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BEFORE THE ARIZONA CORPORATION C

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Arizona Corporation Commission

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COMMISSIONERS

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- GARY PIERCE
- PAUL NEWMAN
- SANDRA D. KENNEDY
- BOB STUMP

IN THE MATTER OF:

GEORGE BEIN-WILLNER for
GLENDALE & 27TH INVESTMENTS, LLC

COMPLAINANT,

v.

QWEST CORPORATION,

RESPONDENT.

DOCKET NO. T-01051B-10-0200

**MOTION TO FOREGO STAFF
PARTICIPATION IN INFORMAL
MEDIATION**

On May 17, 2010, Glendale & 27th Investments, LLC ("Glendale") filed a formal complaint ("Complaint") against Qwest Corporation ("Qwest") with the Arizona Corporation Commission ("Commission"). Glendale's managing member, George Bien-Willner, filed the Complaint on Glendale's behalf.

On November 4, 2010, a Procedural Order ("Order") was issued by the Administrative Law Judge ("ALJ") ordering the parties to engage in an informal mediation conducted by Commission Staff ("Staff"). The Order additionally ordered Staff to file a report in the docket 30 days after such a mediation updating the Commission on the status of the informal mediation and the resolution of any issues. Based on the reasons stated below, Staff respectfully requests that this matter continue through the formal complaint process and that Staff be allowed to forego any additional informal processes.

I. STAFF IS ABLE TO PREPARE A REPORT ABOUT THE ISSUES PRESENTED BY THE FORMAL COMPLAINT WITHOUT CONDUCTING AN INFORMAL MEDIATION.

The ALJ's procedural order requires the parties to engage in an "informal mediation conducted by Staff in an effort to clarify the issues involved in the Complaint . . ."¹ Staff, however,

¹ November 4, 2010 Procedural Order at 2 (emphasis added).

1 has already reviewed these issues in connection with its processing of the informal complaint.
2 Additional informal procedures are not necessary for Staff to clearly set forth its understanding of the
3 relevant facts.

4 Attached as Exhibit A to this pleading is a brief Staff Memorandum, similar to that
5 contemplated by the ALJ's procedural order, setting forth Staff's understanding of the facts and
6 providing a summary of the status of this matter. The Staff Memorandum describes Glendale's
7 allegations as well as Qwest's response thereto.

8
9 **II. UNDER THESE CIRCUMSTANCES, AN INFORMAL MEDIATION WILL
10 NOT BE AN EFFECTIVE USE OF STAFF'S LIMITED RESOURCES.**

11 In general, Staff mediations tend to be time-consuming because they are not governed by the
12 rules of evidence and rules of procedure that are typically applicable to *administrative* hearings. Staff
13 mediations tend to be more "user-friendly" to allow complainants who are unfamiliar with utility
14 subject matter an opportunity to present their concerns in a more relaxed setting. Neither party to this
15 proceeding, however, is unfamiliar with Commission procedures.

16 Qwest, which is a prominent Arizona public service corporation, is well-versed in
17 Commission practice. Also, Mr. Bien-Willner, Glendale's principal, is a successful businessman who
18 has substantial experience with Commission proceedings. Over the past six years, Mr. Bien-Willner
19 has filed approximately fifteen informal complaints on behalf of various entities for which he serves
20 as principal. Approximately three of these informal complaints have proceeded to formal complaints.

21 Staff recognizes that both Qwest and Glendale have requested informal Staff mediation.
22 However, Staff has already expended significant resources in its inquiry involving these issues at the
23 informal complaint level. Staff feels that re-examining this complaint at the informal level would be
24 an inefficient use of Staff's limited resources. It is Staff's belief that the agency's resources would be
25 better utilized at this stage in the proceeding by having the issues addressed directly by the ALJ and
26 the Commission.

27 ...
28 ...

EXHIBIT A

MEMORANDUM

TO: Steven M. Olea
Director
Utilities Division

FROM: Connie Walczak *CW*
Administrative Services Officer II
Utilities Division

DATE: December 7, 2010

RE: QWEST CORPORATION – Glendale & 27th Investments, LLC - FORMAL COMPLAINT (DOCKET NO. T-01051B-10-0200)

On March 30, 2010, the Consumer Services Section of the Utilities Division (“Staff”) received an informal complaint from Glendale & 27th Investments, LLC (“Glendale”) against Qwest Corporation (“Qwest”). Glendale’s managing member is George Bien-Willner. Mr. Bien-Willner has served as the contact person for Glendale throughout Staff’s processing of Glendale’s informal complaint.

In its informal complaint, Glendale alleged that Qwest had incorrectly billed Glendale for an incoming 800 number for nearly six years. The incoming 800 number originally served a Howard Johnson Hotel in Phoenix. On February 11, 2004, Glendale acquired the hotel property, renaming it the Sterling International Hotel. Glendale claims that the acquisition of the hotel on February 11, 2004, should have served as notice to Qwest to terminate the 800 number. In its informal complaint, Glendale sought a \$10,000 refund, which represents what Glendale has paid Qwest for the incoming 800 number for approximately six years.

According to Qwest, Glendale did not contact Qwest to cancel the incoming 800 number until December 23, 2009. Qwest further claimed that it had billed Glendale for the incoming 800 number every month for six years by means of a separate mailing that billed Glendale solely for the incoming 800 number. In other words, the charge for the incoming 800 number was not bundled with other services, but was isolated in a separate monthly bill. Glendale paid these monthly bills and did not dispute them until December 23, 2009.

Qwest also informed Staff that it had already provided a credit to Glendale back to July of 2009. Qwest had provided this refund not as an admission of error but as a gesture of good will.

In Staff’s opinion, the processing of the complaint at the informal level has been concluded. Based on Staff’s review of the complaint, Qwest followed its normal process for handling the transfer of service between two parties and also followed applicable Commission rules and regulations.

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