

ORIGINAL

BEFORE THE ARIZONA CORPORATION



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Arizona Corporation Commission

COMMISSIONERS

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AZ CORP COMMISSION
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GEORGE BIEN-WILLNER, for
GLENDALE & 27TH
INVESTMENTS,
LLC

DOCKET NO. T-01051B-10-0200

COMPLAINANT,

COMPLAINANT'S (1) RESPONSE TO
QWEST'S MOTION TO DISMISS AND (2)
MOTION TO COMPEL DISCOVERY
RESPONSES

V.

QWEST CORPORATION,

RESPONDENT.

Complainant George Bien-Wilner, for Glendale & 27th Investments, LLC, hereby responds to Respondent Qwest Corporation's Motion to Dismiss, which Qwest filed with the Commission on May 23, 2011. For the reasons explained below, Qwest's motion to dismiss is without merit and should be denied; the consumer complaint at issue should be heard and decided on its merits. Furthermore, Complainant respectfully requests that the Commission order Qwest to respond to the discovery requests that were directed at Qwest several months ago, but to which Qwest has failed to respond.

RELEVANT BACKGROUND

This is a very straightforward case that involves allegations of Qwest charging the Complainant thousands of dollars for a telephone line he never requested or ordered. The phone service in question relates to a hotel, which, since February 2004, Glendale & 27th Investments LLC has owned (the Complainant is the managing member of Glendale &

1 27th) and operated as Sterling International Hotel (and which was, prior to that time, a
2 Howard Johnson's hotel). Approximately one year ago – in May 2010 – Complainant
3 filed a half-page complaint with the Commission, which states the following:

4 In February 2004 ownership of the former Howard Johnson hotel
5 became Sterling International; at that time a change in billing and
6 account information was revised to new ownership. Qwest failed to
7 disconnect the 800# of the former Howard Johnson and continues to
8 bill Sterling International Hotel for an 800[#] in Howard Johnson's
9 name. Billing has been questioned without success and not interpreted
10 easily given their billing format. A partial refund of \$810.89 which
11 only represents a (6) month period of (6) years of incorrect billings.

12 As for the "Nature of Relief Sought," the Complaint seeks "[a] complete refund for the
13 5½ years not credited on the account #602-275-4990051 plus interest."

14 On June 10, 2010, Qwest filed its answer to the Complaint. Qwest's Answer to is
15 seven numbered paragraphs long, and takes up less than a page (without the legal
16 caption). Although Qwest's Answer begins with a general denial of the Complaint's
17 allegations, Qwest later admits many of the facts alleged in the Complaint. For example,
18 Qwest acknowledges that Complainant took over the hotel in question in February 2004,
19 exactly as the Complaint states. Significantly, Qwest does not deny that it has already
20 paid the Complainant a refund amount of \$810.89. Instead – and without providing any
21 evidence in support of its assertion – Qwest characterizes the refund payment as "[a]
22 gesture of goodwill and not as an admission of liability." See Qwest Answer, June 10,
23 2010 at paragraph 7.

24 Complainant has requested information from Qwest to prepare for a hearing, but
Qwest has not responded to any of Complainant's requests for information. See

1 Discovery Requests, filed with Commission on March 3, 2011 and attached Exhibit A. In
2 fact, Qwest fails even to mention those requests and its failure to respond to them in any
3 of its submissions to the Commission. In contrast, Complainant has responded to Qwest's
4 requests for information. *See, e.g.*, Letter dated September 13, 2010 and filed on Docket
5 September 15, 2010.

6 **ARGUMENT**

7 Rather than presenting any reason – let alone a legitimate one – to dismiss the
8 complaint on its merits, Qwest attempts to have the Complaint dismissed and relief
9 denied to the Complainant because of a technicality (i.e., Qwest's insistence on detailed,
10 advance written testimony and exhibits) that Complainant believes will have little impact
11 (if any) impact on the outcome of this case. This is not a complicated case, nor can
12 Qwest credibly argue that this specific and narrow consumer complaint requires the
13 substantial time and money investment Qwest seeks to have Complainant invest to spoon
14 feed Qwest additional information about the complaint. Further undermining Qwest's
15 position is the fact that the main impediment to providing exhibits and other information
16 in advance of the hearing is Qwest's own conduct.

18 Indeed, without the information sought by Complainant's discovery requests, it is
19 impossible to know exactly which facts may be in dispute at the hearing, and it is also not
20 possible to determine precisely which areas of testimony the witnesses identified by
21 Complainant (on file with the Commission as of May 11, 2011) may cover – let alone to
22 submit prepared testimony for any witnesses. Furthermore, without a single response to
23

1 Complainant's nearly 3-month-old requests for documentary information, it is not
2 possible to provide a list of exhibits that may be used at a hearing.

3 Even though Complainant lacks information from Qwest that is important to this
4 case, Complainant has attempted in good faith to provide as much information as
5 reasonably possible concerning its testimony in advance of the upcoming hearing by
6 twice designating witnesses who may speak at the hearing in Commission filings, and by
7 also describing the topics of information those witnesses may cover in a Commission
8 filing. However, discovery and disclosure in this matter have been one-way streets, and
9 Complainant respectfully requests that the Commission order Qwest to respond to
10 Complainant's requests for information – which include, among other things, requests for
11 Qwest's records concerning the account in question and the identities of the people
12 responsible for handling the account.

13
14 Even more significant than Qwest's motion to dismiss' lack of factual support, no
15 Commission rule or guideline – or any other bedrock rule or concept of fairness –
16 supports Qwest's position. Instead, the Commission's rules quite clearly contradict
17 Qwest's position. Indeed, the Commission's rules clearly stress that decisions on the
18 merits are of paramount importance, and that any "technical" requirements concerning
19 evidence should not stand in the way of ascertaining the facts:

20 In conducting any investigation, inquiry or hearing, neither the
21 Commission nor any officer or employee thereof shall be bound by the
22 technical rules of evidence, and no informality in any proceeding or in
23 the manner of taking of testimony shall invalidate any order . . . by the
24 Commission. Rules of evidence before the Superior Court of the state
of Arizona will be generally followed but may be relaxed in the

1 discretion of the Commission or presiding officer when deviation from
2 the technical rules of evidence will aid in ascertaining the facts.

3 A.A.C. R14-3-109(K) (emphasis added). Moreover, while pre-hearing testimony may be
4 allowed if the Commission desires, it is not required – even in the most complex of cases.

5 *See* A.A.C. R14-3-109(M).

6 This clearly is not a complex case that should demand complicated testimony or a
7 large volume of documents, and Qwest’s attempts to make the case out to be nuanced or
8 difficult only serve to further its own agenda in this consumer-versus-regulated entity (or
9 “David versus Goliath”) dispute. Here, Complainant respectfully submits that imposing
10 requirements concerning written testimony and exhibits to Complainant’s detriment in
11 these circumstances would not be unwarranted, but would in fact be unjust and conflict
12 with the Commission’s own rules. This is especially true in this case, where Qwest was
13 easily able to answer the Complaint, and should therefore have no problem preparing for
14 a hearing to support the position it has taken denying any wrongdoing. Moreover, Qwest
15 has admitted many of the core facts alleged by the Complainant, and the factual issues –
16 which concern an allegation of wrongfully charging for an 800 number not ordered by
17 Complainant – are narrow.

18 **CONCLUSION**

19 In conclusion, Complainant respectfully requests that the Commission deny
20 Qwest’s motion and require that Qwest provided Complainant with the information and
21 documents requested several months ago to present his case. In the event that the
22 documents requested several months ago to present his case. In the event that the
23 documents requested several months ago to present his case. In the event that the
24 documents requested several months ago to present his case. In the event that the

1 DATED this 31st day of May, 2011.

2
3
4 George Bieri Willner
5 Glendale & 27th Investments LLC
6 3641 North 39th Avenue
7 Phoenix, Arizona 85004

8 ORIGINAL filed this
9 31 day of May, 2011 with:

10 Arizona Corporation Commission

11 Copies forwarded to:

12 Norman G. Curtright, Corporate Counsel
13 Qwest Corporation
14 20 East Thomas Road-16th Floor
15 Phoenix, Arizona 85012
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