



Control Number: 40114



Item Number: 42

Addendum StartPage: 0

TABLE OF CONTENTS

P.U.C. DOCKET NO. 40114
SOAH DOCKET NO. 473-13-0920

2013 FEB 28 AM 10: 57

COMPLAINT OF CITY OF HOUSTON § **PUBLIC UTILITY COMMISSION**
AGAINST SOUTHWESTERN BELL §
TELEPHONE LP, d/b/a AT&T TEXAS § **OF TEXAS**
§

CITY OF HOUSTON'S RESPONSE TO ORDER NO. 2

Page

City of Houston's Response to SOAH Order No. 2	2
Exhibit I - City of Houston's Response to PUC Order No. 2 (September 18, 2012)	11
Exhibit II - letter from the City Auditor.....	26
Exhibit III - letter from the City Attorney	27

PUC DOCKET NO. 40114
SOAH DOCKET NO. 473-13-0920

COMPLAINT OF CITY OF HOUSTON	§	
AGAINST SOUTHWESTERN BELL	§	PUBLIC UTILITY COMMISSION
TELEPHONE LP, d/b/a AT&T TEXAS	§	OF TEXAS
	§	

CITY OF HOUSTON'S RESPONSE TO ORDER NO. 2

SOAH Order No. 2 required Houston to address AT&T's factual dispute of Houston's authority/ownership over four accounts on or before February 12, 2013 (extended to February 28, 2013 by SOAH Order No. 3), apparently due to the account "names" (Names given to the accounts by Houston, as will be discussed).

Respectfully, Houston would submit that SOAH Order No. 2 does not address the issue regarding AT&T's *factual dispute* on whether these four accounts are Houston controlled and owed accounts or not. AT&T does not directly challenge Mark Wilder's authority pursuant to any rule or law; rather, AT&T has a factual dispute as to Houston's authority/ownership of the four accounts. This AT&T disputed fact does not go to Mark Wilder's authority (as the agent of Southwestern Tariff Analyst) to represent Houston-but rather it is factual dispute on whether these accounts are Houston accounts for which Houston could pursue a claim, a factual dispute to be resolved in these proceedings. Houston addressed its designation of Southwestern Tariff Analyst's authority to represent Houston, and the scope of that authority in its filing, City Of Houston's Response To [PUC] Order No. 2, Amendment Of Complaint, And Motion For Referral To SOAH, Pages 6-8, Exhibit "Limited Letter of Agency", and Exhibit "Letter of Authority" (September 18, 2012), which is attached hereto as Exhibit I and is incorporated herein by reference. AT&T's factual dispute on whether or not the four accounts are City of Houston accounts *is not a P.U.C. Proc. R. 22.101(a) challenge of authority* of Authorized Representative;¹ but rather, *AT&T's issue is a factual dispute* of whether Houston is the owner of the four accounts in question.

Nevertheless we respectfully endeavored to provide the requested written authorization from Houston, in this case letters from the City Auditor and from the City Attorney, as requested in SOAH Order No. 3 of Southwestern Tariff Analyst's authority on "non-City of Houston

¹ AT&T did not invoke P.U.C. Proc R. 22.101(a) or any other P.U.C. Rule in support of this factual dispute.

named accounts”. (Attached as Exhibit II and III, respectively) While AT&T seems to suggest Southwestern Tariff Analyst's authority is limited by the Limited Letter of Agency due to Southwestern Tariff Analyst's lack of authority to make changes to these accounts, the City Auditor's letter and the City Attorney's letter is clear and unambiguous as to the Southwestern Tariff Analyst's authority to represent Houston in pursuing claims on these accounts by complaints at the PUC in all aspects of those proceedings, to wit:

“Therefore, as City Attorney for the City of Houston, I confirm that I designate and have designated Southwestern Tariff Analyst as Houston's Authorized Representative, as defined by PUC Procedural Rule §22.2(10). As Houston's Authorized Representative Southwestern Tariff Analyst may file formal and/or informal complaints on its behalf at the Public Utility Commission of Texas and pursue resolution of such complaints in all aspects before the PUC on behalf of the City of Houston.

The scope of this Authorization extends to and includes all twelve accounts, as were previously listed as City of Houston accounts in this Docket in Houston's Response to PUC Order No. 2 (September 18, 2012). Houston's September 18, 2012 filing included an Exhibit 2, which had two attachments. The first is the Letter of Agency dated May 25, 2011 (from the City of Houston's Controller's Office, Audit Division, and the Information and Technology Department's Office). That Limited Letter of Agency specifically listed twelve accounts. The second attachment to Exhibit 2 was my letter of November 30, 2011.² By this letter, for purposes of Responding to SOAH Order No. 3, I confirm that this letter of authorization includes all City of Houston accounts listed on that Limited Letter of Agency, including those accounts characterized as 'non-City of Houston named accounts'”.

The written confirmation from the City Attorney also *acknowledges AT&T's factual dispute* on four accounts. (And acknowledges that if these are not Houston accounts, then neither Houston, nor Southwestern Tariff Analyst has authority to pursue a claim on them.)

As the Authorized Representative of City of Houston in this and other complaints before the Commission, Mark Wilder speaks for Houston when it asserts, on information and belief, Houston's ownership and/or authority over the four accounts and disputes AT&T's unsubstantiated, bare assertion, that gives rise to this factual dispute of Houston's ownership and control on those four accounts. AT&T has presented no facts, nor any evidence, in support of its assertion that the four accounts in issue do not belong to Houston or that they belong to any

² PUC Docket No. 40114, Houston's Response to PUC Order No. 2, Exhibit 2 (September 18, 2012, p. 13 [Limited Letter of Agency], and p. 15 [City Attorney Letter of Authority]).

entity other than Houston. (AT&T, as quoted below, makes this factual dispute apparently due a billing address names on one set of accounts, and what can only be by implication of the other set of accounts, and these were names selected by Houston). This is a question of fact, for which Houston is allowed by rule of law an opportunity to be heard, with its attendant and preceding discovery. Only then may a determination be made by the ALJ; only after an adjudicative hearing on this factual dispute, standing alone or as a part of the Hearing on the Merits of the complaint.

**AT&T'S FACTUAL DISPUTE OF HOUSTON'S OWNERSHIP OF FOUR
AFFECTED ACCOUNTS**

More than one year ago, prior to referral of the instant Complaint to SOAH, in AT&T's February 8, 2012 Response to City of Houston's Formal Complaint With Special Exceptions (Response, p.2), AT&T suggests and/or concludes that four accounts included within the many accounts made the subject of this complaint might not belong to Houston. In its Response AT&T stated:

"Mark A. Wilder of Southwestern Tariff Analysis claims that accounts 713-227-3100 and 713-437-5200, which are associated with the Houston Convention & Visitors Bureau ("HCVB") 'are the City of Houston'. [Footnote 1 to Houston citation omitted] AT&T Texas has reason to believe that Houston, and hence, Mr. Wilder, is not authorized to request or make changes to these two accounts. [Footnote 2 omitted]. In addition, accounts 713-849-9330 and 713-869-7657 are also not Houston accounts." (Emphasis added)

AT&T has provided nothing more than speculation on an "association" as the basis for its factual dispute of Houston's authority on accounts 713-227-3100 and 713-437-5200, and hence Mr. Wilder's. And no more than a self-serving conclusory statement on accounts 713-849-9330 and 713-869-7657.

There have been no facts or evidence presented by AT&T to date as to why these are not Houston accounts. AT&T made no reference to any law, rule, or tariff for the basis of its factual dispute of Houston's ownership/authority over any of the four accounts.

PUC Order No. 2 (September 6, 2012) stated "*As a preliminary matter, AT&T stated a belief that the City, and therefore Mr. Wilder, did not have authority to request or make changes to the two GHCVB accounts, 713-227-3100 and 713-437-5200. Additionally, AT&T stated that accounts 713-849-9330 and 713-869-7657 are not City accounts.*" The PUC ALJ (rather than

AT&T) asserted that “*Under P.U.C. PROC. R. 22.101(a), the presiding officer may require a representative to submit proof of his/her authority to appear on behalf of another person.*”

P.U.C. PROC. R. 22.101(a) reads, in its entirety:

§22.101. *Representative Appearances.*

(a) *Generally. Any person may appear before the commission or in a hearing in person or by authorized representative. The presiding officer may require a representative to **submit proof of his or her authority to appear on behalf of another person.** The authorized representative of a party shall specify the particular persons or classes of persons the representative is representing in the proceeding. (Emphasis added)*

On September 18, 2012 Houston made substantial argument and submitted documents that made clear that Mr. Wilder represents the City of Houston in this, and other, proceedings along with a Limited Letter of Agency containing numerous accounts (including the four in question).³

PUC Order No. 2 stated “*Failure to cure the deficiencies may result in dismissal of this proceeding.*”

After submittal of these documents designating Mr. Wilder, as representing Houston, along with the listed accounts, they were not further questioned by the PUC ALJ in any subsequent proceedings at the Commission. Shortly thereafter the Commission referred to the case to SOAH, also not questioning the documents as sufficient to comply with PUC PROC. R. 22.101(a) and PUC Order No. 2. No mechanism exists in PUC rules to a factual dispute as to the ownership/authority of Houston over specific accounts as AT&T has done in the instant complaint, except as a *factual dispute*.

SOAH Order No. 2 appeared to direct Houston to again provide written confirmation from Houston that Mr. Wilder has authority to represent Houston in its claims with regard to the specific four accounts, and that confirmation may come in the form of a letter from the City Attorney. However, the Houston City Attorney had already submitted a letter of authority making clear that Mr. Wilder represents Houston in these matters here before this Commission. While Houston believes the matter was addressed by the Commission ALJ prior to referral to SOAH, to the extent there is a live motion remaining to be addressed by the honorable ALJ, it

³ City Of Houston's Response To [PUC] Order No. 2, Amendment Of Complaint, And Motion For Referral To SOAH, Pages 6-8, Exhibit “Limited Letter of Agency”, and Exhibit “Letter of authority” (September 18, 2012), which is attached hereto as Exhibit A.

would appear to be AT&T's factual dispute of Houston's ownership, not of Mark Wilder's authority to represent the City of Houston in the complaint. Therefore, ownership of the accounts in question is a genuine issue of material fact that requires evidence to be presented by both parties in support of their respective positions on which AT&T bears the burden of proof. However, prior to any such hearings, discovery is still appropriate and necessary to help resolve this genuine issue of fact.

GENUINE ISSUE OF MATERIAL FACT

Motions to Dismiss complaints before the Commission are governed by P.U.C. Proc. R. 22.181(a), which provides a list of reasons a complaint can be dismissed.⁴ AT&T's Motion fails to appropriately plead grounds for dismissal of the instant complaint under P.U.C. Proc. R. 22.181(a). However, even if AT&T had appropriately pleaded grounds for dismissal, which they did not, their motion must fail. Motions to dismiss ask a court (or in this case the SOAH ALJ) to decide that a claim should be dismissed, even if true, because the law offers no legal remedy. In the instant complaint, AT&T asks the ALJ to dismiss portions of Houston's complaint because four of the accounts included in Houston's complaint are disputed as to whether they are Houston accounts apparently due solely to an account name other than "City of Houston". However, Houston claims the accounts in issue did belong to the City during the time periods in issue. Thus, if Houston's claim of ownership is true, then Houston would be entitled to recover overcharges on the four accounts and AT&T's motion to dismiss must be denied. If, after a hearing on the matter, it is determined that Houston does not own the four accounts, which Houston expressly denies, then Houston would obviously not be entitled to any relief on those four accounts. Until AT&T proves its factual assertion (that these four accounts are not owned by Houston), there is no basis for AT&T to seek dismissal of the complaint. The question of

⁴ **P.U.C. Proc. R. §22.181. Dismissal of a Proceeding.**

(a) Motions for dismissal.

(1) Upon the motion of the presiding officer or the motion of any party, the presiding officer may recommend that the commission dismiss, with or without prejudice, any proceeding without an evidentiary hearing, for any of the following reasons:

- (A) lack of jurisdiction;
- (B) moot questions or obsolete petitions;
- (C) res judicata;
- (D) collateral estoppel;
- (E) unnecessary duplication of proceedings;
- (F) failure to prosecute;
- (G) failure to state a claim for which relief can be granted; or
- (H) other good cause shown.

ownership is a genuine issue of material fact, which precludes summary judgment and/or summary dismissal.

Houston has clearly established that Mark Wilder is its Authorized Representative. Through its pleadings, Houston has clearly claimed ownership of the four accounts subject to AT&T's factual dispute of Houston's ownership/authority.⁵ Thus it is AT&T's burden to prove that Houston did not have ownership of the four accounts during the time frames in issue. Mere speculation and/or conclusory statements do not require Houston prove its ownership. To the contrary, it is AT&T who must provide something more than speculation without any legal or factual basis, and AT&T must offer proof (evidence).

PRESUMED FACTUAL BASIS OF AT&T'S FACTUAL DISPUTE

The sole basis for AT&T's factual dispute of Houston's ownership of the four accounts in issue appears to be one single fact: that the billing name is not "The City of Houston". Notably, based upon past reviews of AT&T records, the "billing name" is a field in AT&T's database used to store the information from which AT&T addresses telephone bills to be mailed. It is a billing address field, and the information for this billing address field comes from the customer and can be named whatever the customer elects and can be changed by the customer whenever it chooses. There are sound reasons that Houston would choose to have these fields identify specific departments of the city, rather than be billed generically as the City of Houston. Frequently, and typically, telephone bills are paid out of the individual City Department budgets, of which there are dozens in the City of Houston (e.g., Library Department, Fire Department, Aviation Department, Legal Department, City Council Administrative Offices, Mayor's Offices,

⁵ Other indicia of Houston ownership and control of those four accounts to be detailed by Houston in the course of this proceeding will include, by summary, that these four accounts: 1.) were *all listed by AT&T as Houston's accounts on AT&T's unilaterally controlled and populated "customer only" web portal site* (a site containing customer specific confidential information that, by federal law, is confidential, with access limited to account customers only. [including but not limited to Section 222 of the Telecommunications Act of 1996] If these were not Houston accounts, as AT&T has asserted, this breach of confidentiality may constitute a violation of federal law.); 2.) the accounts were *listed on the customer-only AT&T web site with the same Houston Master Customer Number*; 3.) *AT&T provided, on-line customer service records* have numerous coded AT&T notations evidencing that these are Houston accounts, for instance AT&T notations that several, if not all *accounts were exempted from state and local sales tax, and from tariff imposed late payment fees* (ostensibly due their being political subdivisions exempt from sales taxes and from tariff late fee charges under the Texas Prompt Payment Act); 4.) AT&T notations with *references to a Houston City employee as the local contact person authorized to change services on one or more of these accounts*; 5.) AT&T notations citing to an *October 16, 2000 contract between Houston and AT&T*; and 6.) the AT&T customer service records show *billing names and addresses (at City of Houston facilities) which were given to these accounts by Houston*.

Finance Department, Police Department, Civic Center Convention Department, City Secretary's Office, are but some typical examples.)

The content of this billing address field is not dispositive of ownership. With regard to all four accounts, AT&T's own customer service records treated the accounts as being owned by Houston for many years and to an extent, continues to today. As argued more fully in its Motion to Compel AT&T Texas to Respond to City of Houston's First RFI, AT&T assigned MCN ("Master Customer Number") codes that associate these four accounts with Houston and allow Houston as the customer-the owner and controller of the account-ready access to confidential by law account information online through AT&T's ToolBar application.⁶ This same MCN is used to identify nearly 1000 other accounts which have not been questioned by AT&T as being owned by the City of Houston. Substantial other evidence exists to establish definitively that these factual disputed accounts belonged to Houston and no other entity. Notably, at least one of the *Greater Houston Convention and Visitors Bureau accounts was under a 60-month contract for service, signed by Houston*, as will be presented in this matter formally at the hearing on the merits, or whenever the ALJ request. (In Houston's Motion to Compel AT&T Texas to Respond to City of Houston's First RFI, Houston evidences the existence of a 60-month term contract (Exhibit A of Houston's Motion to Compel) *which was produced by AT&T in another proceeding*.)⁷

FACTS RELIED UPON BY HOUSTON

It is premature for Houston to present its full case on the genuine issue of material fact of whether the four accounts in question belonged to Houston. But this is not Houston's motion. AT&T put the factual issue of account ownership in question through its motion to dismiss (a summary proceeding in which the Movant bears the burden of proof), but has presented no evidence supporting its motion. Houston has access to the confidential billing records of AT&T (regarding Houston's accounts, including the four disputed accounts) that have allowed it to know of the existence of these four accounts and the nature of these accounts. Houston possesses these billing records because AT&T provided Houston access to customer pass code protected billing records online, because AT&T considered, until this complaint was filed, these

⁶ Including but not limited to Section 222 of the Telecommunications Act of 1996.

⁷ See PUC Docket No. 40092, SOAH Docket 473-13-0845, AT&T Texas' Responses to City of Houston's First Request for Information, Bate Stamp D40092 NC RFP 1-4-1 through D40092 NC RFP 1-4-10, pages 6-15, July, 3, 2012.

four accounts belong to Houston. Each of the four accounts possesses a code (MCN code) that identifies the account as belonging to Houston, as do nearly 1000 other Houston accounts. In summary, AT&T assigned these four accounts that MCN code because Houston owns the accounts and AT&T assigned the code because AT&T also considered these four accounts belonging to Houston.

Exhibit A to Houston's Motion to Compel is a portion of an AT&T's promulgated Customer Service Record (CSR); it was downloaded directly from AT&T's proprietary and what AT&T terms the "ToolBar" website-- a web site with customer specific information that is confidential by federal law--and restricted to customers with a password. This account is one of the two GHCVB accounts. Houston's Motion to Compel RFA No. 1-9 articulates and evidences how account 713-437-5200 has all the indicia of a Houston account. Exhibit B to Houston's Motion to Compel is also a portion of the AT&T produced CSR for the other GHCVB account. Houston's Motion to Compel RFA No. 1-17 articulates and evidences that this account is also clearly tied to Houston and is owned by Houston.

CUSTOMER PROPRIETARY NETWORK INFORMATION (CPNI)

In AT&T's original February 8, 2012 factual dispute of Houston and Mark Wilder's authority over the four accounts in issue, AT&T stated:

*"Accordingly, AT&T Texas hereby challenges Mr. Wilder's authority to request or make changes to these 4 accounts and demands strict proof thereof so that AT&T Texas can confidently deal with Mr. Wilder without risk of violating the requirements of Section 222 of the Telecommunications Act of 1996, which prohibits unauthorized disclosure of customer proprietary network information and therefore necessitates that a carrier insure that any purported agent be authorized to speak on behalf of its client prior to discussing sensitive account information or acting upon requests to modify accounts or billing."*⁸

The four accounts that are the subject of AT&T's factual dispute are included in Houston's complaint because Houston claims ownership of these four accounts. Moreover, Houston has had customer only access to billing records for these four accounts for many years. While some of these accounts have been disconnected permanently (and therefore no longer available on ToolBar), two of these accounts remain available to Houston via AT&T's ToolBar

⁸ PUC Docket No. 40114, AT&T TEXAS' RESPONSE TO THE CITY OF HOUSTON'S FORMAL COMPLAINT WITH SPECIAL EXCEPTIONS, February 8, 2012, at 2.

website today.⁹ AT&T presently and historically allows Houston access via ToolBar to the CPNI and billing records for the four accounts in question, and continues to allow access to the records on two of the accounts even today (more than a year after AT&T's original factual dispute of Houston and Wilder's authority).¹⁰

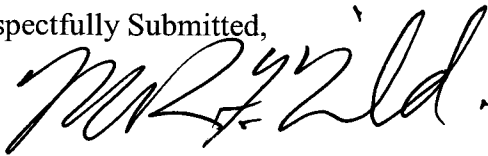
ADDITIONAL CONFIRMATION OF AUTHORITY

Attached hereto as Exhibit II is a letter from the City Auditor concerning authority on all accounts listed in this Complaint and Exhibit III is a letter from the City Attorney specifically addressing the four accounts made the subject of AT&T's factual dispute.

CONCLUSION

Houston respectfully requests the honorable ALJ deny AT&T's motion to Dismiss and allow this complaint to proceed with discovery and to a hearing on the merits.

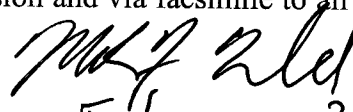
Respectfully Submitted,



Mark A. Wilder
Southwestern Tariff Analyst (Authorized Representative for the City of Houston)
2514 Tangle Street
Houston, TX 77005
713-522-7568 phone
713-522-0145 fax

CERTIFICATE OF SERVICE

I, Mark Wilder, Authorized Agent for the City of Houston, certify that a copy of this document was served on all parties of record in this proceeding on February 27, 2013 in the following manner: FedEx to the Public Utility Commission and via facsimile to all other parties of record.


February 27, 2013

⁹ Account 713-849-9330 is available today on ToolBar. Account 713-227-3396 is the successor account to 713-227-3100 and 713-227-3386 is available today on ToolBar (and addressed to "GREATER HOU CONVNTN VISITORS BUREAU"). All four of the challenged accounts have historically been available on AT&T's proprietary website-the "ToolBar". The discontinued accounts were available on ToolBar up until Houston discontinued the service (only active services/accounts are available on ToolBar).

¹⁰ Of course, as noted earlier, in the event AT&T's factual dispute of the authority of Houston and Mark Wilder over these accounts is true, then AT&T may have violated Section 222 of the Telecommunications Act of 1996 by allowing a non-customer access to confidential customer information.

COMPLAINT OF CITY OF HOUSTON §
AGAINST SOUTHWESTERN BELL § PUBLIC UTILITY COMMISSION
TELEPHONE LP, d/b/a AT&T TEXAS § OF TEXAS
§

TABLE OF CONTENTS

CITY OF HOUSTON'S RESPONSE TO ORDER NO. 2 PAGE 2

MOTION TO DISQUALIFY PAGE 6

REPRESENTATIVE AUTHORITY..... PAGE 6

RESPONSE TO THE ORDERING PARAGRAPH PAGE 10

MOTION FOR REFERRAL TO SOAH PAGE 11

EXHIBIT 2 PAGE 12

LETTER OF AGENCY PAGE 13

LETTER OF AUTHORITY PAGE 15

RECEIVED
12 SEP 18 AM 10:50
PUBLIC UTILITY COMMISSION
FILING CLERK

DOCKET NO. 40114

COMPLAINT OF CITY OF HOUSTON	§	
AGAINST SOUTHWESTERN BELL	§	PUBLIC UTILITY COMMISSION
TELEPHONE LP, d/b/a AT&T TEXAS	§	OF TEXAS
	§	

**CITY OF HOUSTON'S RESPONSE TO ORDER NO. 2, AMENDMENT OF
COMPLAINT, AND MOTION FOR REFERRAL TO SOAH**

COMES NOW the City of Houston ("Houston") pleading in response to Order No. 2.

CITY OF HOUSTON'S RESPONSE TO ORDER NO. 2

Quoting Andrew Kang in Order No. 2 "Unlike district courts, which have general jurisdiction, the Commission has no inherent powers and only has those powers conferred by statute."¹ Houston agrees.

The Commission has no power or authority to hire or employ administrative law judges or to delegate any such authority to any person employed by the Commission. Prior to September 1, 1995, the Commission possessed the authority to hire administrative law judges and that power was expressly conferred by statute; however, that authority was removed and transferred to the Utility Division of SOAH along with all of the Commission's ALJs and Hearings Examiners.² While the undersigned has repeatedly objected to the involvement of persons holding themselves out as administrative law judges who are employed by the Commission, the Commission has repeatedly failed to adequately address this question. Typically the question has been ignored. More recently the Commission itself addressed the

¹ PUC Docket No. 40092, Complaint of City of Houston Against AT&T Texas, Order No. 2, at 4. The Order cited *Brazos Electric Power Cooperative v. Public Utility Commission of Texas*, 101 S.W.3d 499, 501 (Tex.App.-Austin 2002, pet. denied) ("[T]he Commission cannot possess inherent powers but only those conferred upon the agency by clear and express statutory language plus any additional power reasonably necessary to perform a function or duty that the legislature has required of the agency in express terms.").

² Effective September 1, 1995, the State Legislature created the Utility Division of SOAH by adding Texas Government Code 2003.047 (now 2003.049), and by substantially modifying PURA. Specifically, PURA was modified to remove the authority of the Commission to employ Administrative Law Judges, and transferring those duties to SOAH. Some of these changes can be seen in the "introduced" version of the bill (attached hereto as Exhibit 2). Taken in its entirety, it becomes clear that the State Legislature abolished Commission Administrative Law Judges and transferred all powers previously delegated to Commission Administrative Law Judges to SOAH Administrative Law Judges in its Utility Division. There appears to be no present statutory authority for the creation or existence of a Commission Administrative Law Judge.

authority of the Commission's administrative law judges in PUC Docket No. 39800.³ The Texas Legislature intended to and did remove all authority of the Commission to hire and employ its own administrative law judges. It did so expressly. Put simply, no Commission ALJ has any authority over this case or any other contested case.

Houston does not simply complain that such ALJ's lack any statutory authority, Houston complains that these Commission ALJ's have ruled inconsistently, in ways inconsistent with prior rulings and Commission rules, and that these ALJs appear to tend to favor utilities and Commission Staff over complainants.

The State Office of Administrative Hearings was created in 1991 to serve as an independent forum to conduct adjudicative hearings for the various agencies of executive branch of state government, to wit:

Tex. Gov. Code Ann. Sec. 2003.021. OFFICE. (a) The State Office of Administrative Hearings is a state agency created to serve as an independent forum for the conduct of adjudicative hearings in the executive branch of state government. The purpose of the office is to separate the adjudicative function from the investigative, prosecutorial, and policymaking functions in the executive branch in relation to hearings that the office is authorized to conduct.

[Emphasis added] And, the Utility Division was established pursuant to the Public Utility Regulatory Act to conduct contested case hearings for the Commission, to wit:

PURA Sec. 14.053. POWERS AND DUTIES OF STATE OFFICE OF ADMINISTRATIVE HEARINGS.

³ PUC Docket No. 39800, Complaint of Jasper County Against AT&T Texas, Order on Appeal of Order No. 4, June 27, 2012, at 1. The entirety of the Commission's position was stated as follows: "*A Commission ALJ is a presiding officer as defined in P.U.C. PROC. R. 22.2(34) and has express authority under P.U.C. PROC. R. 22.181(a)(3) to dismiss Jasper County's complaint.*" PUC Proc. R. 22.2(34) states in its entirety "*Presiding officer — The commission, any commissioner, or any hearings examiner or administrative law judge presiding over a proceeding or any portion thereof.*" This is the sole basis of the Commission's defense of the authority of Commission ALJs over this and all other contested cases. The logic appears to be that the Commission's definition in PROC. R. 22.2(34) defines that only a presiding officer may preside over a case. Because the Commission ALJ is presiding, they must be a presiding officer. Other rules grant authority to presiding officers and therefore the Commission ALJ has these authorities. This circular logic fails to address the question of what statutory authority allows a Commission ALJ to exist or to preside over a contested case proceeding.

(a) The utility division of the State Office of Administrative Hearings shall conduct each hearing in a contested case that is not conducted by one or more commissioners.

(b) The commission may delegate to the utility division of the State Office of Administrative Hearings the authority to make a final decision and to issue findings of fact, conclusions of law, and other necessary orders in a proceeding in which there is not a contested issue of fact or law.

(c) The commission by rule shall define the procedures by which it delegates final decision-making authority under Subsection (b).

(d) For review purposes an administrative law judge's final decision under Subsection (b) has the same effect as a final decision of the commission unless a commissioner requests formal review of the decision.

(V.A.C.S. Art. 1446c-0, Sec. 1.101(e).)

[Emphasis added]

Tex. Gov. Code Ann. Sec. 2003.049. UTILITY DIVISION.

(a) The office shall establish a utility division to perform the contested case hearings for the Public Utility Commission of Texas as prescribed by the Public Utility Regulatory Act of 1995 and other applicable law.

(b) The utility division shall conduct hearings relating to contested cases before the commission, other than a hearing conducted by one or more commissioners. The commission by rule may delegate the responsibility to hear any other matter before the commission if consistent with the duties and responsibilities of the division.

(c) Only an administrative law judge in the utility division may conduct a hearing on behalf of the commission. An administrative law judge in the utility division may conduct hearings for other state agencies as time allows. The office may transfer an administrative law judge into the division on a temporary or permanent basis and may contract with qualified individuals to serve as temporary administrative law judges as necessary.

[Emphasis added] In addition, Commission rules are clear as to who has the authority to conduct a hearing, preside over a proceeding, or determine the legal rights, duties, or privileges of a party, in a docketed contested case before the Commission, such as the instant complaint, to wit:

Proc. R. §22.2. (1) Administrative law judge — The person designated to preside over a hearing.

Proc. R. §22.2. (23) Hearing — Any proceeding at which evidence is taken on the merits of the matters at issue, not including prehearing conferences.

Proc. R. §22.2. (19) Docket — A proceeding handled as a contested case under APA.

Proc. R. §22.2. (16) Contested case — A proceeding, including a ratemaking or licensing proceeding, in which the legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for adjudicative hearing.

Proc. R. §22.2. (35) Proceeding — Any hearing, investigation, inquiry or other fact-finding or decision-making procedure, including the denial of relief or the dismissal of a complaint, conducted by the commission or the utility division of SOAH.

[Emphasis added] In addition, Commission rules provide:

Proc. R. §22.207 Referral to State Office of Administrative Hearings.

The utility division of the State of Office of Administrative Hearings shall conduct hearings related to contested cases before the commission, other than a hearing conducted by one or more commissioners. At the time SOAH receives jurisdiction of a proceeding, the commission shall provide to the administrative law judge a list of issues or areas that must be addressed. In addition, the commission may identify and provide to the administrative law judge at any time additional issues or areas that must be addressed. The commission shall send a request for setting or hearing, or request for assignment of administrative law judge to SOAH in sufficient time to allow resolution of the proceeding prior to the expiration of any jurisdictional deadline. In order to give the commission sufficient time to consider a proposal for decision, the commission may specify the length of time prior to the expiration of a jurisdictional deadline by which the administrative law judge shall issue a proposal for decision.

[Emphasis added] Whether or not Houston has stated a claim for which relief can be granted is a matter for the statutorily authorized Administrative Law Judge of the State Office of Administrative Hearings to determine. While it is clear that SOAH has the power to preside over this case and determine what the legal rights and duties of the parties are (including the question of whether Houston has or has not stated a claim for which relief can be granted), there appears to be no basis to conclude that the Commission has any authority or power conferred by statute to delegate its authority to preside over any aspect of this case through the use of administrative law judges employed by the Commission. If, as the Commission ALJ states in Order No. 2, *“the Commission has no inherent powers and only has those powers conferred by statute”*, then certainly the Commission ALJ can fully address and cite the statute that allows for his

involvement in the instant complaint and state the basis of his authority to preside over a contested case before the Commission.

Motion for Disqualification

PUC Procedural Rule §22.3 governs motions for disqualification or recusal of an Administrative Law Judge. Houston timely files this motion for disqualification of Andrew Kang and/or any other Commission Administrative Law Judge. As stated previously and as stated above, the Commission lacks statutory authority to appoint an Administrative Law Judge to preside over this or any other contested case. Order No. 2 in the instant complaint purports to determine the legal rights, duties, or privileges of a party to this complaint. The authority to make such determinations is reserved for an Administrative Law Judge in the Utility Division of the State Office of Administrative Hearings.⁴ Pursuant to Proc. R. 22.3(e)(5), a SOAH ALJ must be appointed to this case pending the resolution of the motion for disqualification.

Representative authority

The Commission ALJ wrongly asserts AT&T challenged the undersigned's authority to represent the City of Houston. AT&T vaguely asserts a factual question of whether the City of Houston owns four accounts that are partly the subject of this complaint. Attached hereto is a letter that authorizes Southwestern Tariff Analyst to represent Houston in this matter. Whether the accounts are those of Houston's is a factual question for SOAH to determine after a hearing on the merits.

With regard to the four accounts, the undersigned has billing records for because Houston provided such documents to Southwestern Tariff Analyst. Houston has the records to because AT&T mails them to Houston monthly. Other historical records have come from one of two online electronic bill records sources (both maintained by AT&T).⁵ Houston and the undersigned both have password protected access to detailed historical billing information because AT&T consider each of the four accounts to belong to the City of Houston.

⁴ The Commission itself may hear an entire case through its Commissioners. This duty cannot be delegated to any person other than a SOAH ALJ.

⁵ One of these AT&T services is called ToolBar, the other is Business Direct. AT&T set up each of the four accounts under either ToolBar and/or Business Direct because these accounts belong to Houston.

With regard to two accounts (713-849-9330 and 713-869-7657),⁶ AT&T actually implemented the Tex-AN 2000 rate requests that are the subject of the instant request based on the email sent to AT&T by Houston and its agent Southwestern Tariff Analyst. AT&T has made subsequent changes to both of these accounts on the basis of Southwestern Tariff Analyst's agency status. AT&T viewed these two accounts as Houston's when it established them under the online resources, and considered them Houston's when it acted recently in response to the undersigned requests for services changes. AT&T provides nothing whatsoever in support of its factual allegation that these are not Houston's accounts. Despite the fact that AT&T did not challenge Southwestern Tariff Analyst's authority to represent Houston, the ALJ morphs AT&T vague challenge of Houston's authority to make changes on these two accounts into a challenge of authority. Both these accounts are the responsibility of the City of Houston and paid for by the City of Houston. AT&T makes no argument whatsoever in support of its assertion to the contrary. This is a fact question for SOAH to determine after an opportunity for an adjudicative hearing on the matter and after an opportunity to know and understand AT&T's unstated basis for its claims.

The other two accounts are billed "GREATER HOU CONVNTN VISITORS BUREAU". Like the other two, the undersigned has access to the billing information via Houston. Like the other two, AT&T asserts the barest factual assertion without any proof. Such factual and legal matters are contested issues for SOAH to determine after an adjudicative hearing on the matter. It should be noted that as recently as last month AT&T has refused to permit Greater Houston Convention Visitors Bureau to make changes to these very accounts because GHCVB lacks authority and only City of Houston may make changes to these accounts. That is right, only the City of Houston may make changes to these accounts (and GHCVB may not). These accounts were also available under ToolBar because AT&T considered these Houston's accounts. During the pendency of this complaint AT&T removed these accounts from Toolbar (presumably as a result of this complaint and to bolster its assertion that GHCVB is not Houston).

⁶ Billed to " FRIENDS OF HOUSTON PUBLIC LIBRARY INC" and "HOUSTON POLICE OFFICERS" respectively.

Please also see the attached Letter of Agency (which includes the four numbers in question).

As with virtually all other issues without the basest of facts asserted by AT&T, the Commission ALJ demands explicit proof to contradict AT&T's vague assertions without the opportunity to know and understand that basis of AT&T's assertion. Houston anticipates that both parties will need to conduct discovery on these matters (assuming AT&T does not recant its vague assertions). We ask that the presiding officer the short notice provided by Order No. 2, the documents attached, the factual assertions above, and the complete lack of evidence or assertion by AT&T in considering this particular matter.

Insufficiency Under PUC Proc. R. 22.242

Order No. 2 asserts that Houston's claims are insufficient under the PUC Proc. R. 22.242. Houston's assertion is that AT&T should have applied Tex-AN 2000 rates when Houston requested such rate treatment and failed to do so in a few cases. Clearly, Houston seeks the difference between Tex-AN 2000 that was requested and the rates actually charged. Estimated refunds requested are clearly indicated on the spreadsheet attached to Houston's initial filing. While the Commission must construe documents liberally and to do substantial justice, this does not appear to the undersigned to apply to the Commission ALJs' The undersigned takes strong exception to what it views as particularly harsh and biased treatment by Andrew Kang in the instant complaint and in complaints of the recent past. It is hard to argue that any person could not determine the relief requested from the pleadings.

Fair Notice Standard

Strangely, the footnote 3 appears to gut the argument and conclusion of the Commission's ALJ that Houston must assert and identify the specific law or rule violated in the complaint. If "*setting forth any act or thing done or omitted*" applies to acts or omissions but not to laws (as the footnote clearly asserts, citing prior Commission Order), then there is no need to specify what law or rule is violated. Moreover, Order No. 2 makes clear that the ALJ knows precisely what rule Houston alleges AT&T violated. Houston does claim that AT&T violated Subst. R. 26.27(a)(3)(B) and other relevant laws, rule contractual obligations in its failure to fully implement Tex-An 2000 upon request by Houston. Frankly, the undersigned strains to understand Order No. 2 (particularly the section on Fair Notice). What is clear is that there is no fair notice standard under Commission rules (see Andrew Kang's acknowledgement of this fact in footnote 2). There is however a fair notice requirement under Texas law for cases not filed at the Commission. Andrew Kang however fails to follow the interpretations of this fair notice standard by

Texas courts and fails to follow how the Commission has previously interpreted the same fair notice standard.

Houston's complaint easily surpasses the fair notice threshold. Tex. R. Civ. P. Rule 47 requires that an original pleading include "*a short statement of the cause of action sufficient to give fair notice of the claim involved,*" but it does not require that the plaintiff set out in his pleadings the evidence upon which he relies.⁷ The purpose of the fair notice requirement is to provide the opposing party with sufficient information to enable him to prepare a defense.⁸ The test of whether the requisite fair notice has been given has been described as whether an opposing attorney of reasonable competence, with the pleadings before him, can ascertain the nature and basic issues of the controversy and the testimony probably relevant.⁹ [Emphasis added]. Clearly all parties and the ALJ understand that Houston is complaining that AT&T should have implemented Tex-AN 2000 and did not fully. Anyone can see that. Anyone can see that we request the difference between the rate available under Tex-AN 2000 from the date of request until AT&T implemented Tex-AN 2000 rates (both dates may differ slightly by account or by service). The ALJ's issue (as far as it can discern), is that Houston fails to specify that such overbilling is controlled by or a violation of PUC Subst. R 27.27(a)(3)(B) and or other provision of rule. Again, as the ALJ appears to acknowledge, there is no such requirement under any rule or precedent. Again, the undersigned take issue with Andrew Kang's constant refinement of the Commission's rules. I believe Order No. 2 is quite inconsistent with his prior orders on substantially identical topics. I believe that each and every demand and conclusion contained in Order No. 2 is outside the scope of any Commission ALJ. Furthermore, the delays caused by Andrew Kang and the inconsistent application of Commission rules strongly suggest a bias by Mr. Kang that warrants close scrutiny by the Commission and by the Administrative Law Judge authorized to hear this complaint (SOAH's ALJ).

Finally, the Commission ALJ asserts Houston did not allege facts from which to infer the relevant period of the overbilling. Notwithstanding that nothing in Commission rules or precedent requires such a thing, the pleading most certainly contains the very facts allegedly absent. Moreover, despite that allegedly absent information, AT&T responds (demonstrating it understands what is at issue, and

⁷ See *Paramount Pipe & Supply Co. v. Muhr*, 749 S.W.2d 491, 494-95 (Tex. 1988).

⁸ *Paramount Pipe & Supply Co. v. Muhr*, 749 S.W.2d 491, 494 (Tex. 1988) (citing *Roark v. Allen*, 633 S.W.2d 804, 810 (Tex. 1982)).

⁹ *Coffey v. Johnson*, 142 S.W.3d 414, 417 (Tex. App. – Eastland 2004, no pet.); See also, *State Fidelity Mortgage Company v. Varner*, 740 S.W.2d 477, 479 (Tex.App.-Houston [1st Dist.] 1987, writ denied).

rendering the ALJ's confusion moot). What the ALJ knows or understands is irrelevant. This is a strange forum that combines a mandatory informal complaint as a prerequisite to the formal complaint process. AT&T responded to the informal complaint and gave many refunds without the need for Houston to further specify facts and or dates. Houston's informal complaint is believed to be and generally specifically incorporated by reference. The events that give rise to this complaint generally stem from a request for Tex-AN 2000 rate treatment in early 2008 (a fact that AT&T clearly understands, but the ALJ regrettably does not appear to know). In its informal complaint Houston stated *"In early 2009 COH requested Tex-AN 2000 rates for substantially all of its eligible services. AT&T only partially implemented the Tex-AN 2000 request and/or improperly implemented Tex-AN 2000 rates."* In its formal complaint Houston expressed these same issues but neglected to include the above statement regarding early 2009. The formal complaint however did include a spreadsheet from which anyone with a calculator could determine the time frame of this complaint.

The question here is can the accused (AT&T) understand what it has been accused of and prepare its defense. AT&T has not and will not claim it does not understand the complaint. The complaint may not assert each and every fact, but AT&T understands this complaint. The purpose of this forum and its rule is to ensure just and reasonable outcomes and fair play. Order No. 2 does not read like a simple order to amend consistent with PUC Proc. R. 22.242. Rather Order No. 2 reads as motion for summary decision requiring each and every fact be stated and proved.

Response to the Ordering Paragraph

The authority of the Commission ALJ has been challenged and Houston has moved to disqualify the Commission ALJ. Further, Houston has moved to have this case referred to SOAH as is required by law and Commission rules. Nevertheless Houston attempts to address the Commission ALJ's ordering paragraph:

Houston incorporates its original complaint herein by reference as if stated herein in full. The amounts alleged in this complaint are contained in the spreadsheet attached to Houston's original pleading. Some of the amounts requested in the spreadsheet may have already been adjusted/refunded. However, it is quite unclear what amounts were refunded, for which accounts, and for which issues. Houston seeks each and every amount estimated in its

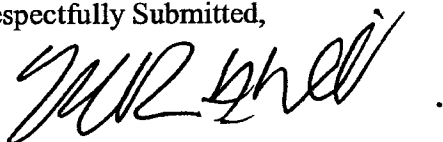
spreadsheet and/or a statement that such amounts have already been refunded (along with evidence demonstrating such refunds). As stated clearly in its informal complaint and reasonably known to all parties to this complaint from the pleadings, Houston believes it is entitled to refund between the Tex-AN 2000 rates and the rates actually charged for each service clearly identified in the spreadsheet from approximately February 2009 (when AT&T appears to have partially implemented Tex-AN 2000 for the bulk of Houston's services).

Houston has addressed the authority to represent Houston in this account above and through the attachments hereto. Houston again takes issue with the ALJ order to show authority based on the mere suggestion that the four accounts might not belong to Houston.

Motion for Referral to SOAH

Houston again moves for referral to the State Office of Administrative Hearings.

Respectfully Submitted,



Mark A. Wilder
Southwestern Tariff Analyst (Authorized Representative for the City of Houston)
2514 Tangle Street
Houston, TX 77005
713-522-7568 phone
713-522-0145 fax

CERTIFICATE OF SERVICE

I, Mark Wilder, Authorized Agent for the City of Houston, certify that a copy of this document was served on all parties of record in this proceeding on September 17, 2012 in the following manner: FedEx to the Public Utility Commission and via facsimile to all other parties of record.

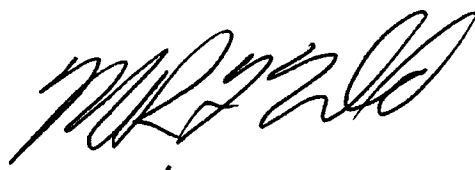

September 17, 2012

Exhibit 2

(a) The commission shall employ an executive director, a general counsel, and such officers~~[administrative law judges, hearing examiners, investigators, lawyers, engineers, economists, consultants, statisticians, accountants, administrative assistants, inspectors, clerical staff,]~~ and other employees as it deems necessary to carry out the provisions of this Act. All employees receive such compensation as is fixed by the legislature. The commission shall develop and implement policies that clearly define the respective responsibilities of the commission and the staff of the commission.

(b) The executive director is responsible for the day-to-day operations of the commission and shall coordinate the activities of commission employees ~~[commission shall employ the following:~~

~~[(1) an executive director;~~

~~[(2) a director of hearings who has wide experience in utility regulation and rate determination;~~

~~[(3) a chief engineer who is a registered engineer and an expert in public utility engineering and rate matters;~~

~~[(4) a chief accountant who is a certified public accountant, experienced in public utility accounting;~~

~~[(5) a director of research who is experienced in the conduct of analyses of industry, economics, energy, fuel, and other related matters that the commission may want to undertake;~~

~~[(6) a director of consumer affairs and public information;~~

~~[(7) a director of utility evaluation;~~

~~[(8) a director of energy conservation; and~~

~~[(9) a general counsel.~~

~~[(c) The commission shall employ administrative law judges to preside at hearings of major importance before the commission. An administrative law judge must be a licensed attorney with not less than five years' general experience or three years' experience in utility regulatory law. The administrative law judge shall perform his duties independently from the commission].~~

City of Houston
Office of the City Controller Audit Division
And
Information Technology Department

LIMITED LETTER OF AGENCY
("LLOA")

TO: TELECOMMUNICATION PROVIDER

RE: LIMITED LETTER OF AGENCY

ACCOUNT #: See ATTACHED.

Please be advised that "Southwestern Tariff Analyst" is hereby authorized to act as our vendor in making inquiries about services and charges and in ordering customer service records and/or bill copies. We do not authorize Southwestern Tariff Analyst to place orders to make changes in our service.

ITD DIRECTOR¹:

PRINTED NAME:

TITLE:

SIGNED:

DATE:

CITY CONTROLLER²:

SIGNED:

DATE:

¹ Or Authorized representative

² Project Administrator per RCA or other Signature Authority

713-A13-2501
713-A13-2504
713-A13-2505
713-A25-2506
713-A25-2507
713-A25-2509
713-A26-2508
713-A73-0009
713-869-7657
713-849-9330
713-437-5200
713-227-3100

City of Houston
Office of the City Controller Audit Division
And
Information Technology Department

Exhibit II

LETTER OF AGENCY¹
("LOA")

TO: WHOM IT MAY CONCERN

**RE: LETTER OF AGENCY TO SOUTHWESTERN TARIFF ANALYST
TO PURSUE CERTAIN CLAIMS AGAINST AT&T TEXAS ON
BEHALF OF THE CITY OF HOUSTON.**

DATE: FEBRUARY 26, 2013

Please be advised that 'Southwestern Tariff Analyst' has been and is authorized to act as agent of the City of Houston to pursue the following below listed claims, and the related AT&T telephone/data City of Houston accounts, as set detailed in the complaints filed at the Public Utility Commission of Texas (PUC). This authorization extends to and includes any additional AT&T City of Houston accounts that have substantially similar claims that may be discovered by examination of AT&T's records during the course of the complaint/discovery process.

1. PUC Docket No. 40014 -- Late Payment of charges inconsistent with the Texas Prompt Payment Act
2. PUC Docket No. 40092 -- Overpayments on unusable infrastructure [empty SmartTrunk spans/DLS spans not disconnected]
3. PUC Docket No. 40014 -- Tex-AN 2000 Discounts not properly given
4. PUC Docket No. 41096 -- Over billing on Private Line Service due to mileage errors.

This Letter of Agency is written in conjunction with the City Attorney's Letter of Authorization to the Honorable Paul D. Keeper, Administrative Law Judge, State Office of Administrative Hearings, dated February 25, 2013. This Letter of Agency supersedes previous letters of agency.



DAVID SCHROEDER, CPA, CISA

City Auditor, Office of the City Controller, City of Houston
(832) 393-3510



CITY OF HOUSTON
Legal Department

Exhibit III

Annise D. Parker

Mayor

David M. Feldman
City Attorney
Legal Department
P.O. Box 368
Houston, Texas 77001-
0368
City Hall Annex
900 Bagby, 4th Floor

T. 832.393.6491
F. 832.393.6259
www.houstontx.gov

February 25, 2013

The Honorable Paul D. Keeper
Administrative Law Judge
State Office of Administrative Hearings

Dear Judge Keeper,

On November 30, 2011, as City Attorney for the City of Houston, I wrote the attached letter to Larry Pfeil of Southwestern Tariff Analyst. The letter was written in anticipation of a challenge by AT&T Texas to Southwestern Tariff Analyst's authority to represent the City of Houston in various complaints before the Public Utility Commission. The letter stated:

.... the City Attorney of Houston designates Southwestern Tariff Analyst as its Authorized Representative as defined by PUC Procedural Rule §22.2(10)...[and] authorize Southwestern Tariff Analyst to file formal and/or informal complaints on its behalf at the Public Utility Commission of Texas and to pursue resolution to such complaints before the PUC on behalf of the City of Houston.

In SOAH Order No. 3 in PUC Docket No. 40114, you have requested written confirmation of Southwestern Tariff Analyst's authority on "non-City of Houston named accounts." This letter serves as that confirmation.

Therefore, as City Attorney for the City of Houston, I confirm that I designate and have designated Southwestern Tariff Analyst as Houston's Authorized Representative, as

defined by PUC Procedural Rule §22.2(10). As Houston's Authorized Representative, Southwestern Tariff Analyst may file formal and/or informal complaints on its behalf at the Public Utility Commission of Texas and pursue resolution of such complaints in all aspects before the PUC on behalf of the City of Houston.

The scope of this Authorization extends to and includes all twelve accounts, which were previously listed as City of Houston accounts in this Docket in Houston's Response to PUC Order No. 2 (September 18, 2012). Houston's September 18, 2012 filing included an Exhibit 2, which had two attachments. The first is the Letter of Agency dated May 23, 2011 (from the City of Houston's Controller's Office, Audit Division, and the Information and Technology Department's Office). That Limited Letter of Agency listed twelve accounts. The second attachment to Exhibit 2 was my letter of November 30, 2011.¹ By this letter, for purposes of Responding to SOAH Order No. 3, I confirm that this letter of authorization includes all City of Houston accounts listed on that Limited Letter of Agency, including those accounts characterized as "non-City of Houston named accounts."²

In an abundance of caution, this letter will also briefly comment on what is really an issue separate and apart from Southwestern Tariff Analyst being properly designated as Houston's Authorized Representative.

AT&T has raised, as a disputed fact issue, whether four accounts that were listed on the May 25, 2012 Limited Letter of Agency are Houston accounts. AT&T has provided no basis for this assertion, other than speculation and conclusory statements, as detailed in Houston's Response to SOAH Order No. 3 (to be filed on or before February 28, 2013).³ AT&T has "linked" Southwestern Tariff Analyst's authority to represent Houston to these factually disputed accounts, but that issue is distinct from whether Southwestern Tariff Analyst has authority to represent Houston before the Commission and at SOAH. It does.

I realize there are factual issues still to be resolved, but until they are, my previous letter of authorization stands, and by this letter I confirm for purposes of Responding to SOAH Order No. 3, that Southwestern Tariff Analyst is authorized by Houston to represent Houston in all aspects of the claims involving the twelve accounts (and related subaccounts listed in the May 23, 2011 City of Houston's Controller's Office and the Information and Technology Department's Limited Letter of Agency, including the four

¹ PUC Docket No. 40114, Houston's Response to PUC Order No. 2, Exhibit 2 (September 18, 2012, p. 13 [Limited Letter of Agency], and p. 15 [City Attorney Letter of Authority]).

² The four accounts are: 713-437-5200, 713-227-3100, 713-849-9330, and 713-869-7657.

³ The four disputed accounts are: 713-437-5200, 713-227-3100, 713-849-9330, and 713-869-7657.

disputed accounts of: 713-437-5200, 713-227-3100, 713-849-9330, and 713-869-7657, unless and until the facts show that these accounts (or any others) are not owned and controlled by the City of Houston.⁴

Very truly yours,



David M. Feldman
City Attorney

⁴ Other indicia of Houston ownership and control of those four accounts are detailed in the Houston's Response to SOAH Order No. 3, but which includes, in summary, that these four accounts: 1.) were *all listed by AT&T as Houston's accounts on AT&T's unilaterally controlled and populated "customer only" web portal site* (a site containing customer specific confidential information that, by federal law, is confidential, with access limited to account customers only. [including but not limited to Section 222 of the Telecommunications Act of 1996]; 2.) the accounts were *listed on the customer-only AT&T web site with the same Master Customer Number* (assigned exclusively to the City of Houston); 3.) *AT&T provided on-line customer service records* that have numerous coded notations evidencing that these are Houston accounts; 4.) *AT&T notations with references to a Houston City employee as the local contact person authorized to change services on one or more of these accounts*; 5.) *AT&T notations citing to an October 16, 2000 contract between Houston and AT&T*; and 6.) the AT&T customer service records show *billing names and addresses (at City of Houston facilities) which were given to these accounts by Houston.*