



Control Number: 40114



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

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PUBLIC UTILITY COMMISSION  
OF TEXAS

**CITY OF HOUSTON'S RESPONSE TO COMMISSION STAFF'S STATEMENT  
OF POSITION**

On February 15, 2012 Commission Staff filed its Statement of Position in this complaint case.

The City of Houston (Houston) files this response to Commission Staff.

Firstly, Commission Staff (Staff) oversimplifies Houston's complaint. There are three basic categories of complaints within Houston's complaint. 1). That AT&T billed for both the full tariff rate and the discounted Tex-AN 2000 rate for some services. This is a double billing and billing higher than permitted by tariff (which is a violation of PURA, and other Commission Rules). AT&T cannot bill twice for a service provided only once. No tariff, law or rule permits AT&T to bill for these services. In reality, the service is billed correctly. Our issue the charges that do not relate to any service. These are charges for no service whatsoever. Nothing permits these charges. 2) AT&T partially implemented Tex-AN 2000 discounts for 24-month term agreements for SmartTrunk services. This contractual offering (approved by the PUC) is a package deal. Any components that are part of that package must be at the Tex-AN 2000 rates. AT&T simply failed to implement some discounts under Tex-AN 2000. The Tex-AN 2000 agreement is a term and condition of the service that Houston subscribes to. PUC Substantive Rule §26.27(a)(3)(B) states: (B) Overbilling. If charges are found to be higher than authorized by the DCTU's tariffs or the terms and conditions of service, an appropriate refund shall be made to the customer. (I) The refund shall be made for the entire period of the overbilling. AT&T charged Houston at rates higher than the terms and condition of service. No rule or law permits AT&T to bill the rates it billed Houston that are the subject of this complaint. 3) Houston requested Tex-AN

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- (G) a statement of whether the complainant has attempted informal resolution through the commission staff and the date on which the informal resolution was completed or the time for attempting the informal resolution elapsed;
- (H) a description of the facts that gave rise to the complaint; and
- (I) a statement of the relief that the complainant is seeking.

Houston met these requirements. If this Commission wishes to alter its rules, it should do so through a rulemaking proceeding. Notably missing from Staff's Statement of Position is any requirement of the utility to show what law, rule, or tariff permits AT&T to bill for the service that is the subject of this complaint. No law, rule, or tariff permits the charges Houston complains of in this case. AT&T must show that it has legal authority for the way it billed Houston. Staff burdens Houston with what is AT&T's burden to show. Specifically, PURA §53.006(b)(Burden of Proof) states "*In a proceeding in which the rate of an incumbent local exchange company is in issue, the incumbent local exchange company has the burden of proving that the rate is just and reasonable.*" Houston has alleged that the rates are unlawful and Houston is entitled to relief. AT&T's response is a simple no Houston is not. AT&T has not attempted to state what law, rule or tariff permits the billing made the subject of this complaint. This is typical of Staff's positions. The utility typically gets a pass on the rules and the complainant is burdened with rules that simply do not exist. If Staff would simply require AT&T to follow the rules, it is unlikely that this and many other formal complaints would have even needed involvement of the PUC. It is the PUC's failure to fairly enforce its own rules that results in this and many other formal complaints.

This complaint is a factual dispute which the ALJ of the State Office of Administrative Hearings (SOAH) will have to weigh and decide after evidence is sought and presented at the hearing on the merits. Houston cannot be ordered to amend its complaint and this complaint cannot be dismissed without first referring this complaint to SOAH. PUC Procedural Rule §22.2(16) defines

"Contested case" as "*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.*" Whether Houston must amend its complaint is a question of law in which the legal duties of Houston are to be determined. Thus, only SOAH may determine what Houston's filing requirements are and whether Houston met those filing requirements. Likewise, to dismiss Houston for the same is a determination that there were legal duties that Houston failed to meet. Thus again, only the SOAH ALJ may make this determination. This alone makes this complaint a contested case. Moreover, the legal rights and obligations of AT&T are likewise in question. The question has been raised as to AT&T's legal right to continue to bill for service it no longer provides to Houston, the question of whether AT&T partially failed to implement requested Tex-AN 2000 rates, and whether AT&T wholly failed to implement Tex-AN 2000 on two SmartTrunk services, and finally whether Houston was ineligible for Tex-AN 2000 services on some service (as AT&T now claims for the first time). Commission rules and PURA define how contested cases are to be handled.

*Procedural Rule §22.202 Presiding Officer.*

*(a) Presiding officer to conduct hearings. Hearings in contested cases shall be conducted by one or more presiding officers. The presiding officer has the decision making authority set out in the commission rules, Government Code, APA<sup>1</sup>, and PURA.*

*§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.*

*PURA §14.053. POWERS AND DUTIES OF STATE OFFICE OF ADMINISTRATIVE HEARINGS.*

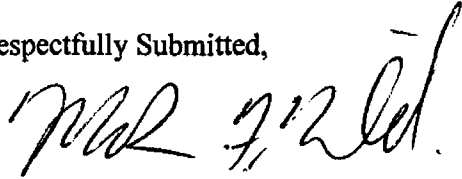
*(a) The utility division of the State Office of Administrative Hearings shall conduct each hearing in a contested case that is not conducted by one or more commissioners.*

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<sup>1</sup> PUC Procedural Rule §22.2 defines "APA" as "*The Administrative Procedure Act, Chapter 2001, Government Code, as it may be amended from time to time.*"

Nothing within any Commission rule, the APA, or PURA permits the Commission to rule on any aspect of this contested case. If Staff is correct and Houston should be ordered to amend its complaint and/or this complaint should be dismissed, SOAH's ALJ must make that determination after the opportunity for an adjudicative hearing. This complaint must, by law, be referred to SOAH. Houston again so moves.

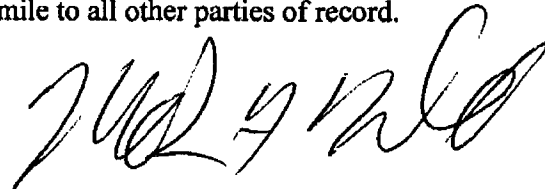
Respectfully Submitted,



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**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 20, 2012 in the following manner: FedEx to the Public Utility Commission and via facsimile to all other parties of record.



February 20, 2012