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BEFORE THE ARIZONA CORPORATION COMMISSION

2011 MAY 23 P 4: 39

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED

MAY 23 2011

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**GEORGE BIEN-WILLNER, for GLENDALE &
27TH INVESTMENTS, LLC,**

COMPLAINANT,

V.

QWEST CORPORATION,

RESPONDENT.

DOCKET NO. T-01051B-10-0200

**QWEST CORPORATION'S
MOTION TO DISMISS**

Qwest Corporation ("Qwest") moves the Commission for an order dismissing the Complaint because the Complainant has twice failed to file written testimony and exhibits, and the second failure to file written testimony and exhibits occurred despite the Commission's admonition that failure to so file may result in a dismissal of the Complaint.

The first time the Complainant failed to file testimony in this docket by the date specified by Procedural Order, the Arizona Corporation Commission extended the procedural schedule, to give the Complainant another chance. The revised schedule set by the April 13, 2011 Procedural Schedule ordered "that the **direct testimony and associated exhibits** to be presented at hearing **by Complainant** shall be reduced to writing and filed on or before **May 10, 2011.**" (Procedural

1 Order, p. 4, lines 11-13, April 13, 2011). Without explanation, the Complainant has once again
2 failed to file direct testimony reduced to writing, or exhibits, contrary to the procedural
3 requirements laid down.

4 On May 11, 2011, rather than filing written testimony reduced to writing as ordered, the
5 Complainant **late-filed** a very brief letter addressed to the undersigned counsel for Qwest, **but**
6 **the letter does not contain any testimony or exhibits.** The subject line of the letter identifies
7 the correspondence as "Witness List and summary of testimony." It identifies two witnesses, but
8 the contents of the letter do not constitute testimony. Rather, the letter contains vague
9 descriptions of things about which the Complainant is unhappy. Those vague statements do not
10 articulate any facts that would tend to support the Complaint, any specific allegation of wrongful
11 acts committed by Qwest, or any allegations of resulting harm for which the Commission might
12 provide redress. The Complainant says that the witnesses "will testify" about billing issues and
13 inaccurate account billings, but do not provide a single fact regarding basic facts surrounding the
14 complaint, such as telephone services involved, the time period, the account numbers, or the
15 charges disputed.

16 Qwest cannot reasonably be expected to prepare for the hearing. More immediately,
17 Qwest cannot prepare written testimony in its defense under these circumstances, and
18 respectfully asks to be relieved of the duty to file its responsive testimony on June 7, 2011.
19 Furthermore, the lack of definite statement of the evidence that the Complainant may attempt to
20 introduce at the hearing throws the usefulness of the evidentiary hearing into considerable doubt.
21 There are no indications in the Complainant's May 11, 2011 filing that enable Qwest to
22 reasonably anticipate what the Complainant is going to testify about. Indeed, it is apparent from
23 the inadequate filing that the Complainant seeks to testify with respect to several (unsupported)

1 allegations that were not made in the Complaint, such as inaccurate billings, “including unrelated
2 phone number billings belonging to the US Government,” and “the inability of Qwest to help
3 identify specific telephone lines dedicated with the Hotel Telephone Switchboard system.”

4 As Qwest noted in its earlier motion filed upon the Complainant’s first failure to file
5 testimony, the Commission typically requires parties to contested proceeding to file written
6 testimony, because the complexity of facts and issues involved in Commission complaint cases
7 can best be addressed by that process. The Complainant’s failure to file written testimony and
8 exhibits deprives the Commission and Qwest of a full understanding of the Complaint.

9 Compounding the problem, it appears from the brief statement filed by the Complainant that it
10 intends to expand the scope of the allegations beyond that which was set down in the
11 Complaint—into new areas, and upon allegations that will be a surprise at the hearing.

12 The Complainant’s failure to set down its testimony in writing creates an intolerable
13 circumstance, in which the Commission cannot perform its role and do justice. It was exactly
14 these concerns that the Commission sought to avoid when it re-set the procedural schedule the
15 last time because the Complainant failed to file written testimony. The Commission warned the
16 Complainant and ordered as follows:

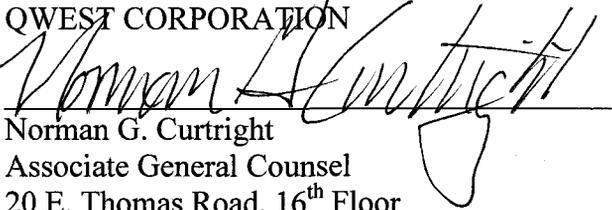
17 **“IT IS FURTHER ORDERED THAT Complainant’s failure to file written**
18 **testimony in compliance with the procedural deadlines set forth herein may**
result in the Complaint being dismissed.”

19 The Complainant’s filing, which the Complainant describes as a “summary” of testimony, is not
20 testimony, and is not a sufficient basis upon which this proceeding may go forward. Qwest asks
21 the Commission to hold that the Complainant’s May 11 filing, which was made late, violates the
22 procedural order. The Commission warned that failure to make a compliant filing may result in
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dismissal of the Complaint, and accordingly, Qwest asks that the Commission enter its order dismissing the Complaint.

RESPECTFULLY SUBMITTED, this 23rd day of May, 2011.

QWEST CORPORATION

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ORIGINAL and thirteen (13) copies filed this 23rd day of May, 2011, with:

Docket Control
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Copy of the foregoing sent via e-mail and U.S. Mail this 23rd day of May, 2011, to:

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