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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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

IN THE MATTER OF:

DOCKET NO. T-01051B-10-0200

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

COMPLAINANT,

v.

QWEST CORPORATION,

RESPONDENT.

PROCEDURAL ORDER

BY THE COMMISSION:

On May 17, 2010, George Bien-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.

1 On August 26, 2010, Qwest filed a response to Complainant's request for a continuance of the
2 procedural conference. Qwest stated that it had no objection to the continuance and requested to
3 appear telephonically if the newly scheduled date conflicted with Qwest counsel's travel schedule.

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

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

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

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

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

23 On January 5, 2011, Staff filed its Reply in Support of Staff's Motion ("Reply"), reasserting
24 its position that the matter should proceed through the Formal Complaint process. Staff stated that
25 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 established deadlines for filing testimony and responsive testimony.

4 On March 3, 2011, Complainant docketed Discovery Interrogatories and a Request for
5 Production directed to Qwest.

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

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

17 On April 13, 2011, by Procedural Order, Qwest's Motion was granted. Complainant was
18 again directed to file written testimony for its witness(es) with a new deadline of May 10, 2011.
19 Complainant was put on notice that its failure to file written testimony and to abide by the procedural
20 deadlines established in the Procedural Order could result in dismissal of the Complaint.

21 On May 11, 2011, Complainant filed a witness list naming two witnesses and including one
22 sentence describing each witness' testimony.

23 On May 23, 2011, Qwest filed a Motion to Dismiss ("MTD"). The MTD states that based on
24 Complainant's failure to file written testimony and associated exhibits, as twice directed by
25 Procedural Order, the Complaint should be dismissed. The MTD further states that Complainant's
26 vague descriptions do not articulate facts that would tend to support the Complaint; that they lack any
27 specific allegations of wrongful acts committed by Qwest or any allegations of resulting harm for
28 which the Commission might provide redress. The MTD states that Complainant's witnesses will

1 testify about billing issues and inaccurate account billings, but does not provide basic facts
2 surrounding the Complaint, such as the telephone services involved, the time periods, the account
3 numbers, or the charges disputed. Qwest further states that Complainant's summary of testimony
4 raises new issues not alleged in the Complaint. Based on the lack of information provided by
5 Complainant, Qwest states that it cannot reasonably prepare for hearing or prepare written testimony
6 in its defense. Therefore, Qwest requests that the Complaint be dismissed.

7 On June 1, 2011, Complainant filed a Response to Qwest's Motion to Dismiss and a Motion
8 to Compel Discovery Responses. Complainant's response states that Complainant filed a half-page
9 Complaint; that Complainant has requested (on March 3) discovery from Qwest and has not received
10 the discovery; that Qwest's insistence on detailed, advance written testimony and exhibits will have
11 little impact on the outcome of the case; and that Complainant has failed to provide exhibits and other
12 information because Qwest has not responded to its discovery requests. Complainant requests that the
13 Commission order Qwest to respond to the discovery requests. Complainant's response states that
14 imposing a requirement to file written testimony and exhibits is unwarranted and unjust and in
15 conflict with Commission rules. Complainant requests that Qwest's MTD be denied.

16 On June 7, 2011, Qwest filed a Reply in Support of its Motion to Dismiss and a Response to
17 Complainant's Motion to Compel Discovery. Qwest reiterated that the Complaint should be
18 dismissed based on Complainant's repeated failure to file written testimony; that Complainant's
19 generalized and unsupported allegations may raise issues outside of the scope of the Complaint
20 during the hearing; that Complainant never served its (March 3) discovery request on Qwest, but
21 instead filed it in the docket; and that Complainant did not raise the issue of the March 3 discovery
22 with Qwest until Complainant filed its response. Qwest requests, that if the Complaint is not
23 dismissed, that the Commission alternatively grant Qwest time to respond or object to the March 3
24 discovery request.

25 On July 1, 2011, by Procedural Order, the hearing scheduled for July 11, 2011, was converted
26 from a hearing to a procedural conference because Complainant had twice failed to comply with
27 orders to file written testimony and associated exhibits related to the Complaint. Based on
28 Complainant's failure to comply, the evidentiary proceeding could not move forward. The Procedural

1 Order advised Complainant that failure to appear for the procedural conference could result in the
2 dismissal of the Complaint.

3 On July 6, 2011, Complainant docketed a letter stating that beginning on July 3, 2011, he
4 would be out of state for several weeks. Complainant requested that the procedural conference
5 scheduled for July 11, 2011, be postponed or, alternatively, that Complainant be allowed to appear
6 telephonically.

7 On July 11, 2011, a procedural conference was held as scheduled. Qwest appeared through
8 counsel and Complainant appeared telephonically on his own behalf. Discussions were held
9 regarding Complainant's failure to comply with the previous orders issued in this proceeding.
10 Complainant reiterated that the half-page Complaint provided sufficient information for Qwest to file
11 responsive testimony and that Complainant should not be required to file written testimony and
12 associated exhibits in this matter. Complainant was advised that the Complaint lacked sufficient
13 information to ascertain the issues that needed to or could be resolved by the Commission and that an
14 Amended Complaint would be required, specifically discussing all claims, actions requested to be
15 taken by the Commission, and any other requested relief. Further, Complainant was advised that the
16 failure to file an Amended Complaint, with the specificity described above could result in the
17 Complaint being dismissed. In addition, the Administrative Law Judge ("ALJ") expressed concerns
18 regarding Complainant's failure to comply with Commission orders and Complainant's failure to
19 follow proper procedure in regards to litigating this matter.

20 On August 3, 2011, a Procedural Order was issued, among other things, continuing the
21 hearing from July 11, 2011 to February 13, 2012 and resetting the filing deadlines in this matter.

22 On September 2, 2011, Complainant filed an Amended Complaint.

23 On September 26, 2011, Qwest filed its Answer to the Amended Complaint.

24 On October 28, 2011, Complainant filed a Response to Qwest's Answer.

25 On November 8, 2011, Qwest filed its Answer to the Complainant's Response.

26 On November 14, 2011, Complainant filed its Direct Testimony.

27 On December 12, 2011, Qwest filed its Rebuttal Testimony.

28

1 On December 12, 2011, Complainant filed a Motion to Compel Discovery Responses and for
2 Sanctions Against Norman G. Curtright and Qwest Corporation. Complainant's motion to compel
3 states Qwest's responses to Complainant's discovery requests have been deficient; that counsel for
4 Qwest has misrepresented facts concerning Qwest's responses; that Qwest and counsel for Qwest
5 have failed to correct the deficiencies and misrepresentations in the responses even with ample time
6 to do so. Complainant's motion to compel requests that Qwest identify specific personnel
7 responsible for its responses to interrogatories; that Qwest supplement its discovery responses; that
8 Qwest be ordered to refrain from further thwarting the discovery process; that Qwest be required to
9 pay a reasonable amount for the time and expenses associated with pursuing these discovery matters;
10 and that the Commission order any other relief that it may deem appropriate.

11 On December 16, 2011, Qwest filed a reply to Complainant's motion to compel discovery and
12 a reply to Complainant's motion for sanctions. Qwest asserts that Complainant's motion to compel
13 discovery fails to show how the documentation requested is relevant to the issues alleged in the
14 Amended Complaint and therefore should be denied. Further, Qwest states that Complainant's
15 motion for sanctions is outlandish and reckless; Qwest has not made false or misleading statements;
16 and Complainant's request for sanctions should be denied.

17 Accordingly, a procedural conference should be held to discuss Complainant's motion to
18 compel discovery and request for sanctions. Further, it appears that some of Complainant's
19 discovery requests stem from the discussions held during the informal complaint proceeding
20 mediated by the Commission's Consumer Services Section. It is therefore appropriate to have a
21 representative from the Commission's Consumer Services Section attend the procedural conference
22 in effort to help resolve the discovery disputes.

23 The Commission's resources are limited, and the Complainant's failure to comply with
24 Commission orders and failure to follow proper procedures in litigating this matter has already led to
25 delay. Therefore, it is appropriate to put Complainant on notice that the failure to comply with
26 procedural orders; or further unnecessary delays; or the failure to follow proper procedure in
27 litigating this matter, may result in Complainant being ordered to obtain counsel to further litigate the
28 Amended Complaint.

1 IT IS THEREFORE ORDERED that a **procedural conference, to discuss Complainant's**
2 **motion to compel discovery and request for sanctions shall be held on January 12, 2012,** or as
3 soon thereafter as is practicable, at the Commission's offices, 1200 West Washington, Hearing Room
4 #1, Phoenix, Arizona.

5 IT IS FURTHER ORDERED that a **representative from the Commission's Consumer**
6 **Services Section, who is familiar with the informal complaint proceedings previously filed by**
7 **Complainant,** shall attend the procedural conference on January 12, 2012.

8 IT IS FURTHER ORDERED that Complainant is hereby **put on notice that the failure to**
9 **comply with procedural orders; or further unnecessary delays; or the failure to follow proper**
10 **procedures may result in Complainant being ordered to obtain counsel to further litigate the**
11 **Amended Complaint.**

12 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
13 Communications) continues to apply to this proceeding.

14 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
15 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

16 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
17 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (Arizona Supreme
18 Court Rule 42). Representation before the Commission includes the obligation to appear at all
19 hearings and procedural conferences, as well as all Open Meetings for which the matter is scheduled
20 for discussion, unless counsel has previously been granted permission to withdraw by the
21 Administrative Law Judge or the Commission.

22 ...;
23 ...
24 ...
25 ...
26 ...
27 ...
28 ...

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

4 DATED this 22nd day of December, 2011.

5
6
7 
8 YVETTE B. KINSEY
9 ADMINISTRATIVE LAW JUDGE

10 Copies of the foregoing mailed/delivered
11 this 22nd day of December, 2011, to:

12 George Bien-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, 1st Floor
19 Phoenix, AZ 85012-3114

20 Janice Alward, Chief Counsel
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24 By: 
25 Debra Broyles
26 Secretary to Yvette B. Kinsey