

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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YONG SOON OH and BERNICE SCHATZ :  
on behalf of themselves and all :  
others similarly situated, :  
 : Civil Action No. 99-2161 (WHW)  
Plaintiffs, :  
 :  
- against - :  
 :  
AT&T CORP., :  
 :  
Defendant. :  
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**AT&T CLASS ACTION SETTLEMENT**

**AMENDED NOTICE OF PROPOSED SETTLEMENT OF  
CLASS ACTION AND APPLICATION FOR ATTORNEYS' FEES**

**SUMMARY**

**Who should read this Summary:** Subscribers or former subscribers to AT&T Corp.'s ("AT&T") services who used AT&T's Area Code Directory Assistance service (as defined below) at any time on or after April 1, 1997.

This Amended Notice (the "Notice") is about a proposed settlement of a class action lawsuit against AT&T and a court hearing in connection with that proposed settlement. The lawsuit alleges that AT&T acted improperly in providing Area Code Directory Assistance ("ACDA"). If you used AT&T's services to call Directory Assistance outside of your own Area Code by dialing another Area Code followed by 555-1212, you used ACDA. The lawsuit alleges that AT&T hindered users of ACDA from getting a second directory assistance listing during a single call to ACDA for a single charge as provided for in its tariffs. AT&T denies and continues to deny all of the claims and allegations of wrongdoing asserted in the lawsuit.

As explained below, if the Court approves the proposed settlement and the settlement becomes final, AT&T will take certain actions providing benefits worth \$13 million in connection with the provision of its ACDA, and the

members of the proposed “Settlement Class,” as defined below, will automatically release certain claims that they might otherwise have against AT&T.

If you subscribed to AT&T’s service, and used ACDA at any time from April 1, 1997 until the time the proposed settlement is approved, and the approval becomes final, then you are a member of the proposed Settlement Class.

If you are a member of the proposed Settlement Class, you should read the rest of this Summary section of this Notice. The facts in this Summary are explained in further detail in the rest of this Notice and in other documents that are available to members of the proposed Settlement Class as described elsewhere in this Notice.

As more fully summarized in the rest of this Notice, if you are a member of the proposed Settlement Class,

- you have the right to object to the proposed settlement for injunctive relief and/or the request by plaintiffs’ counsel for an award of attorneys’ fees and reimbursement of litigation expenses in an amount up to but not exceeding \$3.4 million, plus interest, that would be paid by AT&T if the proposed settlement is approved and becomes final and if the Court issues an award of fees and expenses to plaintiffs’ counsel; and
- if the proposed settlement is approved and the settlement becomes final, you will be entitled to participate in certain benefits of the settlement, described more fully below, having a value of \$13 million, and you will automatically release certain claims that you may have against AT&T.

As detailed below, a settlement hearing will be held on **SEPTEMBER 9, 2004**, in the United States District Court for the District of New Jersey in Newark, New Jersey (the “Court”). The purpose of the settlement hearing is for the Court to decide whether to approve the proposed settlement and a request by the plaintiffs’ counsel for an award of attorneys’ fees and reimbursement of expenses to be paid by AT&T if the proposed settlement is approved and becomes final and the Court issues an award of fees and expenses to plaintiffs’ counsel. If you want the Court to consider your opinion on either of these matters, then you must serve papers by **AUGUST 18, 2004**, as set forth below.

The precise terms of the proposed settlement and related matters are set forth in the Stipulation of Settlement between the plaintiffs and AT&T, dated March 8, 2004 (the “Stipulation”). For information purposes, this Notice summarizes and paraphrases many of the terms of the Stipulation. However, the Stipulation is the governing document. In legal terms, this Notice is qualified in its entirety by the terms of the Stipulation, and in the event of any discrepancy or inconsistency between anything in this Notice and any term of the Stipulation, the term of the Stipulation shall govern and control. The entire Stipulation is available on the Internet at <http://www.attsettle.com>, or at <http://www.abbeygardy.com> (under the links for “Settlements” and “Oh v. AT&T Corp.”), or by sending an email to [attsettle@abbeygardy.com](mailto:attsettle@abbeygardy.com).

You can also review the Stipulation during business hours at the office of the Clerk of the Court, Martin Luther King, Jr. Federal Building & United States Courthouse, 50 Walnut Street, Newark, New Jersey 07101. Finally, you may obtain a copy of the Stipulation by contacting plaintiffs' counsel at the address set forth below.

## **I. THE LITIGATION**

On April 1, 1999, plaintiff Yong Soon Oh filed this lawsuit in the Superior Court of New Jersey. Oh alleged that the prompts used by AT&T in its ACDA were misleading and therefore violated state and federal law. Oh alleged that, although AT&T's tariff offered to provide "up to" two listing requests per call for a fixed price, AT&T used singular form prompts (e.g., "what city? what listing?"), and these prompts provided no opportunity to request a second listing after the customer had obtained the first listing. Oh further alleged that when a customer was unable to make a second request and sought credit, AT&T denied credit on the grounds that its procedures required customers to state at the beginning of the call that they wanted to request two listing requests. Oh alleged that AT&T's conduct constituted a breach of its contracts, common law fraud, and negligent misrepresentation, and that it violated the New Jersey Consumer Fraud Act, N.J. Stat. 56:8-1 et seq.

On May 11, 1999, AT&T removed the lawsuit from New Jersey state court to the Court, claiming that the causes of action alleged in the complaint arose out of a federal tariff filed by AT&T with the Federal Communications Commission (the "FCC"). In October 1999, plaintiff Oh amended the original complaint (the "Amended Complaint") to name co-plaintiff Bernice Schatz (collectively, the "Plaintiffs") and to add a claim under Section 201(b) of the Communications Act of 1934 (the "Communications Act"). On September 15, 1999, AT&T moved to dismiss the Amended Complaint.

By Order dated December 10, 1999, the Court denied in part AT&T's motion for judgment on the pleadings to dismiss the state law causes of action, but found that the state law claims depended on the tariff filed by AT&T and Plaintiffs' rights under the Communications Act. Accordingly, the Court stayed the lawsuit and, pursuant to the "primary jurisdiction" doctrine, referred certain issues to the FCC for decision.

On June 12, 2000, Plaintiffs filed a Request For Declaratory Ruling with the FCC, seeking a Declaratory Order that AT&T's conduct as alleged in the Amended Complaint violated the Communications Act. This matter was consolidated before the FCC with a nearly identical matter against MCI.

After certain discovery and briefing pursuant to the FCC's Rules, the FCC determined that AT&T's and MCI's use of singular form prompts, combined with the non-disclosure of procedures for customers to obtain up to two listings per directory assistance call, were "unjust" and "unreasonable" practices within the meaning of § 201(b) of the Communications Act (the "Declaratory Order").

In April 2002, upon Plaintiffs' application, the Court lifted the previously imposed stay. Thereafter, the Parties commenced the settlement discussions described below.

On or about April 28, 2003, AT&T filed a Motion to Deny Class Certification. On June 4, 2003, Plaintiffs filed a Motion for Class Certification and a Response to AT&T's Motion to Deny Class Certification. Plaintiffs then moved for partial summary judgment and AT&T moved for judgment on the pleadings dismissing Plaintiffs' remaining claims. The Parties agreed to stay the adjudication of these motions subject to the final settlement of Plaintiffs' claims.

Beginning in April 2002, the Parties, through their counsel, conducted ongoing arms'-length negotiations with a view toward settling the material issues in dispute. Eventually, after arriving at an impasse following months of negotiations, the Parties retained retired U.S. Third Circuit Court of Appeals Judge Arlin M. Adams to mediate the dispute.

The Parties prepared and submitted written memoranda to Judge Adams before the mediation. Judge Adams presided over two days of mediation, during which each side presented its factual and legal arguments. Eventually, with Judge Adams' assistance, the Parties reached an agreement in principle to settle the lawsuit on about July 28, 2003. The Parties conducted further negotiations and, on or about October 21, 2003, executed a Memorandum of Understanding (the "MOU") setting forth the basic terms of the proposed settlement. AT&T then provided certain information to Plaintiffs' counsel and Plaintiffs' expert in connection with their evaluation of the proposed settlement. The Parties also negotiated and, on March 8, 2004, executed, the Stipulation. The terms of the Stipulation supersede the terms of the MOU.

## **II. THE PARTIES' STATEMENTS OF THEIR REASONS FOR SETTLING**

Plaintiffs believe that their claims have merit and that the evidence developed to date supports the claims. Plaintiffs and their counsel, however, recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the lawsuit against AT&T through trial and likely appeals. Plaintiffs and their counsel have also taken into account the uncertain outcome and the risk of any lawsuit, especially in complex actions such as this lawsuit, as well as the difficulties and delays that could reasonably be anticipated. Plaintiffs and their counsel have determined that the settlement set forth in the Stipulation is in the best interests of the Plaintiffs and the other members of the proposed Settlement Class.

AT&T denies and continues to deny each and all of the claims and allegations of wrongdoing asserted by Plaintiffs in this lawsuit. Without conceding any infirmity in the denials or defenses AT&T asserted or intended to assert in this lawsuit, AT&T states that it is its desire and in its best interests that the lawsuit be fully and finally settled and dismissed in the manner and upon the terms and conditions set forth in the Stipulation in order to avoid the expense, inconvenience, and distraction of further legal proceedings, and to put to rest the claims asserted by Plaintiffs individually and on behalf of the proposed Settlement Class.

## **III. THE BENEFITS OF THE PROPOSED SETTLEMENT**

If the proposed settlement becomes final, AT&T voluntarily will enter into an injunction by which it shall take the following actions and confer the following benefits upon the proposed Settlement Class pursuant to the terms of the Stipulation and Rule 23(b)(2) of the Federal Rules of Civil Procedure:

Within twenty (20) days after the proposed settlement has been approved and the approval is no longer subject to any appeal (that is, within twenty days after the approval has become “final”), AT&T shall, at its own cost and expense, change the prompts for its ACDA to state “What cities? What listings?”, and shall maintain such prompts and an appropriate “loopback capability” (that is, the ability to request a second listing after obtaining a first listing on the same call) at any time that it offers to provide more than one directory listing on a single call to ACDA.

In addition, for two consecutive weekend days (for a 24-hour period each day), AT&T shall, at AT&T’s sole cost and expense, provide the opportunity for callers to make unlimited calls to a toll-free, 1-800 number to obtain ACDA listings. The two-day period shall be determined by AT&T, and shall begin no earlier than two weeks and not later than four weeks after publication of the Summary Approval Notice described below has been completed.

In addition, for a three-month period beginning immediately after the conclusion of the two-day period referred to above, AT&T shall, at AT&T’s sole cost and expense, provide the opportunity for callers to ACDA to request up to three listings per each call to ACDA for the current price of \$1.99 per call.

In order to inform members of the proposed Settlement Class when the two-day and three-month periods described above begin, as well as the toll-free, 1-800 number to call during the two-day period, within twenty (20) days after the proposed settlement has become final, AT&T shall, at its own cost and expense, publish in *USA Today* a conspicuous Summary Approval Notice setting forth the times and the toll-free telephone number. The Summary Approval Notice shall also provide the address of the website containing more information about the settlement benefits, [www.attsettle.com](http://www.attsettle.com). AT&T shall maintain that website at its sole cost and shall ensure that it provides reasonable access to that website to the members of the proposed Settlement Class.

#### **IV. THE SETTLEMENT HEARING**

The settlement hearing will be held on **SEPTEMBER 9, 2004 at 10 a.m.**, before the Honorable William H. Walls, United States District Judge, at the Martin Luther King, Jr. Federal Building and United States Courthouse, District of New Jersey, 50 Walnut Street, Courtroom 4D, Newark, NJ 07101. The purpose of the settlement hearing will be to determine: (1) whether to finally certify the proposed Settlement Class and appoint Plaintiffs as Lead Plaintiffs and Plaintiffs’ counsel as Lead Counsel; (2) whether the proposed settlement should be approved as fair, reasonable, and adequate to the members of the proposed Settlement Class; (3) whether the application by Plaintiffs’ counsel for an award of attorneys’ fees and reimbursement of litigation expenses, to be paid by AT&T, should be approved; (4) whether this lawsuit should be dismissed with prejudice; (5) whether Plaintiffs and each member of the proposed Settlement Class shall be deemed upon dismissal of the lawsuit and by operation of the final judgment to have released and forever discharged AT&T from any and all of the settled claims as set forth in the Stipulation; and (6) anything else that the Court may deem appropriate. The Court may adjourn or continue the settlement hearing without further notice to the proposed Settlement Class.

## **V. PARTICIPATION IN THE SETTLEMENT**

If you are a member of the proposed Settlement Class, you will be bound by any final judgment entered with respect to the proposed settlement in the lawsuit.

When and if the proposed settlement becomes final, each member of the Settlement Class shall automatically release the “Released Parties” (as defined in the Stipulation, generally including AT&T and each of its predecessors, successors, present and former officers, directors, employees, affiliates, parents, subsidiaries, and agents) from all of the “Settled Claims” (as defined in the Stipulation, generally including any kind of claims, including unknown claims, arising under any kind of law, rule, or regulation, which are either alleged in this lawsuit or could or might have been alleged in this lawsuit).

## **VI. THE ATTORNEYS’ FEES AND EXPENSES APPLICATION**

In connection with the settlement hearing, Plaintiffs’ counsel will ask the Court to award attorneys’ fees and reimbursement of litigation expenses in an amount up to but not exceeding the aggregate amount of \$3.4 million, plus interest as defined in the Stipulation, to be paid by AT&T if the proposed settlement is finally approved and the Court issues an award of attorneys’ fees and reimbursement of litigation expenses to Plaintiffs’ counsel. Under the terms of the Stipulation, within ten days after both the proposed settlement and any fee and expense award have become final, AT&T shall pay to Plaintiffs’ counsel the amount finally awarded up to \$3.4 million, plus certain interest on the amount finally awarded as set forth in the Stipulation.

AT&T has agreed not to oppose this request for fees and expenses in an amount up to but not exceeding the aggregate amount of \$3.4 million, plus interest. However, AT&T shall have no obligation to pay any fees or expenses to Plaintiffs’ counsel in excess of the amounts set forth in the preceding paragraph. Also, AT&T shall have no obligation whatsoever to pay any fees or expenses to plaintiffs’ counsel if the Stipulation has been canceled pursuant to its terms or if the Court does not issue an order of final approval or award attorneys’ fees and reimbursement of litigation expenses. The Stipulation generally provides that either party may cancel it on certain terms if final approval becomes impossible or if the scope of the release that AT&T will get on final approval substantially varies from that set forth in the Stipulation.

Any order or proceedings relating to the fee and expense application, or reversal or modification of any award in connection with such application, will not operate to affect or delay the finality of the proposed settlement.

## **VII. CONDITIONS TO THE SETTLEMENT**

The proposed settlement is conditioned on the following conditions, as well as others set forth in the Stipulation: (1) approval of the proposed settlement by the Court as provided for in the Stipulation; (2) certification of the proposed Settlement Class and appointment of the proposed Lead Plaintiffs and Lead Counsel as provided for in the Stipulation; (3) entry of the Final Judgment dismissing the lawsuit as set forth in the Stipulation; (4) expiration of the time to appeal from or alter or amend the scope of the release that AT&T will obtain on final approval; and (5) entry of the release that AT&T will obtain upon final approval of the proposed settlement in substantially the same form and scope as the parties agreed to in the Stipulation. If, for any

reason, any one of the conditions described in the Stipulation is not met, the Stipulation may be canceled and, if canceled, shall become null and void, and the parties to the Stipulation will be restored to their respective positions.

### **VIII. THE RIGHT TO OBJECT**

Any member of the proposed Settlement Class who objects to any aspect of the proposed settlement or the application for attorneys' fees and expenses may do so in writing as set forth below. Any person objecting in writing as set forth below may also appear in person and be heard at the settlement hearing. Unless the Court orders otherwise, no objector will be heard at the settlement hearing unless he or she has objected in writing as set forth below.

Any written notice of objection must be received, on or before **AUGUST 18, 2004**, by each of the following:

CLERK OF THE COURT  
UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
Martin Luther King, Jr. Federal Building &  
United States Courthouse  
50 Walnut Street, Room 4046  
Newark, New Jersey 07101

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212 East 39th Street  
New York, New York 10016  
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(Co-Counsel for AT&T)

and

Robert D. Towey, Esq.  
David G. Tomeo, Esq.  
LOWENSTEIN SANDLER, P.C.  
65 Livingston Avenue  
Roseland, New Jersey 07068  
(Co-Counsel for AT&T)

The written objection must prominently reference the case name (Oh v. AT&T Corp.) and the Civil Action Number (99-2161 (WHW)), must state the reasons for the objection with enough detail that the Court and the parties will be able to completely consider them, and must

contain the following statement: “I, [insert name], state under penalty of perjury that I am a member of the Settlement Class.”

**PLEASE DO NOT TELEPHONE THE COURT  
REGARDING THIS NOTICE.**

If, after reading this Notice and the Stipulation, you have any unanswered questions about this lawsuit or anything relating to the proposed settlement, you may contact Plaintiffs’ principal counsel by writing to:

Joshua N. Rubin, Esq.  
ABBHEY GARDY, LLP  
212 East 39th Street  
New York, NY 10016

DATED: May 10, 2004

BY ORDER OF THE COURT  
UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY