



Control Number: 40114



Item Number: 88

Addendum StartPage: 0

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

2013 SEP 27 PM 2:47
PUBLIC UTILITY COMMISSION
FILING CLERK

COMPLAINT OF THE CITY OF
HOUSTON AGAINST
SOUTHWESTERN BELL TELEPHONE
COMPANY d/b/a AT&T TEXAS

§
§
§
§

PUBLIC UTILITY COMMISSION
OF TEXAS

CITY OF HOUSTON'S RESPONSE TO AT&T TEXAS' MOTION TO COMPEL

The City of Houston (Houston) timely files this Response to AT&T Texas's Motion to Compel

AT&T's Requests for Information

AT&T's RFI No. 1-1: Explain in detail how Houston compensates and/or will compensate Southwestern Tariff Analyst for services rendered in this proceeding including all commissions, fees, benefits, cost recovery, award/refund sharing or other forms of compensation.

Houston's Objection: The RFI is in no way relevant to the instant complaint. How Southwestern Tariff Analyst is compensated does not tend to establish any facts relevant to the issues made the subject of the instant complaint, anymore than what AT&T personnel are compensated.

AT&T's Motion to Compel: AT&T moves to compel Houston to respond to this RFI. Houston's objection should be overruled on the ground that Houston failed to present any argument to support its relevancy objection in violation of P.U.C. Proc. Rule 22.144(d)(1). That rule clearly states: "All arguments upon which the objecting party relies shall be presented in full in the objection." Moreover, the information sought in this RFI is clearly relevant. In requesting this information, AT&T is attempting to discover facts that may show bias or interest on the part of Houston's Authorized Representative, Mark Wilder, who is an employee of Marketing on Hold, Incorporated doing business as Southwestern Tariff Analyst (hereinafter "STA"). Mr. Wilder recently testified at his deposition that there is a contract/engagement letter between STA and Houston. AT&T should be allowed to introduce this evidence to establish bias and interest on the part of Mr. Wilder given the fact that Mr. Wilder has testified that he receives a percentage of revenue received from invoicing Houston related to refunds and/or savings that are obtained from this proceeding (as well as the other 3 proceedings). This is significant because Mr. Wilder is typically the only person identified as a responsible person for discovery responses, and in at least one other Public Utility Commission proceeding against AT&T wherein Mr. Wilder served as the Authorized Representative for the complainant, Mr. Wilder was the only witness that offered pre-filed testimony. Lastly, to the extent that Mr. Wilder and/or STA is considered or, rather, considers himself to be a testifying expert, then AT&T may discover any bias.

Houston's response: The SOAH ALJ has taken a very narrow view of what is relevant in this complaint case. How Houston compensates STA is no more relevant than how AT&T compensates AT&T's attorney or AT&T's other employees. In this particular consumer billing complaint it asserts that AT&T has had a decade's long overbilling practice.

This complaint is not that complicated, although it does involve hundreds of services, thousands of bills and contracts from thirteen years ago. The primary issues are simple: Did Houston, as a governmental entity, avail itself to contract for the lower governmental telephone and other telecommunication service rates being offered in the 2000 to 2009 time period; if so, when did those lower governmental rates apply; and did AT&T charge the higher retail rates rather than the lower governmental rates during those periods; and if so, what amount of a refund is owed this particular consumer, Houston.

Whatever compensation is paid to either party, or their attorneys' or employees, has the same relevance. None. Would not AT&T attorneys' or employees have some interest to deny the claim, as to do otherwise is an admission of gross incompetence, at best? Is it not a conflict against interest to show that someone in the AT&T organization made a significant error, an error that was continued for years, and in effect continues in this vigorously contested consumer complaint? An error, which in Houston's views, is still being all but being protected from literal discovery, with every tool in a litigator's tool box. Is any conflict more relevant than protecting fellow employees from discovery of what may be viewed as incompetence and overcharging? This is not a proper or fruitful area for Houston to inquire into, just as AT&T cannot inquire into Houston's consultant's compensation. The parties have issues enough to keep them busy.

Neither STA nor Mr. Wilder has been designated as a testifying expert. AT&T is the movant and has not clearly demonstrated that knowledge of compensation is relevant to any issues or facts in this case, or that knowledge of compensation would reasonably lead to relevant evidence of any fact issue in this case. The motion to compel should be denied

AT&T's RFI No. 1-6: Identify the person(s) employed by Houston that Southwestern Tariff Analyst consults with to obtain responses to AT&T's requests for information issued in this proceeding.

Houston's Objection: Houston has identified the responsible person with each of its answers. To go behind those identified as the responsible party as to whom the responsible party consulted with "to obtain information and prepare responses" is protected from disclosure as work product privilege information, as it would disclose legal strategies, and to the extent the consultation "to obtain information and prepare responses" was on legal advice, it is also protected from disclosure by the attorney client privilege. Just as Houston has identified the responsible person with each of its answers, so has AT&T. Houston understands it cannot compel AT&T to identify *a//* the AT&T personnel that the responsible individual AT&T designated in answers has consulted with "to obtain information and prepare responses" in either gathering the records or by identifying the legal counsel that gave legal advice on the appropriate breadth and scope required in providing an answer, otherwise, Houston would so inquire. (For instance, was the legal counsel consulted someone other than the attorney of record? And who was that individual, what is their position at AT&T, and why were they consulted? And so on.....). Of course this protected inquiry as to consultations, is not meant to preclude, reasonable, narrowly focused, factual inquiries into the proper chain of custody of documents.

AT&T's Motion to Compel: AT&T moves to compel Houston's response to this RFI. AT&T is simply seeking the identity of persons STA consults with for purposes of responding to AT&T's RFIs. This information is not privileged. Specifically, the information requested does not meet the definition of "work product" as defined by Texas Rule of Civil Procedure 192.5(a). But even assuming *arguendo* that the information sought was work product, it is not protected from discovery under Texas Rule of Civil Procedure 192.5(c)(3). That rule provides that work product related to the name of any person with knowledge of relevant facts is not protected and is discoverable. Moreover, without getting into the merits of the application of the attorney client privilege to communications between STA and Houston, this information is not privileged under Texas Rule of Evidence 503 because it is not inquiring about specific communications but simply the identity of persons whom STA consulted.

Houston's response: Houston incorporates its original objection and requests that the ALJ deny AT&T motion. This information is at best tangential, and not relevant to any issue in this matter. Will it change any underlying fact to know who AT&T consulted with in preparing this question? No. And who Houston consulted with in response to the question will not either. Nor will it reasonably lead to any relevant facts in this case. The contracts and billing records, that form the basis of the claim, speak (loudly) for themselves. That is not altered by consultations.

Requests for Production

AT&T's RFP No. 1-4: Produce the agreement by which Houston has agreed to compensate Southwestern Tariff Analyst for services rendered in this proceeding including all commissions, fees, benefits, cost recovery, award/refund sharing or other forms of compensation.

Houston's Objection: The RFP is in no way relevant to the instant complaint. How Southwestern Tariff Analyst is compensated does not tend to establish any facts relevant to the issues made the subject of the instant complaint.

AT&T Motion to Compel: For purposes of brevity only, AT&T asserts and incorporates AT&T's Motion to Compel RFI No. 1-1 as if set forth fully herein.

Houston's response: Houston incorporates its original objection and its response in RFI No.1-1 above, and requests that the ALJ deny AT&T motion.

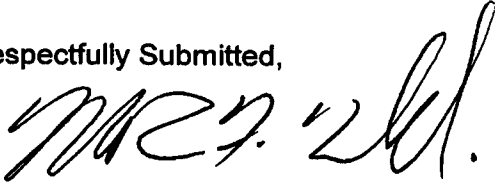
AT&T's RFP No. 1-11: Produce all documents related to the refund Houston seeks in this proceeding.

Houston's Objection: The RFP is overly broad and ambiguous.

AT&T's Motion to Compel: AT&T moves to compel Houston's response to this RFP. In this RFP, AT&T is simply seeking the documents that back-up, substantiate or support the refund Houston seeks in this proceeding. AT&T should be able to review any and all documents that back-up, substantiate or support the refund sought so that AT&T may have an opportunity to review and possibly controvert Houston's refund calculations. Houston's objections should be overruled.

Houston's response: To the extent AT&T sought documents that back-up, substantiate or support the refund Houston seeks, then it should have asked for that or clarified that in the conference regarding Houston's objection. That however is NOT what AT&T has asked nor did AT&T clarify. As written, the RFP seeks all documents that relate in any way (no matter how tangentially) to the refund Houston seeks. Responsive documents would include (but would not be limited to) tens of thousands of pages or billing records and bills that in no way support or backup Houston's claims. The RFP is so broad and so ambiguous that response is nearly impossible.

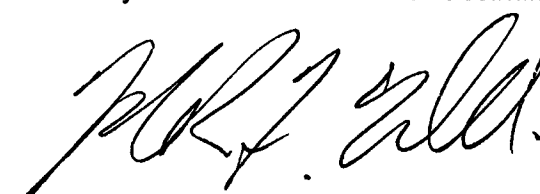
Respectfully Submitted,



Mark A. Wilder
Southwestern Tariff Analyst (Authorized Representative for the City of Houston)
2514 Tangley 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 27, 2013 in the following manner: FedEx to the Public Utility Commission and via facsimile to all other parties of record.



Sept 27, 2013