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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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ARIZONA CORPORATION COMMISSION
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COMMISSIONERS

GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

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

COMPLAINANT,

V.

QWEST CORPORATION,

RESPONDENT.

DOCKET NO. T-01051B-10-0200

PROCEDURAL ORDER

BY THE COMMISSION:

On May 17, 2010, George Bein-Willner, for Glendale & 27th Investments, LLC ("Complainant") filed with the Arizona Corporation Commission ("Commission") a Formal Complaint ("Complaint") against Qwest Corporation ("Qwest"). The Complaint alleges that Qwest has incorrectly billed Complainant, who owns and operates Sterling International Hotel, for a 1-800 line that should have terminated in 2004. Complainant requests relief in the amount of approximately \$10,000.

On June 10, 2010, Qwest filed an Answer to the Complaint, denying the allegations alleged in the Complaint. Qwest's Answer states that as a gesture of goodwill, and not as an admission of liability, Qwest provided Complainant a back credit to July 2009 and Qwest requests that the Commission dismiss the Complaint.

On August 16, 2010, by Procedural Order, Qwest's Motion to Dismiss was denied and a procedural conference was set for September 8, 2010.

On August 20, 2010, Complainant filed a letter requesting that the procedural conference scheduled for September 8, 2010, be rescheduled for early October, due to a conflict in Complainant's business schedule.

On August 26, 2010, Qwest filed a response to Complainant's request for a continuance of the

1 procedural conference. Qwest stated that it had no objection to the continuance and requested to
2 appear telephonically if the newly scheduled date conflicted with Qwest counsel's travel schedule.

3 On August 27, 2010, a Procedural Order was issued continuing the procedural conference to
4 October 7, 2010, and Qwest's request to appear telephonically was granted.

5 On October 7, 2010, the procedural conference was held as scheduled. Qwest appeared
6 through counsel and Complainant appeared on his own behalf. During the procedural conference, the
7 parties requested that Staff conduct an informal mediation to provide clarification on the issues
8 involved in the Complaint and to see if settlement of the issues was possible.

9 By Procedural Order dated November 4, 2010, Staff was directed to engage in an informal
10 mediation with the parties in an effort to clarify the issues involved in the Complaint and to determine
11 if settlement of the issues is possible.

12 On December 7, 2010, Staff filed a Motion to Forego Staff Participation in Informal
13 Mediation. Staff stated it has reviewed the issues in this matter during the informal complaint
14 proceeding. Staff explained that during the informal process Staff acts as a mediator and the process
15 allows complainants who are unfamiliar with Commission proceedings to attempt to resolve their
16 issues in a more relaxed setting. Staff stated that both Complainant and Qwest are familiar with
17 Commission proceedings and to conduct additional informal proceedings is unnecessary. Staff
18 stated that re-examining the issues at the informal complaint level would be an inefficient use of
19 Staff's limited resources and that this matter should continue as a Formal Complaint.

20 On December 10, 2010, the Complainant filed a Response to Staff's Motion ("Response").
21 Complainant stated that under A.A.C. R14-2-510, Complainant is entitled to participate in the
22 informal complaint process.

23 On January 5, 2011, Staff filed its Reply in Support of Staff's Motion ("Reply"). In the Reply,
24 Staff reasserted its position that the matter should proceed through the Formal Complaint process.
25 Staff stated that Complainant will be afforded due process through the Formal Complaint proceeding.

26 On February 15, 2011, Complainant filed a letter requesting immediate assistance in
27 addressing the issues raised in this docket. Complainant's letter further stated that Complainant
28 believes that this matter has been unjustly delayed to the benefit of Qwest.

1 On February 17, 2011, a Procedural Order was issued granting Staff's Motion. The
2 Procedural Order also scheduled the hearing in this matter to commence on May 2, 2011, and
3 deadlines were established for filing testimony and responsive testimony.

4 On March 3, 2011, Complainant filed Discovery Interrogatories and Request for Production.

5 On March 17, 2011, Complainant filed a witness list. On the same day, Complainant
6 docketed a response to Qwest's letter inquiry of March 14, 2011.

7 On April 1, 2011, Qwest filed a Motion for an Order Revising the Procedural Schedule, and
8 Compelling Complainant to Comply ("Motion"). Qwest's Motion states that Complainant has failed
9 to file written testimony as directed by the Procedural Order issued on February 17, 2011, and that
10 without written testimony Qwest is unable to prepare its responsive testimony. Qwest requests that
11 the Complainant be directed to provide written testimony prepared by each of its witnesses; and that
12 the procedural schedule be revised to allow Complainant to file written testimony and Qwest to file
13 responsive testimony. Qwest further requests that Complainant be admonished for failing to comply
14 with the Procedural Order and that Complainant be informed that future failure to comply could
15 result in dismissal of the Complaint.

16 Complainant has failed to file written testimony for its witness(s) as directed in the February
17 17, 2011, Procedural Order. Complainant's witness list fails to provide any substantive testimony
18 addressing the issues raised in the Complaint. Therefore, Qwest's request for additional time to file
19 its responsive testimony should be granted. Further, the hearing in this matter should be continued to
20 allow Complainant to file written testimony for its witness(s) and to allow Qwest to file responsive
21 testimony. Complainant should be put on notice that the failure to file written testimony and to abide
22 by the procedural deadlines established in this Procedural Order may result in the dismissal of the
23 Complaint.

24 **IT IS THEREFORE ORDERED that Qwest's request for additional time to file its**
25 **responsive testimony and to reset the procedural schedule in this matter is hereby granted.**

26 **IT IS FURTHER ORDERED that the hearing in this matter is continued to July 11, 2011,**
27 **at 10:00 a.m., or as soon thereafter as is practicable, at the Commission's offices, 1200 West**
28 **Washington Street, Room 100, Phoenix, Arizona 85007.**

1 IT IS FURTHER ORDERED that **Complainant's failure to file written testimony in**
2 **compliance with the procedural deadlines set forth herein may result in the Complaint being**
3 **dismissed.**

4 IT IS FURTHER ORDERED that **Complainant and Qwest** shall file a joint Status Report
5 discussing any issues that have been resolved on or before **June 30, 2011.**

6 IT IS FURTHER ORDERED that any **Responses to Motions** shall be filed within five days
7 of the Motion.

8 IT IS FURTHER ORDERED that any **Motions** which are filed in this matter and which are
9 not ruled upon by the Commission within 20 days of the filing date of the Motion shall be deemed
10 denied.

11 IT IS FURTHER ORDERED that the **direct testimony and associated exhibits** to be
12 presented at hearing **by Complainant** shall be reduced to writing and filed on or before **May 10,**
13 **2011.**

14 IT IS FURTHER ORDERED that the **rebuttal testimony and associated exhibits** to be
15 presented at hearing **by Qwest** shall be reduced to writing and filed on or before **June 7, 2011.**

16 IT IS FURTHER ORDERED that the **surrebuttal testimony and associated exhibits** to be
17 presented at hearing **by Complainant** shall be reduced to writing and filed on or before **June 21,**
18 **2011.**

19 IT IS FURTHER ORDERED that **any objections to testimony or exhibits** that have been
20 filed as of **June 21, 2011,** shall be made on or before **June 28, 2011.**

21 IT IS FURTHER ORDERED that any substantive corrections, revisions, or supplements to
22 the pre-filed testimony shall be reduced to writing and filed no later than **July 5, 2011.**

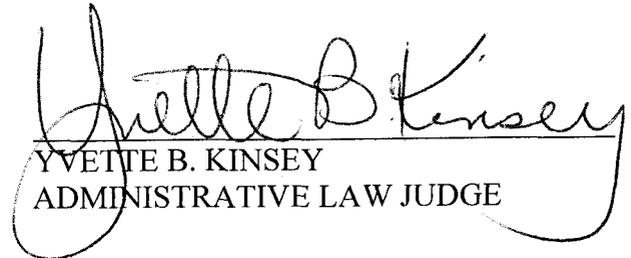
23 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
24 Communications) applies to this proceeding.

25 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
26 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (Arizona Supreme
27 Court Rule 42). Representation before the Commission includes the obligation to appear at all
28 hearings and procedural conferences, as well as all Open Meetings for which the matter is scheduled

1 for discussion, unless counsel has previously been granted permission to withdraw by the
2 Administrative Law Judge or the Commission.

3 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
4 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
5 hearing.

6 DATED this 13th day of April, 2011.


YVETTE B. KINSEY
ADMINISTRATIVE LAW JUDGE

10 Copies of the foregoing mailed/delivered
11 this 13th day of April, 2011, to:

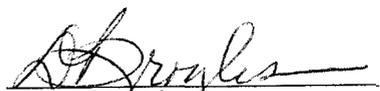
12 George Bein-Willner
13 GLENDALE & 27TH INVESTMENTS, LLC
14 3641 North 39th Avenue
15 Phoenix, AZ 85019-3601

16 Norman G. Curtright, Corporate Counsel
17 QWEST CORPORATION
18 20 East Thomas Road, 16th Floor
19 Phoenix, AZ 85012-3114

20 Janice Alward, Chief Counsel
21 Legal Division
22 ARIZONA CORPORATION COMMISSION
23 1200 West Washington Street
24 Phoenix, AZ 85007

25 Steven M. Olea, Director
26 Utilities Division
27 ARIZONA CORPORATION COMMISSION
28 1200 West Washington Street
Phoenix, AZ 85007

ARIZONA REPORTING SERVICE, INC.
2200 North Central Avenue, Suite 502
Phoenix, AZ 85004-1481

25 By: 
26 Debra Broyles
27 Secretary to Yvette B. Kinsey
28