

Control Number: 39202



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DOCKET NO. 39202

COMPLAINT OF CRANE COUNTY
AGAINST SOUTHWESTERN BELL
TELEPHONE, d/b/a AT&T TEXAS

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PUBLIC UTILITY COMMISSION
OF TEXAS

MAR 11 AM 10:34
FILING CLERK

CRANE COUNTY'S FIRST REQUEST FOR INFORMATION TO AT&T

On March 10, 2011 AT&T Texas ("AT&T") filed its Objections to Crane County's First Request for Information to AT&T. Crane County ("Crane") timely files this Motion to Compel Responses to Crane County's First Request for Information to AT&T. AT&T's objections themselves are made in bad faith and constitute prohibited resistance to discovery and are made solely for the purpose of harassment, cause delay and increase the cost of this complaint.

REQUESTS FOR INFORMATION

Requests for Production:

RFP # 1-1: Please provide a copy of the telephone bill for account 432-558-1100 for any month from June 1994 through the present month where AT&T imposed a Late Payment Charge on the account.¹

AT&T Texas' Objection:

AT&T Texas objects to this request for production to the extent Crane County failed to (in good faith) exhaust its administrative remedies prior to filing its formal complaint. Crane County did not request copies of telephone bills at the informal complaint level to investigate its PPA claim and instead demanded that AT&T do Crane County's homework for it and have AT&T incur the costs associated with Crane County's demand. It is obvious that Mark Wilder, Crane County's representative, strategically chose not to demand copies of telephone bills at the informal complaint level as he has previously demanded on behalf of another governmental entity in at least one other proceeding, to avoid paying \$5 a copy per monthly bill as authorized by Section 23, Paragraph 6.8 of AT&T's General Exchange Tariff (the "tariff"). Crane County fails to recognize, but AT&T asks the Public Utility Commission 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

¹ Crane added special instructions to these Requests for Production as follows: "Special instructions. For purposes of responses to these Requests for Production, it may not be necessary to produce the entire copy of the telephone bills. Complainant only seeks the page or pages that show the imposition of the disputed LPCs and the payments that may have been made by the Complainant. Typically, the LPCs and the credits for payment appear on page one of the telephone bill."

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 and responding to this request for production. In an obvious and blatant attempt to escape the lawful copy charges and circumvent the tariff, Crane County, not having exhausted its administrative remedies to the fullest extent required, demanded an "accounting" and then proceeded to file a formal complaint. Then, not surprisingly, and as further evidence of Mr. Wilder's intent, Crane County served AT&T discovery that sought telephone bills.

AT&T Texas also objects to Crane County's request for production because it is nothing more than a fishing exhibition, which is prohibited. 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. Now, at the formal complaint level, Crane County makes a blanket demand for all telephone bills reflecting a late payment charge from the present through 1994 (a seventeen year period). Crane County provides absolutely no particularity in terms of the month and year for each telephone bill to reasonably narrow the request for production and instead makes an overly broad and generic blanket request for production requiring AT&T Texas to do Crane County's homework.

AT&T Texas further objects to this request for production because Crane County did not limit it as to temporal scope. Such failure to limit the scope renders the request overly broad and unduly burdensome. AT&T Texas should not be required to produce documents that are beyond the scope of its document retention policies. AT&T Texas further objects because this RFP may call for the production of documents that are potentially voluminous.

Crane's Motion to Compel:

AT&T claims that Crane "failed to exhaust its administrative remedies prior to filing its formal complaint." Crane filed this formal complaint after the PUC closed the informal complaint. AS such, the informal complaint process (administrative remedies) was exhausted. It is AT&T that utterly failed to respond to the informal complaint providing no information whatsoever in its response. Contrast its response to the Crane informal complaint to its response on the same topic for the City of Pharr. In its response to the City of Pharr, it provided each and every Late Payment Charge ("LPC") it charged in a spreadsheet. In its response to the informal complaint of Crane, AT&T provided nothing whatsoever. AT&T failed to even acknowledge it ever charged a LPC to Crane. This RFP seeks, in part, to quantify the LPCs charged to Crane and is therefore completely relevant to the instant complaint. It is an unfortunate reality that it takes a

formal complaint and discovery request to get a response from AT&T. Such a response is required by PUC rules. Notably, AT&T also failed to provide even a scintilla of information in response to Crane's complaint directly to AT&T (prior to filing the informal complaint), filed pursuant to PUC Substantive Rule §26.30(a). Nothing but an order from an Administrative Law Judge is likely to allow Crane the response guaranteed by PUC rules and PURA. AT&T also speculates that Crane "*strategically chose not to demand copies of telephone bills at the informal complaint level to avoid paying \$5 a copy per monthly bill*". That is just hogwash. Crane did not want or need these bill copies at the informal complaint level. It is AT&T's failure to acknowledge and quantify the unlawful LPCs and AT&T's unsubstantiated counterclaim (expressed in its informal response) that gives rise to Crane's need for these bills.

AT&T then claims, without any explanation, that Crane's request is a "*fishing exhibition*". Crane seeks to quantify the LPCs charged to it, and information that would allow it to evaluate AT&T speculative assertion (counterclaim) that Crane *might* have owed AT&T overdue interest under the terms of the Prompt Payment Act ("PPA"). These bills will show the amount of the LPC, indicate the dollar amount subjected to the LPC, and amount and date of payments made by Crane. Thus the RFP is relevant both to Crane's LPC claim and AT&T unstated and unsubstantiated overdue interest counterclaim. Oddly, AT&T claims that Crane failed to provide "*particularity in terms of the month and year for each telephone bill to reasonably narrow the request*". Such a claim either shows its ignorance of its owe processes or demonstrates the absence of good faith in its objection. Crane's request seeks each monthly bill for a scope limited in years by the request itself. Likewise its "*temporal scope*" objection is in bad faith. The RFP narrowly defines the temporal scope.

AT&T's "*retention policies*" are irrelevant to discovery requests. AT&T's retention practices are relevant. If they have the documents, then they are discoverable.

AT&T then objects because the response *might* be "voluminous". Voluminous is NOT a proper objection in this forum, or any other forum. Notably, Crane limited the RFP by "special instructions" so as only to seek the single page that show the LPC charges, rather than seeking the entire bill.

Because the information sought is relevant and/or reasonably calculated to lead to admissible evidence, Crane's Motion to Compel must be granted as a matter of law.

RFP # 1-2: For any telephone bill provided in response to RFP #1-1 above, please provide the prior month's bill and the subsequent month's bill. Please note that Complainant does not seek multiple copies of each telephone bill (no duplication).

AT&T Texas' Objection:

AT&T Texas objects to this request for production to the extent Crane County failed to (in good faith) exhaust its administrative remedies prior to filing its formal complaint. Crane County did not request copies of telephone bills at the informal complaint level to investigate its PPA claim and instead demanded that AT&T do Crane County's homework for it and have AT&T incur the costs associated with Crane County's demand. It is obvious that Mark Wilder, Crane County's representative, strategically chose not to demand copies of telephone bills at the informal complaint level as he has previously demanded on behalf of another governmental entity in at least one other proceeding, to avoid paying \$5 a copy per monthly bill as authorized by Section 23, Paragraph 6.8 of AT&T's General Exchange Tariff (the "tariff"). Crane County fails to recognize, but AT&T asks the Public Utility Commission 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 and responding to this request for production. In an obvious and blatant attempt to escape the lawful copy charges and circumvent the tariff, Crane County, not having exhausted its administrative remedies to the fullest extent required, demanded an "accounting" and then proceeded to file a formal complaint. Then, not surprisingly, and as further evidence of Mr. Wilder's intent, Crane County served AT&T discovery that sought telephone bills.

AT&T Texas also objects to this request for production to the extent it seeks documents which are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. More specifically, the "prior month's bills" would not have the tendency to establish any of the following facts: 1) whether or not Crane County's payment was overdue pursuant to the Texas Prompt Payment Act; 2) if Crane County's payment was overdue, how much late payment interest Crane County owes AT&T Texas; and 3) whether Crane County is due a refund after any offset to which AT&T Texas may be entitled.

AT&T Texas further objects to Crane County's request for production because it is nothing more than a fishing exhibition, which is prohibited. 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. Now, at the formal complaint level, Crane County makes a blanket demand for all telephone bills reflecting a late payment charge from the present through 1994 (a seventeen year period) and to make matters more egregious and harassing, it is also demanding the "prior month's

bill” and the “subsequent month’s bill.” Crane County provides absolutely no particularity in terms of the month and year for each telephone bill to reasonably narrow the request for production and instead makes an overly broad and generic blanket request for production requiring AT&T Texas to do Crane County’s homework.

AT&T Texas further objects to this request for production because Crane County did not limit it as to temporal scope. Such failure to limit the scope renders the request overly broad and unduly burdensome. AT&T Texas should not be required to produce documents that are beyond the scope of its document retention policies. AT&T Texas further objects because this RFP may call for the production of documents that are potentially voluminous.

Crane’s Motion to Compel:

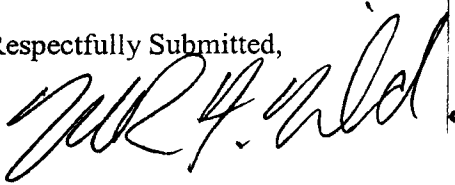
AT&T’s objection RFP 1-2 is largely identical to that of its objection to RFP 1-1. Crane’s response is therefore substantially the same and incorporates its Motion to Compel for RFP 1-1 herein by reference.

AT&T’s objection differs from that of RFP 1-1 in that AT&T claims Crane’s request for the “*prior month’s bills*” “*seeks documents which are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.*” When a LPC appears on the telephone bill, it can only be there because AT&T determined that the payment was not timely made for the prior month’s bill. There is no circumstance what AT&T has ever charged a LPC for the current month’s bill, or any bill other than the immediately preceding bill. In short, it is the prior month’s bill that AT&T claims is late (LPC), and also the bill which AT&T asserts *might* be overdue under the terms of the PPA. This is the bill that is the genesis of disputed LPCs and the bill in question regarding timely payment under the PPA.

AT&T makes no relevancy objection to Crane’s request for the “subsequent month’s bill”, but does call such request a “*fishing expedition*” and “*egregious and harassing*”. Every payment ever made by Crane shows up on the telephone bill. These payments show on the actual bill and show the amount and date of each payments. AT&T charged the disputed LPCs because Crane did not pay the bill by AT&T’s “due date”. The “subsequent month’s bill” will likely show payment of the bills that were subjected to the unlawful LPC and will likely show payments that relate to AT&T’s assertion that Crane *might* owe overdue interest under the terms of the PPA. Any bill showing any payment is relevant to this complaint and/or reasonably calculated to lead to admissible evidence. AT&T demands evidence of timely payment under the PPA, and any bill showing any payment is relevant to that question.

For the reasons stated herein, Crane's Motion to Compel response to RFP 1-2 should be granted.

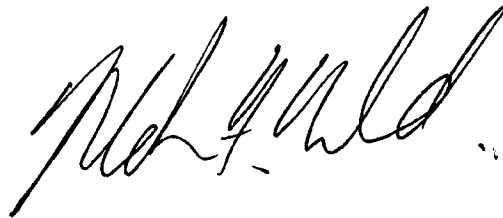
Respectfully Submitted,



Mark A. Wilder
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CERTIFICATE OF SERVICE

I, Mark Wilder, Authorized Agent for Crane County, certify that a copy of this document was served on all parties of record in this proceeding on March 10, 2011 in the following manner: FedEx to the Public Utility Commission and via facsimile to all other parties of record.



March 10, 2011