

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
JAMES CHELMOWSKI,)	
Complainant)	
)	Docket No. 14-260, File No. EB-14-
v.)	MD-016
)	
AT&T MOBILITY LLC,)	
Defendant)	
)	

OPPOSITION TO MOTION TO RECONSIDER

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August 19, 2015

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In the Matter of)	
)	
JAMES CHELMOWSKI,)	
Complainant)	
)	Docket No. 14-260, File No. EB-14-
v.)	MD-011
)	
AT&T MOBILITY LLC,)	
Defendant)	
)	

OPPOSITION TO MOTION TO RECONSIDER

AT&T Mobility respectfully submits this opposition to the Motion to Reconsider filed in this matter by the Complainant, Mr. Chelmowski, on August 10, 2014.¹ In his motion, Mr. Chelmowski seeks reconsideration of the Bureau’s order dismissing his formal complaint with prejudice as time-barred under the two-year statute of limitations in Section 415(b) of the Communications Act.²

In its order, the Bureau held that because Mr. Chelmowski did not file his formal complaint until December 11, 2014, more than two years after both the time of the alleged injury, and the March 2011 date when he filed the first of three informal complaints regarding the claims, the formal complaint was time barred under Section 415(b).³ Moreover, the Bureau found that the

¹ See Motion to Reconsider, *Chelmowski v. AT&T Mobility LLC*, EB Docket No. 14-260 (filed August 10, 2015)(the “Motion”).

² Memorandum Opinion and Order, *Chelmowski v. AT&T Mobility LLC*, EB Docket No. 14-260 (adopted July 10, 2015)(the “Order”).

³ Id. at ¶ 8. The Bureau also ruled that the “relation back” principle in 47 C.F.R. § 1.718 was inapplicable because the formal complaint was filed more than 6 months after Mr. Chelmowski received AT&T’s responses to the two

limitations period was not tolled by alleged fraudulent concealment because “Chelmowski had the basic facts needed to assert a claim regarding the 0400 number port” and “he actually did so, in two informal complaints in 2011, and in an arbitration proceeding in 2013.”⁴

In his Motion, Mr. Chelmowski does not identify any error, omission or reason that would justify disturbing the Bureau’s decision. Moreover, a petition does not warrant relief if it relies “on arguments that have been fully considered and rejected by the Commission within the same proceeding.”⁵ The statements in Mr. Chelmowski’s motion merely repeat arguments made in his formal complaint.

Nor is there any reason to reconsider the Bureau decision based on the facts. Mr. Chelmowski admittedly filed an informal complaint in March of 2011, alleging essentially the same claims regarding the failed number port that form the basis of his formal complaint filed more than two years later, in December of 2014. This demonstrates not only that the alleged injury occurred more than two years before the formal complaint was filed, but that despite any alleged attempts at concealment, he had learned of the alleged injury by March 2011 at the latest. In other words, he had actual knowledge of the facts giving rise to his claims more than two years prior to his filing this formal complaint. Accordingly, the two-year limitations period in Section 412(b) bars his claims, and the Bureau correctly dismissed his complaint with prejudice.

For the reasons stated, his Motion to Reconsider should be denied.

informal complaints Mr. Chelmowski filed in 2011, and the third informal complaint, filed in 2014, was itself time-barred. *Id.* at ¶9.

⁴ *Id.* at ¶10. Because the Bureau found that complaint was time-barred, it did not reach AT&T’s defense that Mr. Chelmowski’s claims were fully litigated in the 2013 arbitration and were therefore also barred by the doctrine of *res judicata*. *Id.* at fn. 38.

⁵ 47 C.F.R. § 1.106(p)(1),(3).

AT&T Mobility LLC

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Certificate of Service

I certify that, consistent with rule 1.735(f), a true and correct copy of this Opposition to Motion to Reconsider was served on the Complainant, Mr. Chelmowski, on August 19, 2015, by email at the following address: jchelmowski@comcast.net.



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