

## Federal Communications Commission

FCC 95D-01

FCC MAIL SECTION

Feb 24 11 21 AM '95  
 Before the  
 Federal Communications Commission  
 Washington, D.C. 20554

DISPATCHED BY *Dockets*

CC Docket No. 94-89

In the Matter of

Elehue Kawika Freemon and FILE NO. E-90-393  
 Lucille K. Freemon,  
 Complainants,

v.

American Telephone and Telegraph  
 Company  
 Defendant

## APPEARANCES

*Elehue K. Freemon Pro Se; Peter H. Jacoby and Clifford K. Williams* on behalf of AT&T; and *Keith Nichols* on behalf of the Federal Communication Commission's Common Carrier Bureau.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE  
 WALTER C. MILLER

Issued: February 17, 1995; Released: February 24, 1995

1. On August 16, 1990, Elehue Kawika Freemon and ostensibly his mother, Lucille K. Freemon, filed a *formal* complaint against AT&T.<sup>1</sup> They asked:

"... for a formal investigations (sic) by the Federal Communications Commission (FCC) to redress and to assist in remedies for the act of divulgence and interception/electronic eavesdropping, alteration of [Lucille Freemon's] monthly telephone bill/toll and false/arbitrary accusations by an AT&T long-distance

operator and AT&T under AT&T company directives causing great harm and injury to complainants on May 30, 1988. . ."

2. Based on allegations contained in the formal complaint, the Freemons posited the following damage claims:

"For the loss of his<sup>2</sup> Business and retirement funds the sum of one point two million dollars (\$1.2 million dollars) is requested.

"for the extreme trauma caused a sum of two million dollars (\$2.0 million dollars) is requested."<sup>3</sup>

3. AT&T answered the Freemons' complaint on September 24, 1990. They contended that AT&T and their operator (Nancy Zolnikov) hadn't violated any statute or other law; that Mrs. Zolnikov did not monitor complainants' telephone conversation of May 30, 1988; and that complainants have not shown that AT&T caused them any injury.

4. The Freemons replied to AT&T's answer on October 18, 1990.<sup>4</sup> There they argued in part as follows:

"...

In the foregoing reply the foreword (c) will assist the commission (sic) in guiding through the varies (sic) AT&T Answers (AT&T Ans.) due to the numerous (sic) violations of 47 CFR 1.724(b), (c) and contradictions (sic) in which complainants (sic) have substain (sic) stronger allegations against AT&T.

"It, (C), will consolidate. . . other statues (sic) which intern (sic) complainants (sic) have suffered. References to the U.S., Constitution (sic). . ."<sup>5</sup>

5. Four years after the official complaint was filed, the Commission designated, the matter for hearing. See FCC 94-192 released August 14, 1994. They set down the following six issues:

(1) To determine the facts and circumstances surrounding AT&T's handling of Elehue Freemon's operator-assisted telephone call to his mother, Lucille Freemon, on May 30, 1988.<sup>6</sup>

<sup>1</sup> Actually the Freemons filed an *informal* complaint against AT&T on February 9, 1989. That informal complaint was terminated on January 4, 1991. See FCC 94-192, released August 12, 1994 at Footnote 5.

<sup>2</sup> "his" refers to complainant Elehue Kawika Freemon.

<sup>3</sup> Elehue K. Freemon never offered a scintilla of evidence to prove his damage claims. He offered nothing to prove his "Business" funds; he offered nothing to prove "retirement funds." According to this record Elehue Freemon had no "retirement funds" to lose. Freemon's use of such phrases is sheer dissembling. It illustrates the type of exaggeration he has used throughout this case.

<sup>4</sup> However, the Freemons never identified and offered their October 18, 1990 reply into evidence. So the Reply has never been made a part of the evidentiary record in this case. However, AT&T has had official notice taken of the Reply. See Tr.115; and AT&T Ex.9.

<sup>5</sup> Grasping Elehue Freemon's position in this case has been almost impossible. It's incredible how the Common Carrier Bureau could analyze all the misdates, the misstatements, and the misspellings and still designate the matter for hearing. Admittedly one can read a particular section of an Elehue Freemon pleading and *guess* at what he said. But resolving a \$3.2 million damage claim calls for accuracy and conciseness, not guesswork. Moreover, many of the crucial misspellings; i.e., misspellings of words that form the premise of the claim, appear deliberate. This is true when you consider Elehue Freemon's contention that he has completed two years of college. See Judges Ex.3, pp.27-30; Tr.74-82 and Tr.249.

<sup>6</sup> Actually Elehue Freemon made at least three operator-assisted telephone calls to his mother on May 30, 1988. The call referred to in this issue was made around 10:30 or 10:40 p.m. on that day.

(2) To determine whether a telephone conversation ensued between Elehue Freemon and Lucille Freemon on May 30, 1988, at the time an AT&T operator handled the operator-assisted call at issue.

(3) To determine whether, AT&T, through its operator or otherwise, intercepted and disclosed the contents or meaning of any telephone conversation that may have taken place between Elehue Freemon on May 30, 1988, within the meaning of Section 705 of the Communications Act.

(4) To determine, in light of the evidence adduced under issues 1 through 3 above, whether AT&T's actions in handling Elehue Freemon's May 30, 1988 operator-assisted call violated Section 705 of the Communications Act.<sup>7</sup>

(5) To determine, in view of the evidence adduced on the foregoing issues, whether and if so, in what amounts, AT&T should be required to pay monetary damages to complainants.

(6) To determine, in view of the evidence adduced on the foregoing issues, whether complainants are entitled to an award of prejudgment interest on any damages recovered in this proceeding.

6. The Commission placed both the burden of proceeding and the burden of proof on all six issues on Elehue Kawika Freemon and Lucille K. Freemon, complainants. See FCC 94-192 *supra*. at para.12.

7. The Commission further indicated ". . . that the designated parties may avail themselves of an opportunity to be heard by filing with the Commission a Notice of Appearance in accordance with Section 1.221 of the Rules, 47 CFR § 1.221, within twenty (20) days of the mailing of this Order." See FCC 94-192 *supra*. at para.13.

8. AT&T and Elehue K. Freemon filed timely Notices of Appearance on September 1, 1994. Complainant Lucille K. Freemon *purportedly* filed a Notice of Appearance the same day. That Notice will be discussed under "Threshold Rulings" *infra*. The Common Carrier Bureau filed a "Limited Notice of Appearance." There they indicated that they would not actively participate in this case, but would limit their efforts to monitoring the case.

9. We held the Prehearing Conference on November 10, 1994, the Evidentiary Admission Session on November 28, 1994, and the Hearing on December 12, 1994. The evidentiary record was closed December 12, 1994. See Tr.411 and FCC 94M-644 released December 15, 1994.

10. Elehue K. Freemon and AT&T filed their Proposed Findings of Fact and Conclusions of Law on January 30, 1995. AT&T also filed a Memorandum in support of Proposed Conclusions of Law. AT&T by letter dated February 8, 1995, indicated that they did not intend to file Reply

Findings and Conclusions. But see FCC 95M-46 released February 10, 1995. Elehue Freemon filed Reply findings on February 15, 1995. The Common Carrier Bureau filed nothing. See Finding 8 *supra*.

### Threshold Rulings

11. The case will turn on two pivotal rulings *infra*.<sup>8</sup> The basic documentation on which the proceeding is based; i.e., the August 16, 1990, formal complaint (See Finding 1 *supra*.) has been falsely filed. Elehue Freemon, the filer, has attempted to hoodwink the Commission into issuing a damage award under false pretenses. Since the basic complaint is counterfeit, it cannot and should not be given serious consideration. So it will be dismissed.

### Lucille K. Freemon's Complaint

12. First, those portions of the August 16, 1990 complaint that can be attributed to Lucille Freemon will be dismissed.<sup>9</sup> This record shows that she did not bring and has never intended to bring a complaint against AT&T. Back in 1988 she was aware that her son, Elehue K. Freemon had a dispute with several different entities<sup>10</sup> (including AT&T) that stemmed from an incident that occurred on the evening of May 30, 1988. But she believed that his dispute with AT&T had ended long ago. See Judges Ex.1, pp.33, 35, 54-55, 65-66, and 74.

13. She never entered an appearance in this case. Rather her son Elehue forged her signature on a Notice of Appearance and filed it with the Commission (See Tr.5-6; FCC 94M-529 released September 16, 1994; and Judges Ex.3, p.281).

14. When that forgery was exposed, Elehue Freemon then tried to file a power of attorney with the Commission that would permit him to represent his mother in this case. That also failed. FCC 94M-584, released October 21, 1994.

15. AT&T then took Lucille Freemon's deposition in Long Beach, California on October 4, 1994. There she indicated that she wasn't and never had been a party to her son's dispute against AT&T.<sup>11</sup> In fact, her version of what happened on the night of May 30, 1988, more nearly coincides with AT&T's (Nancy Zolnikov's) version, and differs substantially from what her son Elehue K. Freemon claims happened. Compare Judges Ex.1, pp.67-75 with AT&T Exhibit 8, paras.26-31 and attached verification.

16. Since Lucille Freemon is not now and never has been a party to this case, any allegations attributable to her or any damage claims traceable to her will be dismissed.<sup>12</sup>

<sup>7</sup> Section 705(a) states in pertinent part: "Except as authorized by Chapter 119, Title 18, United States code, no person receiving, assisting in receiving, transmitting, or assisting in transmitting, any interstate or foreign communication by wire or radio shall divulge or publish the existence, contents, substance, purpose, effect, or meaning thereof."

<sup>8</sup> However, findings of fact will also be made on designated issues 1-6, and the burdens of proceeding and proof designated by the Commission. See paras.5-6 *supra*.

<sup>9</sup> It is difficult to separate Elehue Freemon's own allegations from those he attributes to his mother. Actually all of the

allegations contained in Lucille Freemon's affidavit of February 9, 1989 (See Freemon Ex.1, p.12) are his. He prepared the affidavit, and ostensibly she signed it. None of the allegations are really hers.

<sup>10</sup> These entities include: (1) the Gresham Oregon Emergency Service; (2) the Gresham Police Department; (3) the Portland Adventist Hospital; and (4) Dr. Theodore P. Utt, M.D.

<sup>11</sup> Mrs. Freemon has even carried her point of non-involvement by refusing to sign her October 4, 1994 deposition. See Tr.9.

<sup>12</sup> There are some mothers who allow their children to take

### Elehue Freemon's Complaint

17. Secondly, those portions of the August 16, 1990 formal complaint that can be attributed to Elehue Freemon will also be dismissed. Elehue Freemon has filed a sham suit against AT&T.<sup>13</sup> From the very outset he has held out his mother as a co-complainant, knowing all along she was not involved in the least.

18. Elehue Freemon obviously believed that his chances of receiving a favorable cash damage award from the FCC would be enhanced if a Black female were one of the complainants. He also wanted to obtain all the tactical and procedural advantages that would accrue from having his mother join in the suit. So he deliberately and dishonestly included her in his complaint that he filed with the Commission.

19. Moreover, during the four years the formal complaint was being processed Elehue Freemon never admitted, never even hinted that his mother was not really a co-complainant or that she didn't even know her son had a damage claim against AT&T. In fact, he continued to represent to the authorities (the Common Carrier Bureau) that his mother had been damaged by the acts of the AT&T operator, Nancy Zolnikov, on the evening of May 30, 1988.

20. Later Elehue Freemon realized that using his mother as a front was not going to produce the lucrative dollar amounts he had asked for (See para. 2 *supra.*). So, on May 12, 1991, Freemon sent AT&T a threatening letter.<sup>14</sup> See Judges Ex. 2, sub-exhibit 41; Tr. 209, 215, and 217-218. That letter reads in part:<sup>15</sup>

"...

Due to the problems this has caused to my family and your eagerness to continue this case I've decided to go public with this issue!

...

As the 'Roney (sic) King' Civil Rights case in California has brought out the publics (sic) opinion must be included since it will affect all Americans.

The PUBLIC NEEDS TO KNOW, what ever (sic) the outcome may be, what kind of company AT&T is really about. . . .

Trust AT&T?"

advantage of them. Although Lucille Freemon comes through as a basically honest and decent person, when one reads her deposition (Judges' Exhibit 1) it becomes apparent that she never realized how much her son was using and abusing her.

<sup>13</sup> This is by far the largest damage claim Mr. Freemon has ever filed. But he is not a stranger to damage-claim litigation. On two separate occasions he has sued: (1) the Security Pacific Bank; and (2) EDD, the unemployment agency for the State of California.

<sup>14</sup> Elehue Freemon admits that the letter can be classified as a threatening letter (Tr.217-218). Even while his claim was being processed as an informal complaint (Footnote 1 *supra.*), Mr. Freemon told AT&T manager, Michael Kmetz, that if he filed a lawsuit against AT&T, this matter "would become a big item in the press." See Judge's Ex. 1, p.72.

<sup>15</sup> The letter bears the date "May 12, 1993." As is the case for numerous dates Elehue Freemon wants the Commission to rely on, the date is inaccurate. The Trial Judge believes the correct date to be "May 12, 1991."

<sup>16</sup> Of course AT&T probably could have paid Elehue Freemon nuisance-value money and settled the case. That has become the

21. Elehue Freemon followed through on his threat. On May 16, 1991, Elehue and Lucille Freemon filed for "Discovery Through the Use of Public Opinion." See AT&T Ex.10, and Tr.135-138. The Commission ultimately denied that motion. See FCC 94-192, released August 12, 1994 at para.15.

22. After it was discovered that Elehue Freemon had forged his mother's signature on her purported Notice of Appearance (Finding 13 *supra.*), he realized that his mother wasn't going to give him the tactical and procedural leverage he thought she would. And when AT&T announced that it was going to depose Lucille Freemon (Finding 15 *supra.*), Elehue Freemon recognized that his mother would end up being a litigation liability, not an asset. It was then he brought up the idea that his mother had Alzheimer's disease (Tr.6-7), and that therefore her testimony couldn't be trusted. Mr. Freemon's belated effort to impeach his mother and fellow co-complainant was rejected (Tr.314-341).

23. Since both Lucille K. Freemon's and Elehue Kawika Freemon's basic allegations are subject to dismissal (Findings 12-22 *supra.*), the sham suit (File No. E-90-393) they have brought against AT&T will be dismissed.<sup>16</sup>

### The Burdens of Proceeding and Burdens of Proof

24. Assuming that the complaint was not a sham, it would still have to be denied. As previously noted (Finding 6 *supra.*), the Commission placed both the burden of proceeding and the burden of proof on all six issues on the Freemons. Not only have they failed to meet their burdens, they have not seriously tried to meet those burdens.<sup>17</sup>

25. During the predesignation phase of this case; i.e., between August 16, 1990 and August 12, 1994, Elehue Freemon filed at least 20 pleadings with the Commission. Yet when he was called upon to meet his burdens, he only introduced four documents: (1) Freemon Exhibit 1: the official August 16, 1990 formal complaint; (2) Freemon Exhibit 2: "Complainants Motion to Accept Paragraph 21(b) and supporting discussions and paragraph 24 correction to Late Pleading Reply";<sup>18</sup> (3) Freemon Exhibit 3: "Complainants Motion to Accept Evidence supporting complainants telephone conversation on May 30, 1991 at

standard corporate practice. But in this instance, the Trial Judge informally suggested to AT&T counsel that the Company, the Commission, and the Public would all be better off if the case were not settled. Sham litigators shouldn't be encouraged, even a little bit. This dishonest and deceitful practice cannot be stamped out. But it certainly can't be allowed to spread.

<sup>17</sup> Elehue Freemon is a *pro se* litigant. He has demonstrated that he is not capable of even addressing his assigned burdens, let alone proving them. The Freemons were admonished on numerous occasions that they would need to obtain counsel. See e.g. FCC 94M-479 released August 17, 1994; FCC 94M-481 released August 19, 1994 at Footnote 4; FCC 94M-550 released September 28, 1994 at para.5; FCC 94M-591 released October 26, 1994 at para.3; Tr.21-22; and Tr.175. They didn't do so. It's time to pay the penalty for going *pro se*.

<sup>18</sup> Why Freemon selected this particular pleading from the 20 he had available is a mystery. The certificate of service accompanying Freemon Ex.2 indicates that the pleading was served on the "...26th day of July 1991. . ." Yet the body of the pleading refers to events that occurred on September 12 and 14, 1991.

22:30 :00";<sup>19</sup> and Freemon Ex.4: Medical patient records of Elehue K. Freemon for the period 5-31-88 through 6-3-88.<sup>20</sup>

26. Moreover, the Trial Judge was forced to reject three of those four exhibits; i.e., Freemon Exs. 2, 3, and 4. See Tr. 91, 106, and 112. So Elehue Freemon fell woefully short of meeting any of his burdens on the six issues he faced. So even if the Freemons' complaint couldn't be dismissed (but see Findings 12-23 *supra.*), it would have to be summarily denied.

#### Findings of Fact: Issues 1-4

27. Based on the foregoing (Findings 1-26 *supra*), no substantive findings of fact are needed. But AT&T has taken the position that this matter should be decided on the merits; i.e., that a merits judgment is the best way of disposing of this lengthy litigation (Tr.14-19).

28. Given the six year length of the predesignation phase (both formal and informal) and the cost and labor associated with that phase, one can engender sympathy for the telephone company's position. After six years of jousting something probably should be said about the merits of the proceeding. So *assuming* the case had to be tried on the substantive merits, the following facts on Issues 1-4 would be appropriate.<sup>21</sup>

29. On May 30, 1988 at about 10:30 p.m. Elehue Freemon tried to place a long distance collect call from his home in Gresham, Oregon, to his mother in Long Beach, California. Before he tried to place that call, Mr. Freemon had consumed at least three glasses of wine and an indeterminate number of sleeping pills. See Judge's Exhibit 1, pp. 4-125, 174-175, 183, 189, 194 and 197.

30. Elehue Freemon was connected to an AT&T long distance operator, Nancy Zolnikov. When he was so connected and began speaking to her, he was breathing heavily, and his speech was confused and disoriented. See AT&T Ex.7 (Complaint, p.2); AT&T Exhibit 8, p.7; Judges Ex.1, pp. 179, 202; and Judges Ex. 3, p. 23.

31. Initially Mr. Freemon couldn't state what service or assistance he needed from Ms. Zolnikov, stating only that he wanted to talk to "Mom." Ms. Zolnikov then asked Mr. Freemon for the telephone number that he wished to call; he gave her the 7-digit number 427-2438, but he couldn't give her the area code. Ms. Zolnikov than asked Freemon where his mother lived, thereby allowing her to determine that the call should be routed to Long Beach, California. See Judge's Ex.1, pp.191-192; and AT&T Ex. 8, p. 7.

32. Ms. Zolnikov then connected the call to complainant Lucille Freemon, and announced that Mr. Freemon was trying to place a collect call. Mr. Freemon never heard Ms. Zolnikov say anything after Ms. Zolnikov announced the call. When Zolnikov indicated to Lucille Freemon that Mr. Freemon appeared to need medical help, Mrs. Freemon

gave Ms. Zolnikov Mr. Freemon's full name and expressly authorized Ms. Zolnikov to seek assistance for her son. See Judge's Ex. 1, pp. 199-200, 210; Ex. 2, pp. 71-73; Ex. 3, p. 23; AT&T Ex. 7, p.2, and Ex. 8, pp. 7-8.

33. Mrs. Freemon then dropped off, and Ms. Zolnikov routed the phone call to the Oregon Emergency Services (OES) in Portland, Oregon. She told them Mr. Freemon needed assistance. After they received the call, OES personnel independently determined to send police to Mr. Freemon's residence. See Judge's Ex.3, p.24, 41.

34. *Intermediate Findings.* Nancy Zolnikov did not violate 47 USC 705 on the night of May 30, 1988. She acted properly. When she forwarded the call to the OES, she was acting at the direction of, and with the permission of, Mrs. Lucille Freemon. Mrs. Lucille Freemon confirmed that fact at her October 4, 1994 deposition. See Judges Ex.1, pp.72-73. Operator Zelnikov did not surreptitiously monitor any telephone conversation between Elehue Freemon and his mother. She forwarded the call to the emergency agency as a necessary incident to the rendition of AT&T's service. There was no interception; there was no improper divulgence.

35. Designated issue 2 asks whether a telephone conversation ensued between Elehue Freemon and Lucille Freemon on May 30, 1988, at the time an AT&T operator handled the operator-assisted call. The answer is that there was no such conversation during the operator assisted call described in paras.29-33 *supra.*

36. This does not mean there were *no* telephone conversations between Elehue Freemon and Lucille Freemon on May 30, 1988. The evidentiary record shows that Elehue Freemon made at least two (2) other operator-assisted collect calls to his mother on May 30, 1988. He made his first collect call at 8:37 a.m., and the second at 6:40 p.m. Moreover, between May 23, 1988 and June 21, 1988, Elehue Freemon made at least 19 operator-assisted collect calls to his mother. See Tr.194-209, 225, and 275-282; also see Freemon Ex.3, rejected.

37. So even if we were to *assume* that Elehue Freemon were honest (which he isn't), and if we were to *assume* that he has tried to present an accurate version of a 10:30 p.m. May 30, 1988 telephone call between he and his mother (which he hasn't), there is still the distinct possibility that he has been describing the *wrong* telephone call.

38. Remember too, that on May 30, 1988, Elehue Freemon was drinking wine and taking sleeping pills. See Tr.202, and AT&T Ex.8 at subexhibit B (Police Report). So if it came to accepting Elehue Freemon's version of the 10:30 p.m. telephone call or accepting Nancy Zolnikov's version as corroborated by Lucille Freemon, the choice is clear. Elehue Freemon was simply not in the physical or mental condition to retain and later recall accurate first-hand testimony.

<sup>19</sup> This document contains a number of critical errors. For instance it stresses an incident that occurred ". . . on May 30, 1991 at approximately 22:30 :00 ." In addition, throughout this hearing both AT&T and Elehue Freemon have referred to the telephone call in question as having occurred at 10:30 or 10:40 p.m. Suddenly, without citation and without reason, Elehue Freemon now refers to the phone call in question as having occurred around 23:00 hours. See Freemon Proposed Findings 5, 9, 20, 29, 33, 40 and 72.

<sup>20</sup> Aside from the original complaint (Freemon Ex. 1), one can

only guess why Freemon selected the documents he did. He didn't even identify and offer his "Reply" to AT&T's October 23, 1990 "Answer." See AT&T Exs. 8 and 9.

<sup>21</sup> The Issue 1-4 Findings of Fact are premised on AT&T Exs. C, E, 7 and 8; and Judges Exs. 1 and 3. Elehue Freemon, at the first page of his Findings, claims that he ". . . herewith presents and files eight proposed findings of fact and conclusion. . ." The Trial Judge has searched and searched. He cannot figure out what Mr. Freemon is saying; i.e., he simply cannot discern "eight" findings and conclusion.

39. One further observation is worthwhile. When Nancy Zolnikov first received the 10:30 p.m. operator-assisted call from Elehue Freemon on the night of May 30, 1988, she came to believe that a medical emergency existed: Elehue Freemon didn't know his mother's area code, he was incoherent, and he was having trouble breathing. See Findings 29-33 *supra*.

40. Now it isn't necessary to a decision in this case that Mrs. Zolnikov's judgment be accurate. As long as she honestly believed that a medical emergency existed and as long as she acted in good faith, forwarding the call to the Oregon Emergency Agency was neither illegal nor improper. But the hard cold fact of life is that Mrs. Zolnikov's judgment was accurate. A medical emergency did exist. Elehue Freemon was contemplating suicide, and he did indeed need help. So when Nancy Zolnikov, with Lucille Freemon's permission, forwarded the call to the Gresham emergency medical authorities, she was not only doing the right thing, she was doing the best thing.

#### Findings of Facts: Issues 5-6

41. Since AT&T has not violated 47 USC 705, they are not required to pay any monetary damages to the complainants. And even *assuming* that a 705 violation had occurred, AT&T would not be required to pay any damages to complainants. Complainants have failed to meet their burden of proceeding and burden of proof under Issue 5. Indeed they have not even attempted to seriously address those burdens. See Findings 24-26 *supra*.

42. Similarly, under designated issue 6, and since complainants are not entitled to damages (See Finding 41 *supra*.), they are not entitled to any prejudgment interest.

#### Conclusions of Law

1. This is the unpleasant saga of a dishonest son attempting to use his mother to extort a large damage claim from a telephone company with deep pockets. The formal complaint (File No. E-90-393) that Elehue Kawika Freemon and his mother, Lucille Freemon filed on August 16, 1990 against AT&T Corp. will be dismissed. That complaint is a fake and a sham.

2. Lucille K. Freemon has never intended to bring an action against AT&T. She is not now and never has been a complainant in this case. For the four years that the Common Carrier Bureau was processing the complaint (August 16, 1990 to August 12, 1994), she had no idea that her son was processing a \$3.2 million damage claim in her name.

3. When the formal complaint was set for hearing, the parties were required to file written notices of appearance. Elehue Freemon forged his mother's signature on a Notice of Appearance, and filed it with the Commission.

4. When that forgery was exposed, Elehue Freemon then tried to file a power of attorney that would permit him to represent his mother in this case. That ruse also failed. See FCC 94M-584 released October 21, 1994.

5. When AT&T announced that they would depose Lucille Freemon on October 4, 1994, Elehue Freemon realized that the truth was about to come out; i.e., that his mother had nothing to do with the suit. So he tried to head off her deposition by introducing the idea that Lucille Freemon was suffering from Alzheimer's disease and that therefore any testimony she would give couldn't be credited. This ploy also failed.

6. At her October 4, 1994 deposition Lucille Freemon clearly indicated that she was not and never had been a party to her son's deception. She disowned her February 9, 1989 affidavit that Elehue Freemon had attached to the August 16, 1990 formal complaint. In describing that affidavit, she said: "What's written on here is not the truth." (See Tr.70-72).

7. Moreover, her version of what happened on the night of May 30, 1988 at 10:30 p.m. more nearly coincides with AT&T's (Nancy Zolnikov's) version and differs substantially from what her son, Elehue Freemon, says happened.

8. Even at the December 12, 1994 hearing, Elehue Freemon unsuccessfully continued to try to impeach the co-complainant he had relied on for four years, his own mother.

#### Ultimate Conclusion

9. Elehue Freemon has tried to induce the Commission to act favorably on a \$3.2 million damage claim against AT&T via a falsely captioned and falsely written complaint. From the outset and over a period of four years he has conducted himself dishonestly and deceitfully. Neither his complaint nor his subsequent verbal and written meanderings warrant any further consideration.

So unless an appeal is taken from this Initial Decision or the Commission reviews it on their own motion, Elehue Kawika Freemon's and Lucille K. Freemon's formal complaint (File No. E-590-393) IS DISMISSED;<sup>22</sup> and this proceeding IS TERMINATED.<sup>23</sup>

#### FEDERAL COMMUNICATIONS COMMISSION

Walter C. Miller  
Administrative Law Judge

<sup>22</sup> Note however that findings of fact have been made on both the assigned burden of proceeding and burden of proof (Findings 24-26 *supra*.), and on the substantive aspects of designated issues 1-6 (Findings 27-42 *supra*.) This means that even if an appellate body disagrees with the dismissal analysis (Findings

11-23 *supra*.) no remand will be needed.

<sup>23</sup> If exceptions aren't filed within 30 days, or the Commission doesn't review the case on their own motion, this Initial Decision will become effective 50 days after its public release. See 47 CFR 1.276(d).