

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	<b>File No. EB-04-TC-066</b>
AT&T Corp.	)	NAL/Acct. No. 200532170001
	)	FRN: 0010202638
Billing for	)	
Unauthorized Services	)	

**ORDER**

**Adopted: November 30, 2004**

**Released: December 1, 2004**

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau and AT&T Corp. (“AT&T”). The Consent Decree terminates an investigation initiated by the Enforcement Bureau regarding whether AT&T violated section 201(b) of the Communications Act of 1934, as amended (the “Act”),<sup>1</sup> by erroneously charging a \$3.95 basic rate monthly recurring charge to certain AT&T customers as well as non-AT&T customers.

2. The Enforcement Bureau and AT&T have negotiated the terms of a Consent Decree that would resolve this matter and terminate the investigation. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. Accordingly, **IT IS ORDERED**, pursuant to Section 4(i) of the Communications Act of 1934, as amended,<sup>2</sup> that the attached Consent Decree **IS ADOPTED**.

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<sup>1</sup> 47 U.S.C. § 201(b).

<sup>2</sup> 47 U.S.C. § 154(i).

5. **IT IS FURTHER ORDERED** that the above-captioned investigation into the matters described herein is terminated.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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**CONSENT DECREE**

**I. INTRODUCTION**

1. The Enforcement Bureau (“Bureau”) of the Federal Communications Commission (the “FCC” or the “Commission”) and AT&T Corp. (“AT&T”), by their authorized representatives, hereby enter into this Consent Decree to resolve an investigation by the Bureau regarding whether AT&T violated section 201(b) of the Communications Act of 1934, as amended (the “Act”),<sup>1</sup> by erroneously charging a \$3.95 basic rate monthly recurring charge (“basic MRC”) to certain AT&T customers as well as non-AT&T customers. The investigation was undertaken pursuant to sections 4(i), 4(j), 218, and 403 of the Act.<sup>2</sup>

**II. BACKGROUND**

2. AT&T states that, effective January 1, 2004, it began charging the basic MRC to customers on its basic rate state-to-state direct-dialed plan. AT&T asserts that, prior to implementing the basic MRC, AT&T sent written notice to its customers, posted advance notice on its website, filed a tariff with the Commission, and published a service guide pursuant to its AT&T Consumer Service Agreement. AT&T acknowledges that, after January 1, 2004, it inadvertently billed the basic MRC to a total of 1,267,032 consumers, which included AT&T customers who were not on the basic rate state-to-state direct-dialed plan as well as non-AT&T customers in 50 states and the District of Columbia, primarily due to coding and systems processing issues.

3. AT&T asserts that it (1) formed a team to resolve these issues and provide adjustments to affected consumers, (2) took steps to lessen additional consumer inconvenience as a result of the billing error, and (3) placed bill holds on the accounts of consumers that AT&T determined could be potentially affected as AT&T identified the problems causing the errors. AT&T states that these bill holds prevented the issuance of additional erroneous bills for these consumers while AT&T corrected the errors. In

<sup>1</sup> 47 U.S.C. § 201(b)

<sup>2</sup> 47 U.S.C. §§ 154(i), 154(j), 218 and 403.

addition, AT&T asserts that it stopped or prevented collections efforts with respect to those consumers that AT&T identified as being billed in error. Also, AT&T states that it implemented a process for its 1 800 222 0300 customer care number so that non-AT&T customers who call about erroneous bills are directed to an automated message that explains the error and the automatic credit/refund process.

4. AT&T disclosed the MRC billing error to the Commission and met with the Consumer and Governmental Affairs Bureau on March 1, 2004. AT&T subsequently contacted the Commission several times to keep the Commission apprised of the status of AT&T's efforts to correct the error and provide credits and refunds to affected consumers. AT&T states that it rectified the coding and systems processing errors that caused the billing error and that it provided credits and refunds to all the AT&T and non-AT&T consumers whom AT&T had erroneously billed the basic MRC.

5. On June 22, 2004, the Bureau issued a Letter of Inquiry to AT&T and initiated an investigation into whether the basic MRC billing error violated section 201(b) of the Act.<sup>3</sup> The LOI requested that AT&T provide certain information.

### III. DEFINITIONS

6. For the Purposes of this Consent Decree, the following definitions shall apply:

(a) "Adopting Order" means an Order of the Bureau adopting the terms and conditions of this Consent Decree without change, addition or modification.

(b) "AT&T" or the "Company" means AT&T Corporation, and any affiliate, d/b/a, predecessor-in-interest, parent companies and any direct or indirect subsidiaries of such parent companies, or other affiliated companies or businesses, and their successors and assigns.

(c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.

(d) "Communications Act" or "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*

(e) "Effective Date" means the date on which the Bureau adopts the Adopting Order.

(f) The "FCC" or the "Commission" means the Federal Communications Commission and all bureaus and offices of the Commission, including the Enforcement Bureau.

(g) "Investigation" means the investigation commenced by the Bureau's Letter of Inquiry dated June 22, 2004,<sup>4</sup> together with complaints about the basic MRC against AT&T received by the Commission prior to the Effective Date.

(h) "Parties" means AT&T and the Federal Communications Commission.

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<sup>3</sup> See Letter from Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, to Michael DelCasino, Regulatory Division Manager, AT&T Corporation, June 22, 2004.

<sup>4</sup> See *id.*

#### IV. AGREEMENT

7. AT&T agrees that the Commission has jurisdiction over it and the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

8. AT&T represents and warrants that it is the properly named party to this Consent Decree and is solvent and has sufficient funds available to meet fully all financial and other obligations set forth herein. AT&T further represents and warrants that it has caused this Consent Decree to be executed by its authorized representative, as a true act and deed, as of the date affixed next to said representative's signature. Said representative and AT&T respectively affirm and warrant that said representative is acting in his/her capacity and within his/her authority as a corporate officer of AT&T, and on behalf of AT&T and that by his/her signature said representative is binding AT&T to the terms and conditions of this Consent Decree.

9. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement of the Investigation. In express reliance on the covenants and representations contained herein, and in order to avoid the potential expenditure of additional public resources, the Bureau agrees to terminate the Investigation. The Bureau agrees that, in the absence of new material evidence related to this matter, it will not use the facts developed in the Investigation or the existence of this Consent Decree to initiate, on its own motion, any new proceedings, formal or informal, or take any actions on its own motion, nor will the Bureau, on its own motion, seek any administrative or other penalties from AT&T based on the Investigation. Consistent with the foregoing, nothing in this Consent Decree limits the Commission's authority to consider and adjudicate any formal complaint that may be filed pursuant to section 208 of the Act, 47 U.S.C. § 208, and to take any action in response to such complaint.

10. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding regarding any compliance or noncompliance with the requirements of the Act and the Commission's rules. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, AT&T does not admit or deny any wrongdoing, non-compliance, or violation of the Act or the Commission's rules in connection with the matters that are the subject of this Consent Decree.

11. In consideration for the termination of the Investigation in accordance with the terms of this Consent Decree, AT&T shall make a voluntary payment to the United States Treasury, without further protest or recourse to a trial *de novo*, in the amount of five hundred thousand dollars (\$500,000) within fifteen (15) business days after the Effective Date. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, IL, 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

12. For purposes of settling the matters set forth herein, AT&T confirms that it has either completed or initiated and will continue to implement the actions described below (*i.e.*, the Compliance Plan), with respect to the billing for traditional telephone services in its residential billing system (the residence account maintenance platform ("RAMP")), to prevent the similar occurrence of billing errors:<sup>5</sup>

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<sup>5</sup> If the number of AT&T residential customer bills issued through RAMP decreases 25% from the current monthly volume, AT&T may periodically adjust the number of test cases, the percentage of bills sampled, and the number of  
(continued...)

- (a) Implemented a new testing system to evaluate the impacts on consumers of scheduled changes to AT&T's billing system. This system allows AT&T to test, in advance of implementation, billing system changes to identify the impacts of such changes on a customer who should be affected by the change (positive test case) and the impacts on a customer who should not be affected by the change (negative test case), and to better prevent billing errors before they occur. AT&T will test between 20 and 1000 cases prior to implementing each billing system change.
- (b) Added at least 5,000 test cases to the regression test bed for the residential billing system. The purpose of regression testing is to verify that new system codes, table updates, or process changes (collectively, "new applications") implemented at a particular point in time do not adversely affect the operation of existing applications in the billing system. AT&T will perform such regression testing within two weeks of implementing a new application. This process will allow AT&T to compare the functioning of the residential billing system before and after the new applications are implemented.
- (c) Established a checklist to validate each business rule used to implement a change in the billing system, *i.e.*, a new functionality, in order to verify that existing functionalities are not affected. Managers in the billing operations organization will be instructed to incorporate the checklist into their processes prior to implementing any new functionality in the billing system.
- (d) To verify the accuracy of its records for customer primary interexchange carrier ("PIC") status, AT&T will compare its records for its basic schedule long distance customers in all 50 states to the records of certain local exchange carriers, including, at a minimum, Verizon, SBC, Qwest, BellSouth, Citizens, TDS, and Alltel. If this reconciliation process identifies any additional consumers who have been or who are being erroneously billed the basic MRC, AT&T will provide refunds or credits to those consumers. The reconciliation and additional adjustment processes will be completed no later than February 28, 2005. AT&T agrees to file a report (with a request for confidential treatment, as appropriate) with the Bureau no later than April 30, 2005 detailing by state the number of additional consumers who received adjustments and the total amount of credits and refunds provided to those consumers.
- (e) Assigned an additional five bill calculation/system processing subject matter experts to assist with the management of RAMP.
- (f) Assigned additional analysts to AT&T's bill verification unit, who will analyze random samples of bills before they are released. The bill verification unit will sample and review for accuracy at least .07% of its bills per month for traditional telephone services issued through RAMP.
- (g) AT&T will file reports (with requests for confidential treatment, as appropriate) with the Bureau no later than six months, one year, and two years after the Effective Date that describe each billing error in RAMP involving traditional telephone services, if any, that results in an

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analysts or other personnel who work on the billing system based on the number of customers and bills that are issued but will not, in any case, discontinue such testing. If AT&T makes any such adjustments, AT&T shall specify the decreased volume and any such adjustment to the Compliance Plan in the report(s) it files with the Bureau pursuant to Section 11(g) below.

overcharge to consumers in an amount equal to more than one percent (1%) of its residential customer base (regardless of whether or not the affected consumers are AT&T customers) in any month for the period covered by such report. The reports will also describe the steps taken by AT&T to correct such billing error. If no such billing error has occurred, AT&T shall provide such confirmation to the Bureau in its reports. AT&T shall also report its progress implementing each step of this Compliance Plan.

(h) The requirements of this Compliance Plan shall expire twenty-four (24) months from the Effective Date.

13. Nothing in this Compliance Plan shall alter AT&T's obligation to otherwise comply with the Act and with the Commission's rules and orders.

14. AT&T waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and Adopting Order, provided the Adopting Order adopts the Consent Decree without change, addition, or modification.

15. AT&T's decision to enter into this Consent Decree is expressly contingent upon the issuance of an Adopting Order by the Bureau that is consistent with this Consent Decree, and which adopts the Consent Decree without change, addition, or modification.

16. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

17. The Parties also agree that if any provision of this Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which AT&T does not consent) that provision will be superseded by such Commission rule or order.

18. By this Consent Decree, AT&T does not waive or alter its right to assert and seek protection from disclosure of any privileged or otherwise confidential and protected documents and information, or to seek appropriate safeguards of confidentiality for any competitively sensitive or proprietary information. The status of materials prepared for, reviews made and discussions held in the preparation for and implementation of AT&T's compliance efforts under this Consent Decree, which would otherwise be privileged or confidential, are not altered by the execution or implementation of the terms of this Consent Decree, and no waiver of such privileges is made by this Consent Decree.

19. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither AT&T nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and AT&T and the Commission will waive any statutory right to a trial *de novo* with respect to the issuance of the Adopting Order and shall consent to a judgment incorporating the terms of this Consent Decree.

20. AT&T agrees that any violation of the Consent Decree or the Adopting Order will constitute a separate violation of a Commission order, entitling the Commission to exercise any rights or remedies attendant to the enforcement of a Commission order.

21. This Consent Decree may be signed in counterparts.

For: AT&T Corp.

\_\_\_\_\_  
Date

\_\_\_\_\_  
(AT&T Signature)

For: Enforcement Bureau  
Federal Communications Commission

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Date

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David H. Solomon  
Chief, Enforcement Bureau