



Control Number: 39202



Item Number: 10

Addendum StartPage: 0

AT&T Texas
March 29, 2011

DOCKET NO. 39202

COMPLAINT OF CRANE COUNTY
AGAINST SOUTHWESTERN BELL
TELEPHONE COMPANY D/B/A AT&T
TEXAS

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§

PUBLIC UTILITY COMMISSION
OF TEXAS

AT&T TEXAS' AMENDED MOTION TO DISMISS AND AMENDED RESPONSE TO
COMPLAINT OF CRANE COUNTY

COMES NOW Southwestern Bell Telephone Company d/b/a AT&T Texas
("AT&T") and files this amended response to the Complaint of Crane County as required
by Order No. 1.

I.
Introduction

On February 28, 2011, Crane County, through its agent Mark A. Wilder of Southwestern Tariff Analyst, filed a complaint with the Commission ("the Complaint") against AT&T, seeking a refund of all "Late Payment Charges" assessed against Crane County for account number 432-558-1100.¹ Crane County alleges that under the Texas Prompt Payment Act ("PPA"), late payment charges are unlawful.

For the reasons stated below, the Complaint should be dismissed. In the alternative, AT&T denies that Crane County is entitled to any relief in this matter and all relief requested by Crane County should be denied.

¹ See Formal Complaint of Crane County at 1-2, Docket No. 39202 (February 28, 2011).

II. **Jurisdiction**

Crane County's Complaint should be dismissed for lack of jurisdiction because Crane County failed to exhaust its administrative remedies at the informal complaint level to the fullest extent required prior to filing a formal complaint.² More specifically, prior to filing its Complaint, Crane County made no attempt to provide AT&T with specific information necessary to determine whether a refund is warranted. Instead, Crane County merely made a blanket demand for a refund of all late payment charges and demanded that AT&T provide it with an "accounting" of the refund.³

What is interesting about Crane County's demand is that it calls for AT&T to do Crane County's homework for it and have AT&T incur the costs associated with Crane County's demand. Crane County fails to recognize, but AT&T asks the PUC to consider, that complying with Crane County's overbroad demand is unduly burdensome because it costs AT&T time and money in research hours to locate dated and archived telephone bills, printing all these telephone bills, reviewing all these telephone bills, and, on top of that, preparing an accounting just to satisfy Crane County's demand. Crane County should be precluded from shifting the cost and having AT&T bear the entire costs associated with Crane County's demand for a refund.

III. **Motion to Dismiss**

The Complaint fails to state a claim for which relief can be granted and should be dismissed as a matter of law.⁴ Crane County's allegations lack sufficient specificity with

² P.U.C. Proc. R. 22.242(c).

³ See Crane County Informal Complaint (CP2011020280) dated February 2, 2011.

⁴ See P.U.C. Proc. R. 22.181(a)(1)(G).

respect to key elements of relief sought. Additionally, as discussed below, Crane County fails to adequately plead facts which allow AT&T to fully respond to the Complaint.⁵ Because Crane County's Complaint does not present a proper claim for the granting of relief, the Complaint should be dismissed.

To survive dismissal under P.U.C. Proc. R. 22.181, the Complaint must "state a claim for which relief can be granted." Failure to do so will result in dismissal. The Complaint generally alleges AT&T is not authorized to accept overdue interest, it is "grossly unfair" to apply overdue interest to Crane County, and that it seeks a refund of all late payment charges. There is just no cognizable claim.

Crane County is apparently under the mistaken belief that it is not subject to the PPA. This is incorrect. Crane County is a governmental entity⁶ and, more specifically, a political subdivision.⁷ Hence, it is subject to the PPA.⁸ If Crane County's payment is overdue, it "***shall compute interest*** imposed" on it under the PPA.⁹ Moreover, Crane County "***shall pay the interest at the time the payment is made*** on the principal."¹⁰ The PPA even mandates that Crane County may not require AT&T to "petition, bill, or wait an additional day to receive the interest due."¹¹ Therefore, Crane County is subject to late payment interest if its payment is overdue.

⁵ See P.U.C. Proc. R. 22.242.

⁶ See Tex. Gov't Code §2251.001(3) (providing definition of "governmental entity").

⁷ See Tex. Gov't Code §2251.001(6) (providing definition of "political subdivision").

⁸ See Tex. Gov't Code §2251.021 (providing time for payment by a governmental entity, which includes a political subdivision, and when the payment is considered overdue).

⁹ See Tex. Gov't Code §2251.027(a) (emphasis added).

¹⁰ See Tex. Gov't Code §2251.027(b) (emphasis added)

¹¹ See Tex. Gov't Code §2251.027(d).

Crane County has not demonstrated that it has complied with the requirements of the PPA. The threshold question is whether any of Crane County's payments were overdue. If any of the payments were overdue, under the PPA, Crane County owed AT&T late payment interest. As predicated by the PPA, Crane County has the burden of computing the late payment interest and paying the interest at the time it makes its principal payment.

It is possible that Crane County has not complied with the requirements of the PPA and that Crane County may have owed late payment interest to AT&T. If that is the case, such amounts should be offset against any amounts that AT&T received. But in its Complaint, Crane County failed to allege, much less establish by even the barest factual threshold, that it made any overpayments to AT&T. Instead, Crane County merely speculates that it "likely shows Crane [County] paid AT&T early under the terms of the PPA,"¹² therefore, owes no overdue interest to AT&T. Crane County's speculation, without more, provides no information which allows AT&T to determine what, if any, refund may be justified. Because Crane County's Complaint does not present a proper claim for the granting of relief, the Complaint should be dismissed.

IV. Response

AT&T generally denies each and every, all and singular, the allegations contained in the Complaint, demands strict proof thereof, and denies that Crane County is entitled to relief in this matter.

In the alternative, in the unlikely event that Crane County overpaid late payment interest to AT&T, AT&T contends that Crane County knew, or should have known, that it

¹² See Formal Complaint of Crane County at 1, Docket No. 39202 (February 28, 2011).

was overpaying late payment interest to AT&T under the PPA and it would, therefore, be appropriate to hold Crane County partially responsible for the prolonged accrual of overpayments in this proceeding.

AT&T reserves its right to respond further to Crane County's Complaint as appropriate and necessary.

V.

Applicable Statutes, Rules, Orders and/or Tariff Provisions

Order No. 1 specifically directs AT&T to address the applicable statutes, rules, orders and/or tariff provisions applicable to the Crane County's Complaint. Pursuant to this requirement, following is a list of those statutes, rules, orders and/or tariff provisions which AT&T currently identifies as potentially applying to this Complaint:

- Tex-AN 2000 Sales Agreement, and related amendments;
- Chapter 2251 of the Texas Government Code;
- Section 23, Paragraph 6.8 of AT&T's General Exchange Tariff;
- Order, Docket No. 34332 (April 15, 2009);
- PURA §§ 64.157 and P.U.C. SUBST.R. 26.27;
- P.U.C. SUBST.R. 26.33;
- P.U.C. Proc. R. 22.181; and
- P.U.C. Proc. R. 22.242(c).

VI.

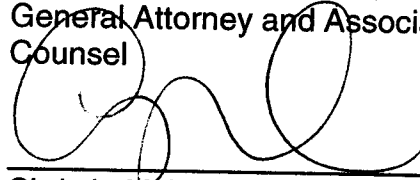
Conclusion

For the reasons stated above, the Complaint should be dismissed for lack of jurisdiction and as a matter of law because it fails to state a claim upon which relief can

be granted. In the alternative, AT&T denies that Crane County is entitled to any relief in this matter and all relief requested by Crane County should be denied.

Respectfully submitted,

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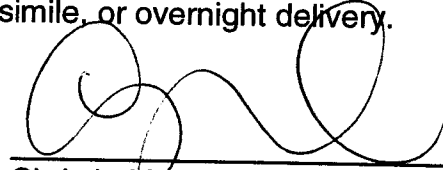
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CERTIFICATE OF SERVICE

I, Christie M. Villarreal, General Attorney for AT&T Texas, certify that a true and correct copy of this document was served on all parties of record on March 29, 2011, via: U.S. Certified Mail, electronic mail, facsimile, or overnight delivery.



Christie M. Villarreal