

ORIGINAL



BEFORE THE ARIZONA CORPORATION 0000129303

COMMISSIONERS

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

COMPLAINANT,

V.

QWEST CORPORATION,

RESPONDENT.

DOCKET NO. T-01051B-10-0200

AMENDED COMPLAINT

Arizona Corporation Commission

DOCKETED

SEP 2 2011

DOCKETED BY 

Complainant George Bien-Wilner, for Glendale & 27th Investments, LLC, hereby alleges the following concerning Defendant Qwest Corporation (“Qwest”), based on the information presently available to him.

I. PARTIES

1. Complainant, George Bien-Willner, is the managing member of Glendale & 27th Investments LLC (“Glendale & 27th”), which is headquartered at 3641 N. 39th Avenue, Phoenix, AZ 85019.

2. Defendant, Qwest, is a utility providing telephone and other services in Arizona, and has offices in Arizona at: 20 E. Thomas Road, 16th Floor, Phoenix, Arizona 85012.

II. ALLEGATIONS

3. This is a straightforward case of Qwest overcharging the Complainant thousands of dollars for an 800 telephone line he never ordered or requested, and from which he derived no benefit. Upon Complainant's discovery in December 2009 of his unwilling payment of hidden charges relating to the 800 number, Qwest issued a token refund covering July-December 2009, but has refused to extend a refund back to the creation of the account in 2004, when the overcharging for services never ordered or used by Complainant began.

Background

4. The phone billing in question relates to a hotel, which, since February 2004, Glendale & 27th Investments LLC ("Glendale & 27th") has owned and operated as Sterling International Hotel (the "Hotel" -- prior to that time, the Hotel was operated as a Howard Johnson's hotel). The Hotel is located at Jefferson and 24th Street, and consists of a Lobby building (with a restaurant) and 97 guest rooms.

5. At the time the Hotel was acquired, there were phone systems in place to service the front desk and the hotel guests. Complainant, through Glendale and 27th, changed the phone service over shortly after the property was acquired in 2004 from the prior owners' names into its name and dutifully paid the phone bills to Defendant Qwest, the phone service provider.

6. A February 14, 2004 memorandum sent on behalf of Mr. Bien-Willner to Qwest personnel reflects the agreement to switch over service from the prior owners

to Glendale and 27th. That memo (and the agreement it reflected) references and concerns only area code 602 numbers, and does not concern any 800 number(s).

7. Between 2004 and 2010, Complainant experienced many problems with his billing from Qwest, which were attributable to (1) the unclear, imprecise and confusing manner in which Qwest's bills were presented (2) Qwest's repeated failure to offer adequate written (or oral) explanations regarding its bills and (3) blatant mischarging on Qwest's part; for example, Qwest admitted in an internal memo dated September 14, 2004, that the Hotel was being billed for a phone line that Qwest knew was being used by the City of Phoenix, not the Hotel.

8. As a result of the legitimate billing questions and issues raised by Complainant, Qwest threatened on several occasions to disconnect service to the Hotel. Service was never suspended, however, and Qwest was ultimately forced to admit mistakes it made in billing Complainant, and issued multiple and substantial refunds and credits in favor of Complainant.

**Qwest Bills Complainant for Six Years
for an 800 Number the Hotel Never Ordered or Used**

9. The Hotel suffered severe storm damage in late 2009. As a result, the Hotel's phone systems required repair. Complainant hired an outside company, Copper State Communications, to review the Hotel's phone systems and bid on making the necessary repairs.

10. Copper State Communications discovered that the Hotel was being billed for telephone services it was not using, and in particular an 800 number that,

unbeknownst to Complainant and Glendale & 27th, had been associated by Qwest with telephone number 602-275-4990.

11. At no time did Complainant or Glendale & 27th ever request, or knowingly use, any type or manner of 800 number service at or for the Hotel. At the time the service was changed over in February 2004, Qwest's billing and other materials did not, on their face – or in any other obvious, plain or apparent manner – state that any charges were being included for any 800 number service. Throughout the time Glendale and 27th has operated the Hotel, it has not used any 800 numbers, including the number that it later learned Qwest was including on its bills.

12. Immediately upon discovery that the Hotel was being billed for services that it had never ordered or used, and which had not been adequately disclosed to Complainant, the Hotel or Glendale & 27th, Complainant cancelled the 800 number which Qwest had been charging for, even though the Hotel had never benefited from the number.

13. In January 2010, Qwest issued a refund check in the amount of \$810.89 for the period of July 2010 through December 2010. Qwest had not explained why it provided only a partial refund.¹ Had Qwest acted appropriately, even by its own measure it would have refunded at least an additional amount of at least approximately \$9,720, exclusive of any interest or penalties.

¹ In its answer to Complainant's original complaint, notwithstanding the long and often difficult history between Qwest and Complainant, Qwest attempted to characterize the refund payment as "[a] gesture of goodwill and not as an admission of liability."

14. Complainant brought these matters to Qwest's attention, but it continues to refuse to explain its billing or its actions. Accordingly, Complainant brought his complaint before the Commission in March 2010, only a few months after the discovery of the overbilling concerning the 800 number.

III. CLAIMS ALLEGED AND VIOLATIONS OF LAW, RULES AND REGULATIONS

15. Complainant seeks both independent Commission investigation and remediation of these matters (as the issues identified by Complainant may relate to Qwest's billing and treatment of others) for the benefit of himself and other Arizona citizens, and personal monetary and/or other relief, as provided by Arizona law.

16. Complainant alleges that Qwest has violated at least the following statutes, rules and regulations:

- a. **A.R.S. 40-248**, which prohibits a utility from charging discriminatory or excessive amounts, and provides for monetary relief to customers in any such instances;
- b. **A.A.C. R14-2-508**, which requires that a telephone utility bill provide certain basic information which was missing here (emphasis added):

1. Monthly charge for basic exchange service including delineation of the following:

- a. Total charge for **customer requested services** and/or equipment.

- b. Installation costs or other service fees, where applicable.

- c. Reconnect fee, where applicable.

* * *

3. Miscellaneous charges and credits shall be shown separately.

- c. **A.A.C. R14-2-1901 et. seq. and A.A.C. R14-2-2001 et seq.**, both of which prohibit, among other things, a telephone utility from failing to explain the services it is billing for, and which also require that a customer specifically authorize services before a telephone company may bill for any such services.

Commission Action

17. Complainant knows first-hand of the excellent results the Commission has achieved in enforcing the law against regulated utilities for the benefit of Arizona's citizens. Specifically, Complainant's former tenant, through counsel and with the encouragement and advice of Complainant (and with the direct involvement and substantial efforts of the Commission), was able to significantly alter APS's billing and meter-reading practices, to the benefit of Arizona's citizens. Those efforts resulted in APS expending in excess of one million dollars to benefit Arizona consumers, and changing its billing and meter reading practices – even though APS had similarly attempted to brush away the complaint against it, as Qwest has done here. A record of the settlement (in which Glendale and 27th member David A. Rubin was directly involved) is reflected in a 28-page document, dated September 9, 2005, Docket Number: E-01345A-03-0775. Complainant understands that APS remains bound to report on its progress in complying with the terms of that order.

18. The Commission has ample authority – and in fact is mandated by state law – to look into and remediate the wrongful actions and practices alleged in this Amended Complaint. Through the allegations in this complaint, Complainant has explained

how Qwest has engaged in wrongful and deceptive practices, which include that it has failed to provide truthful and clear billing (which likely applies to other similarly-situated customers), has withheld information from him, and has refused to provide a complete refund of amounts it has wrongfully collected from him. Several statutes provide for the Commission's intervention, action and recovery in these circumstances:

- a. A.R.S. 40-421 (Commission's obligation to enforce laws relating to public service corporations);
- b. A.R.S. 40-203 ("When the commission finds that the rates, fares, tolls, rentals, charges or classifications, or any of them, demanded or collected by any public service corporation for any service, product or commodity, or in connection therewith, or that the rules, regulations, practices or contracts, are unjust, discriminatory or preferential, illegal or insufficient, the commission shall determine and prescribe them by order, as provided in this title.");
- c. A.R.S. 40-423 (Public service corporations liable for acts or omissions that violate the constitution, state law, or commission orders and cause damage; exemplary damages permitted and additional penalties to the state are available);
- d. A.R.S. 40-248 ("When complaint is made to the commission concerning any rate, fare, toll, rental or charge made by any public service corporation, and the commission finds, after investigation, that the corporation has made an excessive or discriminatory charge, the commission may order that the corporation make reparation to the complainant with interest at the legal rate from the date of collection, if no discrimination will result from such reparation. If the corporation does not comply with the order for payment of reparation within the time specified in the order, an action may be brought to recover the amount thereof. . . . The remedy afforded in this section is cumulative and in addition to any other remedy provided for failure of a public service corporation to obey an order or decision of the commission.")

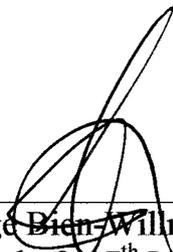
19. In addition, A.R.S. 40-241 (Power to examine records and personnel of public service corporations; filing record of examination) provides the Commission with the authority and right to obtain the documents and information from Qwest that it has been unwilling to provide to Complainant.

IV. PRAYER FOR RELIEF:

Complainant respectfully requests that the Commission order, against Qwest:

- a. Monetary damages;
- b. Exemplary damages;
- c. Injunctive relief;
- d. And any other relief the Commission may deem appropriate.

DATED this 2nd day of September, 2011.



George Bien-Willner
Glendale & 27th Investments LLC
3641 North 39th Avenue
Phoenix, Arizona 85004

ORIGINAL filed this 2nd day of September with:

Arizona Corporation Commission

Copy served upon:

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