

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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<b>Carole Grant Hall</b>	)	
	)	
<b>vs.</b>	)	<b>Docket 05-0754</b>
	)	
<b>SBC Long Distance, LLC</b>	)	

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

The Complainant, Carole Grant Hall, fails to address the substance of the legal arguments Illinois Bell Telephone Company (“AT&T Illinois”) raises in its motion to dismiss her Amended Complaint.<sup>1</sup> She instead focuses on matters that have no bearing on the Commission’s ability to decide the issues involved in the motion, and she invites the Commission to act beyond the scope of its authority. Because the Commission has no jurisdiction over the claims Ms. Hall raises and because those claims are moot, it should dismiss the Amended Complaint.

**ARGUMENT**

AT&T Illinois made two arguments in its motion to dismiss: 1) the Commission lacks jurisdiction over the Amended Complaint because the claims it asserts are not cognizable here or are inapplicable to AT&T Illinois; and 2) the claims raised against AT&T Illinois in the Amended Complaint are moot. See AT&T Ill. Mot. at 3-5. Ms. Hall responds to the jurisdictional argument by suggesting that the Commission ignore the limitations on its authority created by state law. She does not directly address the

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<sup>1</sup> Ms. Hall did not serve a copy of her response on counsel for AT&T Illinois, despite having promised to do so at the last status hearing. See May 3, 2006, Tr. at 6. Counsel obtained the document through the Commission’s e-docket system.

mootness issue, other than to admit that she has received credit for any charges AT&T Illinois billed for Call Control, the call blocking service that she claims was ineffective. Because Ms. Hall failed to rebut AT&T Illinois' arguments, the Commission should dismiss the Amended Complaint.

### **Lack of Jurisdiction**

Ms. Hall addresses the jurisdictional argument by asserting that, because AT&T Illinois and SBC Long Distance, LLC ("SBC LD") are affiliated entities, the Commission simply should consider all aspects of her claims against both companies. Response at 2.<sup>2</sup> This assertion ignores the limited nature of the Commission's authority.

Under Illinois law, an administrative agency, such as the Commission, is a statutory creation and has no common law or general powers. E.g., Harrisonville Tel. Co. v. Illinois Commerce Comm'n, 176 Ill. App. 3d 389, 392, 531 N.E.2d 43, 45 (5<sup>th</sup> Dist. 1988). As a result, the Commission derives its power to act "solely from the statute creating it, and its acts or orders which are beyond the purview of the statute are void." Id. at 392, 531 N.E.2d at 45; Illinois Mun. Elec. Agency v. Illinois Commerce Comm'n, 247 Ill. App. 3d 857, 860, 617 N.E.2d 1363, 1364-65 (4<sup>th</sup> Dist. 1993).

The Public Utilities Act contains two limitations on the Commission's authority that are relevant here. First, the Commission has jurisdiction over a telecommunications carrier only to the extent that the carrier is providing "telecommunications services between points within the State." 220 ILCS 5/13-202 (defining "telecommunications carrier"). Ms. Hall seeks a refund of charges for international calls (see Amended Complaint at 2), but the Commission has no authority over such calls, regardless of what

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<sup>2</sup> Ms. Hall may be confused about which lawyer is representing which company, since she refers to AT&T Illinois' counsel as "the Long distance attorney." Response at 2.

carrier provided the service. See Citizens Utility Board v. Illinois Commerce Comm’n, 315 Ill. App. 3d 928, 936, 735 N.E.2d 92, 98 (3<sup>rd</sup> Dist. 2000) (stating that Commission has regulatory power only over intrastate telecommunications rates). Second, the Commission has no authority to require one carrier to provide a refund for services provided by another carrier. See 220 ILCS 5/9-252 (stating that Commission can require utility to refund “excessive or unjustly discriminatory amount [charged] for its product, commodity or service”); 220 ILCS 5/9-252.1 (stating that Commission can order utility to refund overcharge only for “service provided”). Because Ms. Hall seeks a refund of charges assessed by SBC LD, the Commission cannot order AT&T Illinois to refund those charges. The Commission should dismiss the Amended Complaint as to AT&T Illinois.

### **Mootness**

Ms. Hall addresses AT&T Illinois’ mootness argument only by implication. She asserts that, since AT&T Illinois already provided credit for the charges for the Call Control service and removed other disputed charges from her bill, it should simply credit her account for the disputed SBC LD charges as well. Response at 1.

Through this assertion, Ms. Hall concedes the factual basis for AT&T Illinois’ mootness argument: that she already has received the only remedy that the Commission could order AT&T Illinois to provide: a refund of the cost of the Call Control service. Under the terms of the AT&T Illinois tariff, the company’s liability for service errors<sup>3</sup> 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 to AT&T Illinois

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<sup>3</sup> 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.

Motion to Dismiss as Appendix 2). In this case, the relevant charges are those AT&T Illinois billed to Ms. Hall for Call Control. The company, however, has already credited Ms. Hall's account for more than what she was billed for Call Control. See Affidavit of Leslie A. Wilson ¶ 5 (attached to AT&T Motion to Dismiss as Appendix 1).<sup>4</sup> Any claim Ms. Hall could raise against AT&T Illinois is thus moot.

In addition, Ms. Hall's request to be credited for all of the disputed calls does not prevent foreclose a finding that any possible claim against AT&T Illinois is moot. The mootness of a party's claims is dependent both on the relief that the party requests in its Complaint and on the scope of the Commission's authority. The sole relief sought in the Amended Complaint is that the Commission enter an order giving Ms. Hall "credit for the international calls." Amended Complaint, p. 2. As explained above, the Commission does not have jurisdiction over charges for international calls, so it does not have the ability to order AT&T Illinois to provide the relief sought. The Commission thus should dismiss the Amended Complaint.

### **CONCLUSION**

THEREFORE, for all of the foregoing reasons and for the reasons stated in AT&T Illinois' Verified Motion, the Complaint should be dismissed.

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<sup>4</sup> The credits were adjustments to maintain customer good will and do not represent a decision by AT&T Illinois that Ms. Hall's service did not function properly.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, James A. Huttenhower, an attorney, certify that a copy of the foregoing  
**REPLY OF AT&T ILLINOIS IN SUPPORT OF VERIFIED MOTION TO  
DISMISS AMENDED COMPLAINT** was served on the service list via U.S. Mail  
and/or electronic transmission on June 30, 2006.

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James A. Huttenhower

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