

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN AND
FOR LEON COUNTY, FLORIDA

Case No.

STATE OF FLORIDA,
OFFICE OF THE ATTORNEY GENERAL,
DEPARTMENT OF LEGAL AFFAIRS,

Plaintiff,

v.

ALLTEL COMMUNICATIONS, INC.,

Defendant.

**COMPLAINT FOR
INJUNCTION, DAMAGES AND PENALTIES**

Plaintiff, **STATE OF FLORIDA, OFFICE OF THE ATTORNEY GENERAL,
DEPARTMENT OF LEGAL AFFAIRS** sues Defendant, **ALLTEL
COMMUNICATIONS, INC.**, and alleges:

1. This is an action for injunctive and other statutory relief brought pursuant to the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Fla. Stat. (2006).
2. Plaintiff is an enforcing authority under § 501.203(2), Fla. Stat. (2006), and is authorized to bring this action and seek injunctive and other statutory relief pursuant to § 501.207, Fla. Stat. (2006).
3. In accordance with § 501.207(2), Fla. Stat. (2006), the Attorney General, Charles J. Crist, Jr., has reviewed this matter and has determined that this enforcement

action serves the public interest.

4. The Court has jurisdiction in this matter pursuant to § 501.207(3), Fla. Stat. (2006).

DEFENDANT

5. Defendant ALLTEL COMMUNICATIONS, INC. (hereinafter “ALLTEL”) is a business incorporated under the laws of Delaware, whose headquarters and principal place of business are located at One Allied Drive, Little Rock, Arkansas 72203. ALLTEL is a subsidiary of Alltel Corporation.

6. At all material times herein ALLTEL has been, and is, engaged in substantial and not isolated activity within the State of Florida pursuant to § 48.193(2), Fla. Stat. (2006) and in tortious conduct within the State of Florida pursuant to § 48.193(1)(b), Fla. Stat. (2006).

DEFENDANT’S BUSINESS ACTIVITIES

A. Defendant’s Mr. Rescue Roadside Assistance Feature

7. Since on or about September 2001, defendant ALLTEL has marketed and sold various wireless telephone data and features in conjunction with the sale of its wireless telephones and service plans.

8. One feature promoted and sold by defendant ALLTEL to consumers purchasing telephones and service plans is “Mr. Rescue Roadside Assistance” (hereinafter referred to as “MR. RESCUE”).

9. Under the MR. RESCUE program offered by defendant ALLTEL, roadside

assistance services were provided through another company named Asurion Corporation.

10. The cost for MR. RESCUE was \$3.00 per month.

11. In defendant ALLTEL's marketing literature and sometimes in sales pitches used by defendant ALLTEL representatives, consumers were advised that MR. RESCUE was "Free" for the first 60 days after purchase of a wireless phone or service plan and that the consumer would be billed for the MR. RESCUE feature at the end of the free-trial period unless the consumer cancelled the feature.

11. From on or about June 2002 through on or about April 2005, defendant ALLTEL programmed its computer systems to "auto enroll" every consumer who purchased and activated a new wireless telephone or service plan in MR. RESCUE.

12. Auto enrollment meant that each newly activated consumer automatically received roadside assistance as part of their activation and did not have to proactively select the roadside assistance feature.

13. Defendant ALLTEL instituted the auto enrollment system to significantly enhance enrollment in, and revenue from, its MR. RESCUE roadside assistance program.

14. The number of consumers who were enrolled in the roadside assistance feature increased dramatically after the MR. RESCUE auto enrollment system was instituted. Following ALLTEL's abandonment of auto enrollment, the number of consumers enrolled in MR. RESCUE fell dramatically.

B. Defendant's Deceptive and Misleading Sales Pitch

15. Defendant ALLTEL relied upon its sales representatives to orally inform

consumers at the point of sale concerning ALLTEL's automatic enrollment of the consumer in MR. RESCUE and concerning all the material terms and conditions of MR. RESCUE.

16. In numerous instances, defendant ALLTEL representatives failed to disclose or adequately disclose to consumers at the point of sale all the material terms and conditions of the MR. RESCUE 60-day free of charge offer, including but not limited to, one or more of the following:

- a. That upon a new activation of an ALLTEL telephone and service plan, the consumer will be automatically enrolled in MR. RESCUE without any proactive selection by the consumer.
- b. That the consumer will be assessed charges for a portion of the 60-day free of charge trial period.
- c. That the consumer will be charged \$3.00 per month after the free trial period unless the consumer affirmatively cancels MR. RESCUE.
- d. The cancellation rights of the consumer and the procedure to cancel MR. RESCUE.
- e. That under MR. RESCUE consumers are limited to six service calls per year.
- f. That under MR. RESCUE consumers are limited to maximum benefits not to exceed \$50 per service call.
- g. That service under MR. RESCUE covers towing and mechanical

problems only - - not towing for accidents, misuse and other damage or winching.

17. In many instances, defendant ALLTEL representatives represented, expressly or by implication, that consumers will receive a 60-day trial period free of charge for MR. RESCUE beginning upon the purchase and activation of a wireless telephone and/or service plan, when in fact, consumers were billed for charges during the free trial period.

C. Defendant's Improper Billing Practices

18. In some instances, where ALLTEL informed consumers of the MR. RESCUE feature though failing to adequately disclose all the material terms and conditions, the consumer flatly refused ALLTEL's offer of enrollment in MR. RESCUE and was assessed charges for the MR. RESCUE feature.

19. Despite ALLTEL's representations in marketing literature, and sometimes in oral representations, that a free 60-day trial period was provided, defendant ALLTEL caused consumers to be assessed charges for the MR. RESCUE feature during the first 60 days of service. (See Plaintiff's **Exhibit A**, attached hereto and incorporated by reference, which is a true and accurate copy of a consumer telephone bill reflecting charges for defendant's MR. RESCUE feature during the first 60 days of service.)

THE FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT

20. Section 501.204(1) of the Florida Deceptive and Unfair Trade Practices Act (Chapter 501, Part II, § 501.204(1), Fla. Stat. (2006)) ("FDUTPA") provides that "any unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby

declared unlawful.”

VIOLATIONS OF SECTION 501.204(1) OF FDUTPA

COUNT I

DECEPTIVE ACTS AND PRACTICES

21. As set forth in paragraphs 7 through 17, Defendant ALLTEL has engaged in acts, practices, representations and omissions which are material and which are false or likely to mislead consumers acting reasonably under the circumstances.

22. In light of ALLTEL’s representations, defendant ALLTEL’s failure to disclose, or clearly and conspicuously disclose, all material information and ALLTEL’s false and misleading statements related to the MR. RESCUE 60-day free of charge offer are deceptive acts or practices in violation of § 501.204(1), Fla. Stat.

COUNT II

UNFAIR ASSESSMENT OF CHARGES

23. As set forth in paragraphs 17 through 19, in connection with the advertising, promotion, marketing, offering for sale, sale and billing of MR. RESCUE, defendant ALLTEL has caused charges to be assessed for payment of the MR. RESCUE feature without the express informed consent of the consumer during the 60-day free of charge period or after refusal or cancellation of defendant’s offer.

24. Defendant ALLTEL’s acts or practices of causing charges to be submitted for

payment of the MR. RESCUE feature without the consumer's express informed consent offend established public policy and are unethical, oppressive, unscrupulous or substantially injurious to consumers.

25. Defendant's acts or practices, as alleged in paragraph 23, are unfair in violation of § 501.204(1), Fla. Stat.

RELIEF REQUESTED

WHEREFORE, Plaintiff, State of Florida, Office of the Attorney General, Department of Legal Affairs, asks for judgment:

A. Permanently enjoining Defendant ALLTEL, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of the injunction, from engaging in unfair and deceptive acts and practices, in violation of Chapter 501, Part II, Fla. Stat.(2006).

B. Awarding Plaintiff actual damages on behalf of consumers injured by the deceptive and unfair acts or practices of Defendants, in accordance with § 501.207(1)(c), Fla. Stat. (2006).

C. Ordering reimbursement to consumers in accordance with § 501.207(3), Fla. Stat. (2006); or ordering restitution to consumers in accordance with the equitable powers of the court.

D. Order disgorgement of ill-gotten revenues, profits or other remunerations in accordance with § 501.207(3), Fla. Stat. (2006).

E. Assessing Defendant ALLTEL civil penalties in the amount of ten

thousand dollars (\$10,000) for each violation of Chapter 501, Part II, pursuant to § 501.2075, Fla. Stat. (2006), and fifteen thousand dollars (\$15,000) for each violation of Chapter 501, Part II, pursuant to § 501.207, Fla. Stat. (2006).

F. Awarding reasonable attorney's fees and costs to Plaintiff, pursuant to §§ 501.2105 and 501.2075, Fla. Stat. (2006).

G. Granting such other relief as this Honorable Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all issues so triable.

CHARLES J. CRIST, JR.
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