

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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| Peggy Wilkins | : | |
| -vs- | : | |
| Illinois Bell Telephone Company | : | 11-0066 |
| | : | |
| Complaint as to billing/charges in Chicago, Illinois. | : | |

EXCEPTIONS AND BRIEF ON EXCEPTIONS OF AT&T ILLINOIS

Illinois Bell Telephone Company (“AT&T Illinois”) submits the following exceptions and brief on exceptions concerning the Administrative Law Judge’s Proposed Order of July 27, 2011 (“Proposed Order”), in this proceeding:

The Proposed Order correctly finds that the Complainant, Peggy Wilkins, failed to prove that AT&T Illinois established, without her agreement, installment billing for the costs of establishing a second phone line for her account. It also correctly finds that Ms. Wilkins failed to prove that she did not agree to a deferred payment plan for an outstanding overdue bill. The Proposed Order also finds, however, that AT&T Illinois failed to act on Ms. Wilkins’ request in July 2010 to disconnect the second line, and it directs the company to remove from her bill all charges occurring after July 13, 2010, which relate to the second line. Proposed Order at 4.

AT&T Illinois takes exception, in three alternate ways, to the relief granted to Ms. Wilkins regarding the removal of charges billed for the second line. First, because Ms. Wilkins did not raise the disconnection issue in her Complaint, the Commission lacks authority to find AT&T Illinois liable for failing to disconnect the line. Second, because Ms. Wilkins agreed that AT&T Illinois should be paid for the installation work for the second line, the Proposed Order improperly allows her to escape responsibility for the cost of that work. Third, the Commission

should revise the Proposed Order to make clear that the order does not address deregulated charges that are outside the Commission's authority. As a fourth exception, AT&T Illinois explains why the Commission should revise the Proposed Order to clarify the company's ability to disconnect the second line.

Exception 1

AT&T Illinois takes exception to the relief that the Proposed Order grants to Ms. Wilkins, since it finds in her favor on a claim she never raised: i.e., that she wanted the second line on her account¹ cancelled as of July 2010. Proposed Order at 4. AT&T Illinois is entitled to advance notice of the wrongdoing that Ms. Wilkins claims it committed. Throughout this docket, Ms. Wilkins repeatedly indicated that her dispute with AT&T Illinois was based on the company's establishment of a 12-month payment arrangement for the account without her knowledge and its subsequent failure to establish a new payment arrangement for the account. If the issue of disconnecting the second line was not clearly raised in advance of the evidentiary hearing on June 16, 2011, it is inappropriate for the Commission to find the company liable because it did not disconnect that line.

The Complaint here contains no indication that AT&T Illinois' failure to disconnect Ms. Wilkins' second line was at issue. In the Complaint, Ms. Wilkins describes the basis for her dispute as "adjustments were not made, 12 month arrangement plan was not removed[;] also, a new arrangement was not set forth." Complaint at 1. In a three-page handwritten document attached to the Complaint, Ms. Wilkins states that, after she called AT&T Illinois about her account in July 2010, she was told that "adjustments will be made... the 2nd phone-line arrangement would be removed, and a new arrangement would be set." Attachment to

¹ The telephone for the second line is 773-928-4488. *See* Jt. Group Ex. 1, Apr. 13, 2010 bill at 1 (showing 773-928-2287 as primary line and 773-928-4488 as additional line).

Complaint at 1. In that same document, she also states that she subsequently told Michelle, an AT&T representative, that she wanted the company to “remove a month payment[,] remove the 12 month arrangement [and] also provide a new arrangement.” *Id.* at 3. The Complaint filing makes no mention of a request to AT&T Illinois to disconnect the second phone line or of the company’s failure to disconnect that line.

To obtain more information about Ms. Wilkins’ claims, counsel for AT&T Illinois sent Ms. Wilkins a discovery request seeking, among other things, documents concerning “notes of [her] conversations with AT&T Illinois personnel.” Attachment A to Verified Motion of AT&T Illinois to Compel, Request No. 2 (filed March 31, 2011). Ms. Wilkins’ response to that discovery request was admitted into evidence as Wilkins Ex. 1. *See* Tr. at 28, lines 1-10; 92, lines 6-14. Similar to the Complaint, Wilkins Ex. 1 states that, after Ms. Wilkins complained to AT&T Illinois that she was unaware that the account had been placed on a 12-month arrangement plan, she was advised that “adjustments will be made[;] also, the 2nd phone-line ~~will~~ ~~be~~ arrangement will be removed and a new arrangement will be set.” Wilkins Ex. 1 at 2 (strike-out in original). The exhibit similarly states that Ms. Wilkins later told Michelle of AT&T that, to address her concerns, the company “could remove two months of payments [and] also, the 12-month arrangement[,] and provide a new arrangement.” *Id.* (emphasis added). This exhibit also makes no mention of any request to AT&T to disconnect the second line or of the company’s failure to disconnect the line.

Even Ms. Wilkins’ testimony during the evidentiary hearing took vague and varying positions on what AT&T Illinois had allegedly failed to do. Ms. Wilkins testified that her problem with AT&T was that she “never made any arrangement” for the account (Tr. at 29, lines 8-9), and that the existence of the arrangement on the second line was what had caused “the

elevation” of her bill. Tr. at 33, lines 21-22. She also testified that, when she contacted AT&T after receiving her July 2010 bill, she was “told that the matter would get resolved. I was told that adjustments would be made. Also the second phone line arrangement will be – would be removed and a new arrangement would be set forth.” Tr. at 24, lines 15-19.² Although Ms. Wilkins did eventually state that she told AT&T to cancel the second line (Tr. at 40, lines 17-19), the context of that statement makes clear that the conversation about cancellation took place during a call AT&T made to her, and occurred sometime after December 23, 2010. See Tr. at 40, lines 2-4, 15-17.³ Given these imprecise and differing statements by Ms. Wilkins, there was no reason for AT&T Illinois to assume – even during the evidentiary hearing – that her supposed request to cancel the second line in July 2010 was part of “the gist of the Complaint.” Proposed Order at 3.

In addition, the record shows that Ms. Wilkins continued to make use of the second line subsequent to July 2010. See Jt. Group Ex. 1, Aug. 13, 2010 bill at 5; Sept. 13, 2010 bill at 5-6; Oct. 13, 2010 bill at 4-5; Nov. 13, 2010 bill at 4; Dec. 13, 2010 bill at 4; Jan. 13, 2011 bill at 4 (showing multiple toll calls made on 773-928-4488 between July 20, 2010 and December 20, 2010). Ms. Wilkins’ regular use of the second line after July 2010 diminishes the credibility of her testimony that she wanted the line disconnected. It certainly undercuts the Proposed Order’s conclusion that AT&T Illinois should credit the account for charges billed after July 13, 2010, relating to the supposedly unwanted second line.⁴

² Although the Administrative Law Judge asked Ms. Wilkins to explain what she meant by an “arrangement,” her response was not enlightening. See Tr. at 24, line 22, to 25, line 15. She eventually agreed that an “arrangement” involved a plan to pay, over time, what was owed on her bill. Tr. at 28, lines 20-22; Tr. at 34, line 31, to 35, line 3.

³ Ms. Wilkins also testified that she told Michelle of AT&T that she wanted the second line removed. Tr. at 41, lines 13-16. Such a request, however, was not described in Ms. Wilkins’ earlier written accounts of her conversation with Michelle in the Complaint and in Wilkins Ex. 1.

⁴ Although Ms. Wilkins had an unlimited toll calling plan that included calls made on the second line, AT&T Illinois billed line charges each month for providing dial tone. See, e.g., Jt. Group Ex. 1, Aug. 13, 2010 bill at 1 (showing line charge of \$7.74 and federal subscriber line charge of \$4.53 for 773-928-4488).

Illinois law is clear that the Commission lacks authority to grant relief not requested in a party's written complaint because such a result would be unfair to the other party. *See Peoples Gas Light and Coke Co. v. Illinois Commerce Comm'n*, 221 Ill. App. 3d 1053, 1060 (1st Dist. 1991) ("If the ICC were permitted to enter an order that is broader than the written complaint filed in the case then it would be ruling on an issue of which the responding party had no notice and no opportunity to defend or address."); *Alton & Southern Railroad Co. v. Illinois Commerce Comm'n*, 316 Ill. 625, 630 (1925) (finding that complaint must contain "a statement of the thing which is claimed to be wrong sufficiently plain to put the carrier upon its defense"). This unfairness is compounded where, as here, the issue of disconnecting Ms. Wilkins' second line not only was absent from the Complaint, but also received no mention in the discovery responses describing her interactions with AT&T personnel, and only came up partway through her trial testimony. The Proposed Order accurately states that AT&T Illinois "did not contest the assertion that [Complainant] requested that the second line be terminated" (Proposed Order at 4) – but that is simply because the company had no idea, until it received the Proposed Order, that the continued existence of the second line might be a material issue in the case.

Accordingly, AT&T Illinois proposes several changes to the Proposed Order, which are redlined in Attachment 1.

Exception 2

As an alternative, in the event that the Commission denies AT&T Illinois' first exception, AT&T Illinois argues that the Proposed Order errs in requiring it to refund any of the installation charges (and associated financing charges) for Ms. Wilkins' second line. As an initial matter, Ms. Wilkins testified several times during the evidentiary hearing that her dispute did not involve the amounts of her bills. *See, e.g.,* Tr. at 22 (testifying that "this is not really about the bills. No

one's contesting the bills."'). More importantly, she even admitted that, since AT&T Illinois did the installation work that she had requested, the company should get paid for that work. Tr. at 49. If a complainant agrees that AT&T Illinois should get paid for services it performed, the Commission has no logical basis to nonetheless order the company to provide a credit for those services.

At bottom, the Proposed Order is mistaken in treating the one-time installation charges as comparable to a recurring charge that can be prorated based on when service was installed or cancelled. The total of \$161.99 in installation-related charges arises from a technician visit to Ms. Wilkins' house on March 31, 2010, and the wiring work performed by the technician during that visit, as well as back office work to process Ms. Wilkins' order and connect the second line. *See* Jt. Group Ex. 1, Apr. 13, 2010 bill at 2 (itemizing charges). AT&T Illinois would normally be entitled to be paid this full amount within a month after the line was established; it only provides installment billing when the customer expresses interest in such an arrangement. *See* Tr. at 75, lines 1-4; 76, lines 2-11; *cf.* Proposed Order at 3 (stating that "customer must agree to payment terms prior to receiving" installment payment plan). Ms. Wilkins had the full benefit of the installation work as soon as the second line was operational. If she had cancelled the second line a week later, she would not have had any right to a pro rata credit for some "unused" portion of the one-time installation charges, since AT&T Illinois had already performed all the work reflected in those charges.

The Proposed Order's conclusion that Ms. Wilkins should receive a credit for installation charges occurring after July 13, 2010, fails to recognize that they are sunk costs for AT&T Illinois. Accordingly, AT&T Illinois proposes the following changes to the first paragraph on page 4 of the Proposed Order:

It appears that shortly after receipt of her July 2010 bill Ms. Wilkins requested, among other things, a cancellation of her second line because of the increase in her bill. She says she delayed payment because she was told by one or more service representatives to wait until certain unspecified adjustments were made. The Respondent did not contest the assertion that Ms. ~~Watkins~~ Wilkins requested that the second line be terminated. However, the line was not terminated. We find that cancelling the second line and removing recurring charges from the bill arising from the second line occurring after July 13, 2010, including a proration of late charges ~~and the second line installation and financing charges~~ is reasonable and appropriate.

AT&T Illinois also proposes the following changes to finding (5) on page 4 of the Proposed Order:

Illinois Bell Telephone Company is ordered to adjust the Complainant's bill for services by removing recurring charges occurring after July 13, 2010 arising from the second telephone line on her account and prorating late charges ~~and the balance due for the installation charge and financing charges~~ for that second line.

Exception 3

Regardless of whether the Commission accepts either of AT&T Illinois' first two Exceptions, it should revise the Proposed Order to remove any suggestion that it is directing the company to credit Ms. Wilkins for charges that are outside the Commission's jurisdiction. In particular, the Commission's rules specifically identify installation and maintenance of inside wiring as a deregulated service. 83 Ill. Admin. Code § 711.10(b). The Commission accordingly has dismissed complaints involving disputed charges arising from work on inside wiring because such services were deregulated. *See Order, Paniotte v. Illinois Bell Telephone Co.*, Dkt. No. 01-0393, at 5 (Sept. 11, 2002) (Attachment 2); *Order, Grigas v. Illinois Bell Telephone Co.*, Dkt. No. 90-0302, at 1-2 (Jan. 16, 1991) (Attachment 3).

AT&T Illinois billed Ms. Wilkins' account a total of \$161.99 in charges for installing the second line. Jt. Group Ex. 1, Apr. 13, 2010 bill at 2. Four separate charges were included in that

total, two of which involve deregulated services.⁵ Because the Commission has no authority over deregulated services, it can provide no relief relating to the charges billed for those services. The Proposed Order thus should be revised to make clear that any obligation imposed on AT&T Illinois to credit Ms. Wilkins' account does not apply to deregulated installation charges (and any associated financing charges).

Accordingly, AT&T Illinois proposes the following changes to the first paragraph on page 4 of the Proposed Order:

It appears that shortly after receipt of her July 2010 bill Ms. Wilkins requested, among other things, a cancellation of her second line because of the increase in her bill. She says she delayed payment because she was told by one or more service representatives to wait until certain unspecified adjustments were made. The Respondent did not contest the assertion that Ms. ~~Watkins~~ Wilkins requested that the second line be terminated. However, the line was not terminated. We find that cancelling the second line and removing charges from the bill arising from the second line occurring after July 13, 2010, including a proration of late charges and the second line regulated installation and financing charges is reasonable and appropriate.

AT&T Illinois also proposes the following changes to finding (5) on page 4 of the Proposed Order:

Illinois Bell Telephone Company is ordered to adjust the Complainant's bill for services by removing charges occurring after July 13, 2010 arising from the second telephone line on her account and prorating late charges and the balance due for the regulated installation charge and financing charges for that second line.

Exception 4

Regardless of whether the Commission accepts AT&T Illinois' second and third exceptions, it should revise the Proposed Order to clarify the current status of the second line on Ms. Wilkins' account. The Proposed Order faults AT&T Illinois for failing to comply with Ms. Wilkins' supposed request in July 2010 to cancel the second line, and it directs AT&T Illinois to

⁵ The charges reflecting deregulated services were the installation service call charge (\$90.00) and the flat rate jack charge – rewire (\$48.99). *See* Jt. Group Ex. 1, Apr. 13, 2010 bill at 2.

credit the account for charges billed for that line since July 13, 2010. Proposed Order at 4. The implication of the Proposed Order is that AT&T Illinois also should disconnect the second line. However, since the Proposed Order does not explicitly direct such disconnection, the company is concerned that it could run afoul of the disconnection process established by 83 Ill. Admin. Code § 735.130 if it immediately disconnects the line. Accordingly, AT&T Illinois proposes the following changes to finding (5) on page 4 of the Proposed Order:

Illinois Bell Telephone Company is ordered to disconnect the second telephone line on Complainant's account immediately and to adjust the Complainant's bill for services by removing charges occurring after July 13, 2010 arising from the second telephone line on her account and prorating late charges and the balance due for the installation charge and financing charges for that second line.

Respectfully submitted,

/s/
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August 10, 2011

CERTIFICATE OF SERVICE

I, James A. Huttenhower, an attorney, certify that a copy of the foregoing *Exceptions and Brief on Exceptions* was served on the service list via Overnight Mail and/or electronic transmission on August 10, 2011.

/s/

James A. Huttenhower

Service List ICC Docket No. 11-0066

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