

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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<b>W. Mauldin Smith</b>	)	
	)	
v.	)	<b>Docket 08-0474</b>
	)	
<b>Illinois Bell Telephone Company</b>	)	
	)	
<b>Complaint as to whether the disconnection of a business number that existed more than 30 years was justified under Illinois law and the facts of this case in Chicago, Illinois</b>	)	
	)	

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**ILLINOIS BELL TELEPHONE COMPANY’S REPLY BRIEF ON EXCEPTIONS**

Pursuant to Section 200.830 of the Illinois Commerce Commission’s Rules of Practice, 83 Ill. Admin. Code § 200.830, Illinois Bell Telephone Company (“AT&T Illinois”) respectfully submits this Reply Brief on Exceptions to the Brief on Exceptions filed by Complainant W. Mauldin Smith (“Complainant”) on March 11, 2009. The Complainant has suggested substantial changes to the Administrative Law Judge’s Proposed Order issued in the instant proceeding regarding AT&T Illinois’ decision to disconnect Complainant’s business line after he failed to pay past-due amounts owed on his business account.

In his Brief on Exceptions, the Complainant takes exception to twenty-four paragraphs contained in the Proposed Order. However, the Complainant does not include any references to the specific parts of those paragraphs with which he disagrees. Nor does he offer any explanation regarding why he believes information in the twenty-four paragraphs is factually or legally incorrect. Instead, the Complainant sets forth his unsupported view of the facts, which largely lacks citation to the record<sup>1</sup> and relevance to the legal issues involved in this case, and

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<sup>1</sup> Section 200.830(e) of the Commission’s Rules of Practice requires that statements of facts in an Exceptions brief be supported by citations to the record. Complainant’s failure to comply with this requirement, by itself, is sufficient reason for the Commission to reject his exceptions.

concludes that AT&T Illinois has acted “improperly,” even though the Complainant has not identified a single law or regulation enforced by the Commission that AT&T Illinois has violated. AT&T Illinois disagrees with each of the Complainant’s exceptions and responds to them in the order in which they appear in his brief.

**I. RESPONSE TO COMPLAINANT’S EXCEPTIONS TO THE PROPOSED ORDER’S SUMMARY OF “COMPLAINANT’S POSITION”**

**Response to Complainant’s Exception to Paragraph 1:** The Complainant does not identify any error in the first paragraph of this section, which contains a concise summary of the positions taken by the Complainant at the evidentiary hearing and in post-hearing briefing. The first sentence of paragraph 1 accurately states that “Mr. Smith believes he was discriminated against by AT&T.” Proposed Order (“PO”) at 1; *compare* Smith Opening Br. at 3-4. The rest of the paragraph correctly summarizes the Complainant’s assertions that he had an AT&T Illinois business line for over 30 years (PO at 1; *compare* the caption to his complaint), and that AT&T Illinois did not follow customary billing procedures by refraining from sending him a disconnection notice for the nine months during which AT&T Illinois was on notice that the Complainant was in bankruptcy proceedings (PO at 1; *compare* Tr. 42:9-13).

Instead of challenging any specific aspect of the ALJ’s summary in paragraph 1, the Complainant urges the Commission to substitute in a different set of unsupported facts. The Commission should reject this exception in full. First, the “facts” asserted by the Complainant are unnecessary for a full understanding of the case and are already summed up by the ALJ’s finding that “Mr. Smith believes he was discriminated against by AT&T.” PO at 1. Second, these facts do not call into question whatsoever the Commission’s ultimate findings of fact and law. The ALJ correctly concluded that “Mr. Smith’s claim regarding discrimination is beyond the authority of the Commission” (PO at 5), and the Complainant does not challenge that legal

conclusion. It would serve no purpose to amend the Proposed Order to include the Complainant's opinions about his interactions with individual AT&T Illinois employees and his speculation about those employees' racial backgrounds.<sup>2</sup>

**Response to Complainant's Exception to Paragraph 2:** The Complainant does not challenge any of the ALJ's findings in this paragraph, which accurately sets forth the following undisputed facts: the Complainant filed an informal complaint with the ICC on July 14, 2008 (Tr. 39:2-21); the Complainant and AT&T Illinois employees participated in a conference call on July 18, 2008 to attempt to negotiate a payment arrangement (Tr. 159:2-8); the parties did not reach an agreement on that call and the Complainant's business line was disconnected that afternoon (*see* Tr. 105:5-14; Tr. 154:20-155:6; Tr. 157:4-13; *see also* Tr. 153:11-22); on July 21, AT&T Illinois notified the Commission that the informal complaint had been closed (Tr. 141:2-142:13); and, in the Complainant's view, AT&T Illinois violated the law by disconnecting his line before the informal complaint was closed on July 21. *See* PO at 1-2. In his proposed replacement language for paragraph two, the Complainant merely asserts additional facts and opinions regarding the July 18 conference call, which are not needed for a full understanding of the Complainant's position or any legal or factual issue in dispute. In addition, page 10 of the Complainant's "business record," *i.e.* notes that he purportedly took during a conversation with an AT&T Illinois employees on July 18, does not support his statement in this exception that "Ms. Thomas said that she was sending a letter to the Commission and ended the three-way call." This exception should be rejected in full.

**Response to Complainant's Exception to Paragraph 3:** In the first sentence of this paragraph, the ALJ correctly states that "Mr. Smith testified at the hearing that he does not

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<sup>2</sup> There is no definitive evidence in the record about the race of the AT&T employees named by the Complainant in his exceptions; instead, there are only Complainant's guesses as to their race.

dispute the amount he owes the Company, but rather that he does not agree with the payment arrangement offered by the Company.” PO at 2. The Complainant asserts in his exceptions to this paragraph that “there was no portion of the bill undisputed.” But this statement contradicts the Complainant’s own admission at the evidentiary hearing that he did not dispute the correctness of AT&T Illinois’ charges. *See* Tr. 43:22-44:3. Specifically, the Complainant had the following exchange with ALJ Haynes:

JUDGE HAYNES: Okay. You're arguing about whether your service should have been cut off otherwise, if they had done it? Is there any argument about the billing here?  
MR. W. MAULDIN SMITH: No, not billing. Collection.

Tr. 43:20-44:3.

In the second sentence of paragraph three, the ALJ correctly summarizes the Complainant’s position that AT&T Illinois “wanted him to pay half the amount due immediately and the other half within two to three weeks.” PO at 2. It is unclear why the Complainant takes exception with this finding, because he proposes the very same finding in his exceptions to paragraph one.

In the third sentence of paragraph three, the Proposed Order states that the Complainant wanted to pay only \$50 per month on his overdue balance, which is perfectly consistent with the Complainant’s own position in his exceptions to paragraph 1 that he asked to be allowed to make payments “equal to the average monthly bill until the arrearage was paid.” Thus, there is no reason to revise this sentence of the Proposed Order.

The remainder of the Complainant’s exceptions to paragraph three has nothing to do with that portion of the Proposed Order. Instead, the Complainant uses this exception to accuse one of AT&T Illinois’ witnesses of lying about having spoken to a counselor in the Commission’s

Consumer Services Division (“CSD”). But in fact, the record shows that AT&T Illinois’ witness Shirley Anderson, the customer relations manager responsible for overseeing the company’s response to complaints filed in the Commission (Tr. 133:10-16), reported to the Commission’s CSD on Monday, July 21 that AT&T Illinois and the Complainant had been unable to resolve his informal complaint on Friday, July 18 and therefore AT&T Illinois had disconnected the Complainant’s business line on that afternoon (Tr. 141:2-142:13). The record also shows that Ms. Anderson subsequently spoke with a CSD Counselor and explained that, although she transmitted her report to the CSD on July 21, the final actions on the Complainant’s informal complaint occurred on July 18. Tr. 142:14-144:14. As Ms. Anderson testified, the Counselor from the CSD told Ms. Anderson that he understood why AT&T Illinois “considered [the] issue to be closed on the 18th,” and did not indicate that AT&T Illinois had taken any inappropriate action on the Complainant’s account. Tr. 144:7-14. There is absolutely nothing in the record to suggest that Ms. Anderson’s summary of events is incorrect, even though the Complainant conducted an extensive cross-examination of Ms. Anderson. This part of the Complainant’s exception to paragraph three should be rejected.

Finally, the Complainant asserts that the Commission should add to paragraph three the finding that during “settlement conferences” the Complainant “agreed to pay any amount claimed by AT&T.” This information has no place in the Proposed Order because it was not the subject of testimony and, in any event, is irrelevant to the subject of Complainant’s claim because it has nothing to do with the propriety of AT&T Illinois’ actions in July 2008.

## **II. RESPONSE TO COMPLAINANT’S EXCEPTIONS TO THE PROPOSED ORDER’S SUMMARY OF “RESPONDENT’S POSITION”**

In his exceptions brief, the Complainant challenges the ALJ’s summary of *AT&T Illinois*’ position in this proceeding. The Complainant never suggests, though, that anything in the ALJ’s summary is inconsistent with the case put on by AT&T Illinois during the evidentiary hearing. In addition, the Complainant does not cite to anything in the record that calls the ALJ’s summary into doubt, as required by the Commission’s rules. *See* 83 Ill. Admin. Code § 200.830(e). Clearly, it is AT&T Illinois – and not the Complainant – that is best equipped to determine whether the ALJ accurately summarized AT&T Illinois’ position in this case. And AT&T Illinois had no exceptions to the ALJ’s summary (or to any part of the Proposed Order). Thus, the ALJ should reject the Complainant’s exceptions to paragraphs one and three through nine of the section of the Proposed Order titled “Respondent’s Position.”

## **III. RESPONSE TO COMPLAINANT’S EXCEPTIONS TO THE “COMMISSION ANALYSIS AND CONCLUSION”**

The Complainant does not challenge the ALJ’s findings in the first two paragraphs of the Commission Analysis and Conclusion, which are that the Complainant: (1) failed to show that AT&T Illinois did not follow standard collection and disconnection practices; (2) did not pay his bill for nine months; (3) received a proper disconnection notice; and (4) did not identify any regulation that AT&T Illinois has violated. These findings, in and of themselves, fully support the Proposed Order’s ultimate conclusion that the complaint should be denied.

**Response to Complainant’s Exception to Paragraph 3:** Skipping over these key findings, the Complainant focuses on paragraph three, which explains that, although the Commission’s rules do not specify when an informal complaint is concluded, the rules are “clear that a Complainant must pay the undisputed portion of his bills in order to be protected from

disconnection while an informal or formal Complaint is pending.” PO at 4. In his exception to this paragraph, the Complainant once again urges the Commission to find that AT&T Illinois engaged in discrimination when it disconnected his business line. Once again, however, this issue is not before the Commission. As the Proposed Order correctly recognizes, adjudication of the Complainant’s discrimination claim is beyond the Commission’s authority. PO at 5. *See also* Tr. 147:18-22 (ALJ’s statement that the Commission may only “look at whether or not” the Complainant’s business line was “improperly disconnected,” and “any other claims are not properly brought before the Illinois Commerce Commission” and cannot be considered). In any event, the “facts” the Complainant proposes in this exception are not supported by the record. Specifically, the Complainant offers no support for his assertion that AT&T Illinois has “cover[ed] up” discriminatory “actions by black women by then having a white woman lie under oath in the legal proceedings that follow.” The Complainant did not establish these facts through discovery or during the evidentiary hearing, at which he had a chance to cross-examine AT&T Illinois’ witnesses and call witnesses of his own. (In fact, the Complainant had no way of knowing the race of the AT&T Illinois employees with whom he had the July 18 conference call or of AT&T Illinois’ witness Ms. Anderson, who appeared at the evidentiary hearing telephonically and who testified about AT&T Illinois’ handling of the informal complaint and communications with the Commission’s CSD.) Complainant’s Exception to paragraph 3 should be rejected.

**Response to Complainant’s Exception to Paragraph 4:** Paragraph four of the Commission Analysis and Conclusion sets forth the correct current and past-due balances on the Complainant’s business account as of July 2008. Paragraph four also properly concludes that the Complainant does not dispute these amounts and therefore that AT&T Illinois “was within its

rights to disconnect Mr. Smith while the informal complaint was pending because Mr. Smith failed to pay the undisputed portion of his bill.” PO at 4.

The Complainant’s exception to Paragraph four does not address or deny any of these findings. Instead, the Complainant baldly asserts that the Commission should instead conclude that AT&T Illinois could not have disconnected his line on July 21, 2008 (3 days after the actual disconnection) “because Complainant had the money to stop disconnection of his business number . . . and he would have paid AT&T any amount necessary to do this” on July 21. This conclusion is based on speculation about a hypothetical set of events, rather than evidence presented at the hearing. Moreover, this conclusion is contradicted by the record. First, the Complainant repeatedly stated at the evidentiary hearing that he could not pay the entire past-due amount immediately. *See, e.g.*, Tr. at 47:21-48:2 (Complainant: “I wasn’t going to set myself up for failure or for the type of problem that paying the entire amount of a nine-month bill would have presented to my business . . . .”). Second, the record shows that there was absolutely nothing stopping the Complainant from paying his past-due balance on July 21 and having his business line restored at that time. As AT&T Illinois witness Ms. Berry testified, the business line was only “temporarily interrupted for nonpayment” on July 18; the line was not permanently disconnected until nearly two weeks later, on July 30. Tr. 93:15-17. Paragraph four of the Commission Analysis and Conclusion should therefore remain unchanged.

**Response to Complainant’s Exception to Paragraph 5:** In his exception to paragraph five, the Complainant asks the Commission to find that “AT&T allowed its agents to disregard the intent of the Illinois utility regulation protecting consumers from discriminatory treatment[.]” This exception should be rejected. First, the Complainant has never identified the “Illinois utility regulation” that purportedly gives the Commission authority to decide claims of racial and

gender discrimination such as those raised in the complaint. As ALJ Haynes explained at the evidentiary hearing, the Commission “can look at whether or not” the Complainant’s business line was “improperly disconnected,” but “any other claims are not properly brought before the Illinois Commerce Commission” and cannot be considered. Tr. 147:18-22. Second, even if the Commission could consider discrimination claims under some legal theory, the evidence presented by the Complainant would fall far short of meeting any applicable burden of proof. All the Complainant has offered as evidence is his subjective belief that a white business customer would not have been treated the same way he was if that white customer owed substantial past-due charges on his or her account.

**Response to Complainant’s Exception to Paragraphs 6, 7 and 8:** The Complainant lumps his exception to paragraphs six, seven and eight of the Commission Analysis and Conclusion into a single paragraph. This tactic does not comply with the Commission’s rules regarding exceptions briefs, which provides that “[e]xceptions and replies thereto with respect to statements, findings of fact or rulings of law must be specific and must be stated and numbered separately in the brief.” 83 Ill. Admin. Code § 200.830.

In addition, the Complainant’s exception to paragraphs six, seven and eight does not identify any error in the ALJ’s findings. In paragraph six, the ALJ correctly determined that it does not have authority to award damages. PO at 5; *see also, e.g., Moenning v. Illinois Bell Tel. Co.*, 139 Ill. App. 3d 521, 528 (1st Dist. 1985) (“Plaintiff urges that he was entitled to ‘costs and damages,’ but the Commission has no general authority to fashion an award of damages[.]”); Order, *Beecham v. AT&T Communications of Illinois, Inc.*, No. 03-0421, 2003 WL 23330855 (ICC Dec. 17, 2003) (slip copy) (holding that the Commission does not have authority to award punitive damages). In paragraph seven, the ALJ properly finds that AT&T Illinois had no legal

obligation to enter into a payment plan for the Complainant's business account. PO at 5; *see also* 83 Ill. Admin. Code § 735.80(a) (“*nonresidential customers . . . who are indebted to a company for past due [telephone utility] service, may have the opportunity, at the discretion of the [telephone utility] company, to make arrangements with the utility to retire the debt by periodic payments referred to hereinafter as a Deferred Payment Agreement*” (emphasis added)). And in paragraph eight, the ALJ stated as a correct matter of law that the Complainant's “claim regarding discrimination is beyond the authority of the Commission.” PO at 5. Since the Complainant has not offered any law or facts that call into question paragraphs six, seven and eight of the Proposed Order, they should be adopted in full.

Instead of directly confronting paragraphs six, seven and eight, the Complainant essentially asks the Commission to shift the burden of proof to the respondent, by requiring AT&T Illinois to demonstrate that its decision to disconnect the Complainant's business line was *not* based on a motive of gender and/or racial discrimination. Even if the Complainant could bring his discrimination claim in the Commission – which he cannot (*see* PO at 5) – it would be *the Complainant's* burden to prove discrimination, not AT&T Illinois' to disprove discrimination. The record in this case, taken as a whole, demonstrates that AT&T Illinois disconnected the Complainant's business line because the Complainant let an overdue balance accrue for nine months and then, after receiving a disconnection notice, refused to enter into a payment plan that AT&T Illinois could accept.

#### **IV. RESPONSE TO COMPLAINANT'S EXCEPTIONS TO THE “FINDINGS AND ORDERING PARAGRAPHS”**

**Response to Complainant's Exception to Paragraph 2:** This paragraph of the Proposed Order accurately summarizes the Complainant's position that AT&T Illinois did not follow proper collection and disconnection procedures while his informal Commission complaint

was pending. The Complainant does not challenge this summary, but instead proposes a long, factually detailed and inaccurate paragraph as a replacement. Such information does not belong in the findings and ordering paragraphs, which contain ultimate conclusions of law and fact. In addition, the findings the Complainant proposes to include in this paragraph are irrelevant as a legal matter. In essence, the Complainant asserts in this exception that AT&T Illinois' witnesses who testified at the evidentiary hearing did not have personal knowledge of certain facts the Complainant wished to establish, for instance what happened on the three-way call held between the Complainant and two AT&T Illinois employees on July 18, 2008. But the Complainant – not AT&T Illinois – had the burden of proof in this case. While he had the opportunity to testify as to his own version of events and to cross-examine AT&T Illinois' witnesses about whether they had first-hand knowledge of what happened with his account on July 18, 2008,, the Complainant failed to establish that AT&T Illinois violated any law or regulation by disconnecting his business line.

**Response to Complainant's Exception to Paragraphs 3, 4 and 5:** In paragraphs three, four and five of the Findings and Orderings Paragraphs, the ALJ adopts the findings of fact and conclusions of law set forth in the prior section of the Proposed Order. In his exceptions, the Complainant does not challenge the legal soundness of the ALJ's conclusions. Applying the law to the record, there can be no dispute that: (1) AT&T Illinois followed its normal collection practices for treating the accounts of customers who are in bankruptcy proceedings (*see, e.g.*, Tr. 77-78); (2) AT&T Illinois followed the Commission's rules governing disconnection notices (*see* 83 Ill. Admin. Code § 735.130(c)(1)); (3) AT&T Illinois had no legal obligation to set up a payment plan for the Complainant's business account (*see* 83 Ill. Admin. Code § 735.80(a)); and

(4) AT&T Illinois properly disconnected the business line after the Complainant failed to pay the undisputed balance on his account (*see* 83 Ill. Admin. Code § 735.200).

Instead of addressing the regulations that actually govern his complaint, the Complainant instead proposes that paragraphs three, four and five should be replaced with the following; “The entire record shows beyond a reasonable doubt by circumstantial evidence that consumers disconnection was improper. Said conclusion is adopted based on the findings of fact and law herein.” The Complainant can only prevail, however, by identifying some law or regulation that applied to his situation and proving that AT&T Illinois did not follow that law or regulation. The Complainant’s general statement that the disconnection “was improper” falls far short of meeting this burden, and paragraphs three, four and five of the Proposed Order should be left as-is.

**Response to Complainant’s Exception to Paragraph 7:**

In his final exception, the Complainant urges the Commission to grant his complaint. For all of the reasons explained above, this exception should be rejected and the complaint denied. The Complainant’s case boils down to an allegation that AT&T Illinois discriminated against him based on his race and gender. Such claims of discrimination, however, cannot be brought in the Commission. Instead, the Complainant had the obligation to identify a particular law or regulation that AT&T Illinois violated, and to establish facts proving the alleged violation. The Complainant has not done so, and therefore the Commission should reject his exceptions.

**CONCLUSION**

For these reasons, AT&T Illinois respectfully requests that the Commission deny the Complainant's exceptions in full.

Dated: March 18, 2009

Signed,

AT&T Illinois

By: /s Nissa J. Imbrock

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**CERTIFICATE OF SERVICE**

I, Nissa J. Imbrock, an attorney, certify that a copy of the foregoing **Reply Brief on Exceptions** was served on the following parties by First Class United States Mail and/or electronic transmission on March 18, 2009.

/s/ Nissa J. Imbrock  
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