of his claims regarding the Settlement Agreement. The Commission should dismiss the Petition and not allow Mr. Krislov a second bite at the apple.

⁷ The only possible claim that Mr. Krislov can assert on behalf of the Morrison class is that AT&T Illinois is in violation of the Settlement Agreement.

3. The Commission Should Not Exercise Its Discretion to Issue a Declaratory Ruling Here.

The rule governing declaratory rulings gives the Commission “sole discretion” to decide whether it should issue a declaratory ruling. 83 Ill. Admin. Code § 200.220(a). The Petition requests a ruling that AT&T Illinois’ bill mailing practices do not comply with Section 735.160(a). Because such a ruling may impact utilities other than AT&T Illinois, and because a unique procedural framework applies to the declaratory ruling process, the Commission should exercise its discretion and decline to issue a declaratory ruling here.

As stated above, Section 735.160(a) is applicable to all telephone companies regulated by the Commission. See 83 Ill. Admin. Code § 735.30 (discussing scope of Part 735 rules). Moreover, the Commission has a rule comparable to Section 735.160(a) that is applicable to gas and electric utilities. See 83 Ill. Admin. Code § 280.90(c). As a result, it is quite likely that other telecommunications carriers or utilities have bill mailing practices similar to those used by AT&T Illinois and thus those other companies could be affected by the interpretation of law requested by the Petition.

In addition, the code provision governing declaratory rulings establishes a procedural framework that differs from the usual Commission process. For example, the Commission has “sole discretion” to decide a declaratory ruling request exclusively on the basis of written submissions and without an evidentiary hearing. 83 Ill. Admin. Code § 200.220(h). Declaratory rulings also cannot be appealed. 83 Ill. Admin. Code § 200.220(i). Cf. Resource Technology Corp., supra, 343 Ill. App. 3d at 44, 795 N.E.2d at 942 (concluding that Commission decision was not declaratory ruling under § 200.220 and thus could be reviewed on appeal).

The Commission has relied on this unique procedural framework and the possible statewide effect of a declaratory ruling as sufficient reasons not to issue such a ruling. See Exhibit D, 1999 Ill. PUC Lexis 202, at *13 (cautioning against the issuance of “abstract legal opinions that will bind parties not before us”). The Commission should similarly be wary of the possible preclusive effect of the declaratory ruling requested here, especially given the likelihood that the ruling could be used to initiate class action lawsuits challenging the billing practices of various utilities. The Commission thus should dismiss the Petition.

4. The Commission Cannot Consider the Petition in Its Current Form.

As explained above, the Commission should dismiss the petition with prejudice because it is an improper invocation of the declaratory ruling process. However, assuming that the Commission determines that Mr. Krislov is an appropriate person to request a declaratory ruling regarding AT&T Illinois’ compliance with 83 Ill. Admin. Code § 735.160, the Petition still should be dismissed because it fails to comply with the Commission’s rules in several ways.

First, to the extent that Mr. Krislov, in the Petition, purports to be representing a class of customers, the Petition is improper. Mr. Krislov’s filing makes the definite suggestion that it is brought on behalf of a class. The caption refers to Mr. Krislov as a petitioner “for himself and as Class Counsel,” and the Petition alleges that he brings this case “as an individual and as class counsel for [a] certified class of customers.” Petition ¶

1. However, there is no certified class of customers before the Commission, and there cannot be. The Commission’s practice rules expressly provide that, because the agency “has no statutory authority to entertain class actions, no such actions shall be filed and

maintained before the Commission.” 83 Ill. Admin. Code § 200.95; see also Moncada v. Illinois Commerce Comm’n, 164 Ill. App. 3d 867, 872-73, 518 N.E.2d 349, 353 (1st Dist. 1987).⁸ As a result, because Mr. Krislov appears to be trying to represent some amorphous class of customers through the Petition, his filing violates both the Commission’s rules and Illinois law, and it should be dismissed.

Second, the administrative code provision on declaratory rulings requires that any request for such a ruling that contains allegations of fact “be supported by affidavit or verified.” 83 Ill. Admin. Code § 200.220(i). The Petition includes no verification or affidavit, and therefore is improper.

Finally, Section 200.220(b)(1) requires that a request for a declaratory ruling contain, among other things, “a clear, concise statement of the controversy or uncertainty that is the subject of the request” and “citations to any statutes, rules, orders or other authorities involved.” 83 Ill. Admin. Code § 200.220(b)(1). The Petition fails to comply with this requirement because it provides only an imprecise and incomplete description of the controversy. Although the Petition refers to the earlier litigation between the Morrison plaintiffs and Ameritech over the company’s bill mailing practices in 1991, and the settlement of that litigation, its limited description of the litigation is incomprehensible except to someone already familiar with the matter. Moreover, the Petition omits *any* discussion of Docket 92-0403, the version of Morrison brought before the Commission. Given the Petition’s repeated references to the earlier litigation and Mr. Krislov’s status as class counsel (Petition ¶¶ 1, 4-5), Mr. Krislov obviously believes that the Morrison litigation is somehow relevant to resolution of the declaratory ruling

⁸ Indeed, in a ruling in Docket No. 92-0403, the hearing examiner struck the class allegations from Mr. Krislov’s Morrison complaint. See Transcript of Mar. 15, 1993, Hearing at p. 6 (attached as Exhibit F).

request. As a result, the Commission should not consider the request without a more complete description of the two Morrison actions, the parties' obligations under the Settlement Agreement, and Mr. Krislov's recent efforts in the Circuit Court to enforce that agreement. Because the Petition fails to provide information necessary to understand and resolve the issues, the Commission should dismiss it.

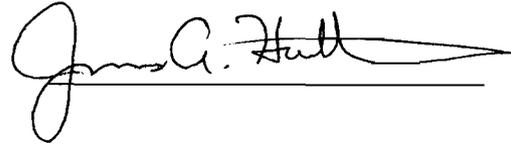
5. Mr. Krislov Can Present His Claim to the Commission Via Other Means.

This motion points out the multitude of ways in which Mr. Krislov's Petition is improper and the reasons why it should be dismissed. There are, however, other procedural vehicles for Mr. Krislov to present to the Commission the issue he raises regarding AT&T Illinois' current bill mailing practices. For example, Mr. Krislov alleges in the Petition that he is an AT&T Illinois customer who receives his bill by mail and who has paid late charges within the last year. Petition ¶ 1. To the extent that he believes that AT&T Illinois imposed those late charges improperly, because of its alleged noncompliance with Section 735.160(a), Mr. Krislov can file a complaint, seeking a refund of the late charges he paid. Although AT&T Illinois would have good defenses to such a complaint, it would be more appropriate for Mr. Krislov to present his concerns about AT&T Illinois' current bill mailing practices to the Commission through the complaint process than through the process he has chosen.

CONCLUSION

Wherefore, for all the foregoing reasons, AT&T Illinois asks that the Commission dismiss the Petition, with prejudice.

Respectfully submitted,

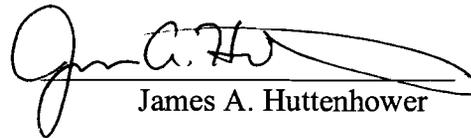
A handwritten signature in black ink, appearing to read "James A. Huttenhower". The signature is written in a cursive style and is positioned above a solid horizontal line that spans the width of the signature.

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STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

VERIFICATION

I, James A. 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 PETITION FOR DECLARATORY RULING** and know the contents thereof, and that the same are true to the best of my knowledge, information and belief.


James A. Huttenhower

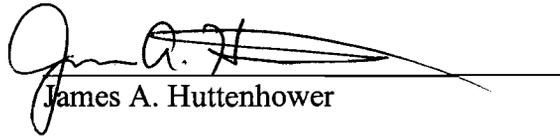
Subscribed and sworn to before
me this 20th day of June, 2006.


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 PETITION FOR DECLARATORY RULING** was served on the service list via U.S. Mail and/or electronic transmission on June 20, 2006.


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