

CHRISTOPHER J. CHRISTIE
United States Attorney
SUSAN J. STEELE
Deputy Chief, Civil Division, Assistant U.S. Attorney
970 Broad Street, Suite 700
Newark, New Jersey 07102
(973) 645-2920
SJS7042

RECEIVED CLERK
U.S. DISTRICT COURT

2004 SEP -9 P 2:40

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

Plaintiff,

v.

AT&T CORP.

Defendant.

Civil No.

**COMPLAINT FOR PERMANENT INJUNCTION AND OTHER
EQUITABLE RELIEF AND MONETARY CIVIL PENALTIES**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("Commission"), for its complaint alleges that:

1. Plaintiff brings this action under Sections 5(a), 5(m)(1)(A), 13(b), and 16(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and 56(a), Section 621(a) of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681s(a), to obtain monetary civil penalties and injunctive and other relief for defendant's violations of the FCRA 15 U.S.C. §§ 1681-1681u.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and under 15 U.S.C. §§ 45(m)(1)(A), 53(b), and 56(a).

3. Venue in the United States District Court for the District of New Jersey is proper under 15 U.S.C. § 53(b) and under 28 U.S.C. §§ 1391(b-c) and 1395(a).

DEFENDANT

4. Defendant AT&T Corp. (hereinafter referred to as "AT&T") is a New York corporation with its principal place of business at 295 North Maple Avenue, Basking Ridge, New Jersey. In connection with the matters alleged herein, AT&T has transacted business in this District.

5. At all times material to this Complaint, AT&T has provided local and long distance telephone service to consumers, as "consumer" is defined in Section 603(c) of the FCRA, 15 U.S.C. § 1681a(c).

6. At all times material to this Complaint, AT&T has been a "creditor," as that term is defined in Section 702(e) of the ECOA, 15 U.S.C. § 1691a(e), and Section 202.2(l) of Regulation B, 12 C.F.R. § 202.2(l).

AT&T'S BUSINESS

7. At all times material to this Complaint, AT&T has provided local and long distance telephone service to consumers on a "credit" basis, as that term is defined in Section 202.2(j) of Regulation B, 12 C.F.R. § 202.2(j). Thus, AT&T provides its services in advance and bills consumers for payment after the services are provided.

8. Consumers who seek to obtain telephone service from AT&T are "applicants" and must complete an "application," as the terms "applicant" and "application" are defined in Sections 202.2(e) and 202.2(f) of Regulation B, 12 C.F.R. §§ 202.2(e) and 202.2(f), respectively. As part of the application process, AT&T conducts a credit review to determine the applicant's eligibility to obtain service on a credit basis. This procedure includes searching AT&T's internal files for information on the applicant, and obtaining a "consumer report" on the applicant from a

"consumer reporting agency," as those terms are defined in Sections 603(d), and 603(f), 15 U.S.C. §§ 1681a(d) and 1681a(f), respectively, of the FCRA.

9. Applicants whom AT&T determines, based on the credit review, are not approved for service are either denied service entirely, required to make an advance payment or deposit to obtain service, or assigned an "Approved Usage Amount" which limits the amount of charges the consumer can accrue on his or her AT&T account. When AT&T requires the consumer to pay a specified amount of money up front before obtaining telephone service, that prepaid amount may serve as a deposit which AT&T retains for the life of the consumer's account, or may be applied to the consumer's balance after she has made a certain number of on-time payments. When AT&T imposes an "Approved Usage Amount" on the consumer's account (due to the consumer's credit history or other information), the consumer is not permitted to accrue charges in excess of that amount.

VIOLATIONS OF THE FCRA

10. Section 615(a) of the FCRA, 15 U.S.C. § 1681m(a), requires any person who takes "adverse action," as that term is defined in Section 603(k) of the FCRA, 15 U.S.C. § 1681a(k), with respect to any consumer that is based in whole or in part on any information contained in a consumer report to provide to the consumer: (1) notice of the adverse action taken; (2) the name, address, and telephone number of the consumer reporting agency from which the consumer report was obtained; (3) a statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken; (4) notice of the consumer's right to obtain a free copy of the consumer report, within 60 days from notice of the adverse action, from the consumer reporting agency from which the report was obtained; and (5) notice of the consumer's right to dispute with a consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the agency.

11. AT&T has taken "adverse action," as that term is defined in Section 603(k) of the FCRA, 15 U.S.C. § 1681a(k), and Section 202.2(c) of Regulation B, 12 C.F.R. § 202.2(c), when it has limited the amount of charges a consumer can accrue on his or her AT&T account and the consumer has declined to accept service with this limitation, and when it has denied consumers' appeals of those account spending limits, based in whole or in part on information contained in consumer reports.

12. In many instances, AT&T has taken adverse action against consumers, as described in Paragraph 11 above, but has given them notices that lacked information required to be disclosed under Section 615(a) of the FCRA, 15 U.S.C. § 1681m(a). For example, many of those notices have failed to disclose (1) the name, address and telephone number of the consumer reporting agency(ies) consulted, (2) the consumer's right to contact the consumer reporting agency to dispute the accuracy or completeness of the consumer report, and (3) the consumer's right to request a free copy of the report from the consumer reporting agency within 60 days.

13. By and through the acts and practices described in Paragraphs 7 through 12, AT&T has violated Section 615(a) of the FCRA, 15 U.S.C. § 1681m(a).

14. Pursuant to Section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), the alleged violations of the FCRA constitute unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

15. The acts and practices described in Paragraphs 7 through 12 constitute a pattern or practice of knowing violations, as set forth in Section 621(a)(2)(A) of the FCRA, 15 U.S.C. § 1681s(a)(2)(A).

CIVIL PENALTIES

16. Each instance in which AT&T has failed to comply with Section 615(a) of the FCRA, 15 U.S.C. § 1681m(a), constitutes a separate violation of the FCRA for the purpose of assessing monetary civil penalties.

17. Section 621(a) of the FCRA, 15 U.S.C. § 621(a), authorizes the Court to award monetary civil penalties of not more than \$2,500 per violation.

INJUNCTION

Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to issue a permanent injunction against AT&T's violations of the FCRA.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests that this Court, pursuant to 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), and 1681s, and pursuant to the Court's own equity powers:

- (1) Enter judgment against defendants and in favor of plaintiff for each violation charged in this complaint;
- (2) Enjoin defendants from violating any provision of the FCRA;
- (3) Award plaintiff monetary civil penalties from defendants for each violation of the FCRA alleged in this complaint; and
- (4) Award plaintiff such additional relief as the Court may deem just and proper.

Dated:

FOR THE UNITED STATES OF AMERICA:

Of Counsel:

JOEL C. WINSTON
Associate Director for
Financial Practices
Federal Trade Commission

JEFFREY S. BUCHOLTZ
Acting Assistant Attorney General
Civil Division
United States Department of Justice

BRADLEY H. BLOWER
Assistant Director for
Financial Practices

CHRISTOPHER J. CHRISTIE
United States Attorney



Assistant United States Attorney
970 Broad Street, Suite 700
Newark, New Jersey 07102
(973) 645-2700

RONALD G. ISAAC
SANDRA FARRINGTON
ERIC IMPERIAL
Attorneys
Division of Financial Practices
Federal Trade Commission
Washington, D.C. 20580

EUGENE M. THIROLF
Director
Office of Consumer Litigation

Elizabeth Stein
ELIZABETH STEIN, Attorney
Office of Consumer Litigation
Civil Division
U.S. Department of Justice
Washington, D.C. 20530

Attorneys for Plaintiff
United States of America