

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of )	
Vondelise Jones, )	
Complainant, )	
v. )	Case No. 09-1020-TP-CSS
AT&T Ohio, )	
Respondent. )	

OPINION AND ORDER

The Commission, considering the testimony and exhibits presented in this matter, the applicable law, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Vondelise Jones, 765 Donald Avenue, Akron, Ohio, 44306, on her own behalf.

Mary Ryan Fenlon, AT&T Ohio, 150 East Gay Street, 4A, Columbus, Ohio 43215, on behalf of AT&T Ohio.

I. HISTORY OF THE PROCEEDINGS

On October 29, 2009, Vondelise Jones (Ms. Jones) filed a complaint against AT&T Ohio (AT&T). Ms. Jones states that in 2008 she combined her AT&T landline and AT&T wireless bills into one bill. She adds that, according to AT&T, she has unpaid wireless charges, yet she asserts that her wireless account was "financially satisfied and . . . had been closed for several months." Further, she states, "AT&T landline gathered all my credits into debits," and she contends that "these amounts are from my overpayments" for landline services that she did not request. Mr. Jones alleges that incorrect billing by AT&T landline led to improper termination of her wireless account. She seeks reimbursement for the incorrect billing, reimbursement of the termination fee, and punitive damages.

On November 18, 2009, AT&T answered the complaint. AT&T admits that Ms. Jones had combined billing for AT&T landline and AT&T Mobility wireless, and states that Ms. Jones incurred unpaid charges of \$481.10 because of inadequate payments to the combined account. AT&T adds that it is the billing and collections agent for AT&T

Mobility and asserts that, to seek collection of \$481.10, Account No. 4747, a separate account, was created and the services separated for billing purposes. According to AT&T, \$481.10 is not a credit as Ms. Jones claims; rather, it is the amount unpaid for wireless service that was transferred over to Account No. 4747. AT&T denies any other allegations of Ms. Jones, asserts that it has breached no legal duty to her, and contends that its service and practices have been in full accordance with applicable law and accepted standards within the telephone industry.

By entry issued December 4, 2009, the attorney examiner scheduled a January 5, 2010, settlement conference. The parties were unable to resolve differences at the conference. The hearing was conducted on April 20, 2010.

## II. APPLICABLE LAW

AT&T is a public utility, as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of the Commission.

Section 4905.26, Revised Code, requires that the Commission set for hearing a complaint against a public utility whenever reasonable grounds appear that any rate charged or demanded is in any respect unjust, unreasonable, or in violation of law, or that any practice affecting or relating to any service furnished is unjust or unreasonable. The Commission also notes that the burden of proof in complaint proceedings is on the complainant. *Grossman v. Pub. Util. Comm.* (1966), 5 Ohio St.2d 189. Therefore, it is the responsibility of a complainant to present evidence in support of the allegations made in a complaint.

## III. SUMMARY OF THE TESTIMONY

### Ms. Jones' Position

Ms. Jones disagrees with AT&T's conclusion that she owes \$481.10, as indicated by her combined landline and wireless bill for Account No. 4747, October 26 - November 25, 2008, Jones Ex. 3. To emphasize this, she observes that on Jones Ex. 2, the combined landline and wireless bill for Account No. 4739, October 26 - November 25, 2008, \$481.10 is indicated as a credit (Tr. at 9; Jones Ex. 2, 3). In Ms. Jones' opinion, on Jones Ex. 3, "AT&T landline took all of my credits, converted them into debits, [and] put them all into collections to collect the same amount of money," i.e., the \$481.10 that, in her words, is "hidden behind" Account No. 4747 (Tr. at 15-16; Jones Ex. 3).

Ms. Jones adds that she paid all her bills by making three payments per bill (Tr. at 26). As evidence of her payments, Ms. Jones introduced copies of her money orders issued during 2008 and 2009. The value of the money orders range from \$12.00 to \$118.00 (Jones Ex. 7, 14, 16, 28-36). Despite this, she argues, her multiple payments are not shown

on her bills and were not applied to her wireless charges, so her wireless service was terminated (Tr. at 19, 27, 30, 37). Ms. Jones, observes that, as an example, Jones Ex. 6, her June 26 - July 25, 2008, combined bill, indicates no payment toward the \$250.79 that was due from the prior bill, yet Jones Ex. 7, a June 12, 2008, \$50.00 money order payable to AT&T, is not reflected on Jones Ex. 6 (*Id.* at 25-26; Jones Ex. 6, 7). In addition, contends Ms. Jones, Jones Ex. 13, her April 26 - May 25, 2008, combined bill, does not reflect Jones Ex. 14, a \$96.46 money order dated April 3, 2008, and although Jones Ex. 5, her May 26 - June 25, 2008, combined bill, reflects her June 17, 2008, payment of \$50.00, she adds that she made several other payments not indicated on the bill (Tr. at 22, 22-35).

Ms. Jones asserts that she paid AT&T landline more than enough to cover her wireless charges in 2007 and 2008 (Tr. at 19). Using Jones Ex. 1, her January 26 - February 25, 2008, combined bill as an example, Ms. Jones observes that the bill indicates multiple credits of \$76.25, \$57.03, and \$5.00, and that while the total amount due was \$117.88, she states that she paid \$118.00, resulting in a twelve cent credit (*Id.* at 9-10; Jones Ex. 1). She also observes that Jones Ex. 2, her October 28 - November 25, 2008, combined bill, indicates the presence of multiple credits again, in the amount of \$50.00, \$481.10, and \$30.98, resulting in an \$11.04 credit balance, so no payment was even required (Tr. at 13-14). Finally, upon observing Jones Ex. 4, her November 26 - December 25, 2008, combined bill, she notes that an \$11.04 credit from the prior month's billing was applied to current charges of \$32.39, resulting in \$21.35 total amount due. She contends that she paid \$22.00, producing a 65 cent credit (*Id.* at 17).

Aside from her assertion that she does not owe AT&T \$481.10 and that her wireless service was wrongfully terminated, Ms. Jones contends that her bills indicate the presence of "service plans that I did not sign for, [or] call for" (*Id.* at 47-49). Ms. Jones introduced Jones Ex. 21, her combined bill from July 26 - August 25, 2008, as indicative of services that she did not request. Jones Ex. 21 indicates services such as flexible call plan and three way calling (*Id.*; Jones Ex. 21).

Ms. Jones concluded by emphasizing that she is seeking "punitive damages" because her "contract was broken by AT&T" (Tr. at 56).

#### AT&T's Position

Witness Kathy Gentile-Klein testified on behalf of AT&T. In response to Ms. Jones' assertion that she did not request the flexible call plan, Ms. Gentile-Klein introduced AT&T Ex. R, which consists of notes from conversations between Ms. Jones and AT&T customer service representatives. Ms. Gentile-Klein observed that Ex. R indicates that on May 6, 2008, Ms. Jones called and discussed changing her monthly service plan to the flexible rate plan (*Id.* at 60; AT&T Ex. R). Ms. Gentile-Klein added that this change is reflected on AT&T Att. F, the April 26 - May 25, 2008, combined bill for Ms. Jones (Tr. at 61; AT&T Att. F).

Ms. Gentile-Klein then addressed Ms. Jones' disagreement over the \$481.10 at issue. First, Ms. Gentile-Klein referred to AT&T Att. A, which is Ms. Jones' September 26 - October 25, 2005, landline bill. Ms. Gentile-Klein observed that AT&T Att. A indicates the first time that Ms. Jones' wireless charges are included on her landline bill (Tr. at 62-63). Ms. Gentile-Klein explained that even when wireless charges are placed onto the landline bill, Ms. Jones still received a wireless bill stating that a payment had been posted. In reality, stated Ms. Gentile-Klein, no payment for wireless service had been posted; rather, the wireless charges were simply transferred to the landline bill (*Id.* at 85-86).

Next, Ms. Gentile-Klein referred to AT&T Att. B, C, D, and E, which are Ms. Jones' combined bills for October 26 - November 25, 2005, September 26 - October 25, 2006, October 26 - November 25, 2007, and March 26 - April 25, 2008, and to AT&T Att. 1, 2, 3, and 4, which are Ms. Jones' wireless bills for October 11 - November 10, 2005, September 11 - October 10, 2006, October 11 - November 10, 2007, and April 11 - May 10, 2008 (*Id.* at 63-65). Ms. Gentile-Klein observed that the attachments indicate that the amount owed for wireless service was transferred onto Ms. Jones' landline bills, with Ms. Jones paying the combined charges in full each month (*Id.*). Ms. Gentile-Klein added that, as indicated by AT&T Ex. O, P, Q, and E, Ms. Jones continued to pay her combined bills in full during January - April 2008 (*Id.* at 65-69). Regarding Ms. Jones' allegation of a \$96.46 payment made in early April 2008 that was not credited to her account, Ms. Gentile-Klein observed that on AT&T Attachment E, Ms. Jones' March 26 - April 25, 2008, combined bill, a \$96.46 payment is indicated on April 9, 2008; the \$96.46 was sufficient to pay for prior billing cycle charges of \$96.34 (*Id.* at 69; AT&T Attachment E).

Ms. Gentile-Klein stated that, in May 2008, Ms. Jones stopped paying her combined bill in full. As shown on AT&T Att. F, which is Ms. Jones' April 26 - May 25, 2008, combined bill, Ms. Jones made only a \$30.00 payment on May 19, 2008, toward a prior balance of \$93.79 (*Id.* at 69; AT&T Ex. 1A at 5; AT&T Ex. F); with the addition of the April 26 - May 25, 2008, current balance, the total amount due increased to \$127.27 (Tr. at 71; AT&T Att. F).

According to Ms. Gentile-Klein, Ms. Jones' pattern of partial payments continued after the April 26 - May 25, 2008, combined bill. Referring to AT&T Att. G, which is Ms. Jones' May 26 - June 25, 2008, combined bill, Ms. Gentile-Klein observed that Jones Ex. 7, a \$50.00 money order dated June 12, 2008, is indicated on the bill as a June 17, 2008, payment (Tr. at 71). Ms. Gentile-Klein added that after the \$50.00 payment, Ms. Jones had a past due balance of \$77.27; when combined with wireless charges for that billing cycle, the total amount due became \$250.79 (*Id.* at 72). Regarding AT&T Att. H, Ms. Jones' June 26 - July 25, 2008, combined bill, Ms. Gentile-Klein observed that Ms. Jones made no payments toward the \$250.79 that was past due; when combined with current

charges for that billing cycle, the total amount due became \$375.40 (Tr. at 72; AT&T. Att. H).

Ms. Gentile-Klein noted that Ms. Jones made a \$50.00 payment on August 4, 2008, as indicated on AT&T Att. I, her July 26 - August 25, 2008, combined bill, thus reducing the past due balance to \$325.40; when added to current charges for that billing cycle and a \$186.38 cancellation fee for failing to pay the wireless charges, the total amount due became \$554.67 (Tr. at 73; AT&T Att. I). Similarly, a \$50.00 payment was made on September 8, 2008, as AT&T Att. J, Ms. Jones' August 26 - September 25, 2008, combined bill, indicates, reducing the past due balance to \$504.67; when combined with current charges for that billing cycle, the total amount due became \$531.10 (Tr. at 73-74; AT&T Att. J). Finally, Ms. Gentile-Klein observed that Ms. Jones made a \$50.00 payment on October 8, 2008, as indicated by AT&T Att. K, Ms. Jones' combined bill for September 26 - October 25, 2008; when added to current charges for that billing cycle, the total amount due became \$500.12 (Tr. at 74; AT&T Att. K).

According to Ms. Gentile-Klein, AT&T mailed to Ms. Jones a Bill Separation Notice on October 20, 2008. Ms. Gentile-Klein explained that bill separation occurs when past due charges, including wireless charges, are unpaid after several months, and the customer does not respond to collection efforts. Under such circumstances, stated Ms. Gentile-Klein, AT&T takes action to "remove the delinquent past due charges from the live account, issue a final bill on the separated unpaid charges, and promptly refer the final account to an outside collection agency or attorney" (AT&T Ex. 1A at 7-8). The Bill Separation Notice informed Ms. Jones that her account was past due \$481.10 and that full payment must be received immediately, or the past due amount would be placed on a final bill to be sent to her. The Bill Separation Notice also indicated that the amount owed by Ms. Jones might be referred to an outside collection agency or reported to a credit bureau (*Id.* at 8).

After AT&T mailed the Bill Separation Notice, Ms. Jones received AT&T Att. L, her October 26 - November 25, 2008, combined bill. Ms. Gentile-Klein noted that AT&T Att. L indicates a \$50.00 payment by Ms. Jones on November 5, 2008, and also indicates that bill separation occurred, with AT&T transferring \$481.10 of past due unpaid wireless and long distance charges from Account No. 4739 to Account No. 4747. Account No. 4747, the October 26 - November 25, 2008, bill for the unpaid \$481.10, was introduced by Ms. Gentile-Klein as AT&T Att. M. Ms. Gentile-Klein added that by separating the unpaid wireless and long distance charges onto another bill, AT&T can keep local service intact. If a customer does not respond to a notice to pay the final bill in two weeks, stated Ms. Gentile-Klein, the charges are referred to outside collections (Tr. at 74-76, 88; AT&T Att. L, M).

In sum, stated Ms. Gentile-Klein, AT&T referred Ms. Jones' unpaid bills to a collection agency because, in May 2008, Ms. Jones began making only partial payments of

\$30.00 to \$50.00 toward her current charges. Ms. Gentile-Klein added that the partial payments were only enough to cover Mr. Jones' local charges, not wireless and long distance charges (Tr. at 81-82, 84).

#### IV. DISCUSSION AND CONCLUSIONS

As noted in Part II of this Opinion and Order, in complaint proceedings the burden of proof is on the complainant. For reasons explained below, we find that there is insufficient evidence to support a conclusion that AT&T acted unreasonably, in violation of any tariff, rule, regulation, law, or accepted standard or practice in the telecommunications industry, or that charges for Ms. Jones' telephone service violated any tariff or law. Therefore, based on the record in this proceeding, Ms. Jones has failed to sustain her burden of proof.

The Commission does not overlook Ms. Jones' assertion that she paid AT&T landline more than enough to cover her AT&T wireless charges in 2007 and 2008, and her contention that she made multiple payments to AT&T, as indicated by her exhibits, which include copies of numerous money orders (Tr. at 19, 26; Jones Ex. 7, 14, 16, 28-36). However, as is indicated by the dollar value of the money orders, as well as Ms. Gentile-Klein's statements and AT&T Att. F, G, I, J, K, and L, Ms. Jones' payments from May 2008 through subsequent months were just \$30.00 to \$50.00, and were insufficient to cover the total amount due on each bill, which ranged from approximately \$100.00 to \$550.00 (Tr. 81-82, 84; AT&T Att. F, G, I, J, K, L). In addition, the Commission observes that, contrary to Ms. Jones' contention that her multiple payments to AT&T are not indicated on her bills, close examination of AT&T Ex. F, G, I, J, K, and L, which represent the April 26 – May 25, 2008, billing cycle and each subsequent cycle other than June 26 – July 25, 2008, reflect the payments made by Ms. Jones in Jones Exhibits 7, 28, 31, 33, and 34 (Tr. at 19, 27, 30, 37; AT&T Ex. F, G, J, K, L; Jones Exhibits 7, 28, 31, 33, and 34).

Regarding Ms. Jones' assertion that her wireless service was wrongfully terminated, the Commission observes that Rule 4901:1-5-10, Ohio Administrative Code (O.A.C.), which concerns termination of service, primarily applies to wireline service, not wireless service. Indeed, aside from requiring the registration of commercial mobile radio service providers under Rule 4901:1-6-15, O.A.C., the Commission has minimal regulation over the provision of retail wireless service. In fact, Commission policy has been to encourage the continuation of wireline local exchange service over more discretionary services such as wireline long distance and wireless service. Therefore, when AT&T applied Ms. Jones' payments to her landline service and eventually terminated her wireless service because of insufficient payments, AT&T did not violate Commission policy.

The Commission now turns to Ms. Jones' contentions that AT&T wrongfully placed unrequested services, such as the flexible call plan, on her account. The

Commission notes that Ms. Jones did not introduce evidence to contradict Ms. Gentile-Klein's assertion that, according to AT&T Att. R, Ms. Jones contacted AT&T on May 6, 2008, to discuss changing her monthly service plan to the flexible rate plan, and that this change was reflected on AT&T Att. F, Ms. Jones' April 26, 2008 - May 25, 2008, combined bill (Tr. at 60-61; AT&T Att. F, R).

Upon review of the record in this proceeding, the evidence does not support Ms. Jones' assertions. Moreover, we find nothing in this record to indicate that the steps taken by AT&T when Ms. Jones began a pattern of partial payments charges violated any tariff or state law, or that AT&T acted unreasonably or in violation of the Commission's rules and regulations, state laws, or accepted standards and practices in the telecommunications industry. Accordingly, lacking evidence demonstrating that AT&T has violated any rule, regulation, law, or acted unjustly or unreasonably, the Commission finds that Ms. Jones has failed to sustain her burden of proof and the complaint should be dismissed.

#### V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

- (1) On October 29, 2009, Vondelise Jones (Ms. Jones) filed a complaint against AT&T Ohio (AT&T), alleging that inaccurate billing by AT&T landline led to improper termination of her AT&T wireless account. Ms. Jones added that she was billed for services that she never requested, and she seeks reimbursement for the incorrect billing, reimbursement of the termination fee, and punitive damages.
- (2) On November 18, 2009, AT&T answered the complaint by admitting that Ms. Jones had combined billing for AT&T landline and AT&T Mobility wireless, and asserting that Ms. Jones incurred unpaid charges of \$481.10 because of inadequate payments to the combined account. AT&T denied any other allegations of Ms. Jones.
- (3) A settlement conference was held on January 5, 2010, and the hearing was held on April 20, 2010.
- (4) AT&T is a public utility, as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of the Commission.
- (5) In a complaint case, the burden of proof is on the complainant. *Grossman v. Public Utilities Commission* (1966), 5 Ohio St.2d 189.
- (6) There is insufficient evidence to support a finding that the charges for Ms. Jones' telephone service violate any tariff or state law, or that AT&T has acted unjustly or unreasonably or in violation of any rule,

regulation, or law, or that any practice affecting or relating to any service furnished was unjust or unreasonable.

- (7) Based on the record in this proceeding, Ms. Jones has failed to sustain her burden of proof and the complaint should be dismissed.

ORDER

It is, therefore,

ORDERED, That the complaint be dismissed. It is, further,

ORDERED, That a copy of this opinion and order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman



Paul A. Centolella



Valerie A. Lemmie



Steven D. Lesser

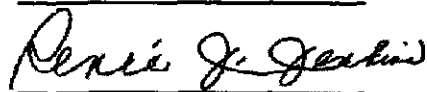


Cheryl L. Roberto

JML/dah

Entered in the Journal

**JUL 29 2010**



Renee J. Jenkins  
Secretary