

ORIGINAL



BEFORE THE ARIZONA CORPORATION

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COMMISSIONERS

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

COMPLAINANT,

V.

QWEST CORPORATION,

RESPONDENT.

) DOCKET NO. T-01051B-10-0200

SECOND AMENDED COMPLAINT

Arizona Corporation Commission

DOCKETED

MAR 12 2012

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, which Complainant unwittingly paid. More specifically, Qwest charged Complainant for services he never ordered or requested, and from which he derived no benefit. Upon Complainant discovery that he was being charged for “services” that he never ordered or utilized in December 2009 these charges, 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 by Qwest for services never ordered or used by Complainant began.

4. Qwest has never contended that Complainant actually (a) ordered or (b) used the services for which Complainant disputes Qwest’s charges (which Complainant unwittingly paid), but instead takes the position of “buyer beware” concerning its services.

5. Complainant was forced to bring this action as Qwest refused to participate in an informal process before the Commission (which it has not denied), but refuses to explain the reason(s) why it has failed to comply with Commission procedures.

6. Significantly, as detailed below, the limited discovery obtained by Complainant to date substantiates the claims herein.

7. Moreover, the limited discovery to date has revealed that Qwest does not have any contemporaneous “paperwork” (or, in fact, any written record thereafter) showing that Complainant ordered all of the services for which Qwest charged Complainant.

8. In addition, and likely of particular interest to the Commission and other Qwest small business customers, Qwest did not require its small business group to keep any paperwork, notwithstanding that other of its business groups apparently “require forms and keep copies of them.”

History of Account and Wrongful Overcharging

9. The wrongful 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.

10. 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.

11. The issues with Qwest’s billing materialized when the Hotel was first purchased in February 2004. A February 2004 memorandum sent on behalf of Mr. Bien-Willner to Qwest personnel reflects a request that Qwest switch over service from the prior owners to Glendale and 27th. That memo does not authorize “toll trunk” or any other kind of specialized service, nor was Complainant aware of any such service for the Hotel. Furthermore, that February 19, 2004 memo stated that only two telephone lines (as an ordinary customer would understand them) would

remain, and even then the menu of service would be “temporary until such time [as Qwest could make] permanent arrangements with George Bien-Willner.”).

12. Numerous difficulties with Qwest were encountered thereafter, which included unclear billing and several apparent problems with Qwest’s service and billing set up and policies, practices and procedures. Indeed, Qwest did not even attempt to implement an agreed-upon menu of phone services until late 2004. For example, in September 2004, Qwest issued a credit of \$1,366.81 for erroneous billing at the Hotel. Qwest later characterized this overcharging as a minor billing error. Even after that time, Qwest did not offer service correctly or appropriately.

13. 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.

14. **Complainant repeatedly questioned the charges and attempted to obtain an understanding of the charges that Qwest was levying – and which Complainant was paying. Qwest repeatedly failed to explain the charges.** Rather, 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.

15. Many of the deficiencies in Qwest's billing and account set-up procedures are highlighted by Commission Staff in an email exchange between Commission staff (Connie Walczak and Carmen Madrid) and Qwest in late 2010, and have never adequately answered by Qwest. *See* Exhibit 4 of Testimony of George Bien-Willner ("GBW Testimony"), Received by Commission on November 14, 2011.

16. Until Qwest's services were cancelled, its billing remained unclear, incomplete and unintelligible. Indeed, even well after the fact and in response to this Complaint, Qwest's own employees were not even able to understand the services for which the Hotel was being billed, as documented in an internal Qwest email from Julie Layne, dated June 10, 2010:

Hi Andre, you helped me the other night with 602-275-4990. It disconnected December 09 This account had an additional line with 4 trunks. I think you told me they were outgoing 800 lines. Did you find out anything else that would help me on this[?] I am not familiar enough with the product and I was going to see if there was any other information I could use.

In other words, Qwest's very own employee, who was tasked with looking into this matter in response to Commission inquiries, (a) believed the services may have related to 800 numbers and, more importantly, (b) like Complainant, could not possibly understand the nature of the services being billed for by looking at Qwest's bill – instead, she was forced to consult with a specialist at Qwest to try to understand the cryptic billing, and even the specialist could not clearly understand or explain the billing.

17. To date, Qwest has failed to produce clear copies of the bills in question relating to the Hotel, as it claims (1) it cannot search for accounts by name and (2) even for the bills it can locate, it does not have and cannot reproduce copies as they were sent in the course of business, but instead has produced computer printouts that are difficult – if not impossible – to understand.

**Complainant Discovers That Qwest Has Billed Complainant
for Six Years for Services the Hotel Never Ordered or Used**

18. 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.

19. Copper State Communications discovered that the Hotel was being billed for telephone services it was not using, and in particular services that had been associated by Qwest with telephone number 602-275-4990.

20. At no time did Complainant or Glendale & 27th ever request, or knowingly use, any type or manner of toll trunk or 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 toll trunk or 800 number service. Throughout the time Glendale and 27th has operated the Hotel, it has not used any 800 numbers or toll trunk services.

21. 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 services which Qwest had been charging for, as the Hotel did not require them and had never benefited from them.

22. 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.

23. 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.

Subsequent Events: Qwest Circles Its Wagons, While It Is Forced to Admit That It Cannot Show That Complainant Ever Ordered – Let Alone Used – The Services in Question; Qwest Admits That It Did Not Require or Keep Crucial Records for Its Small Business Customers

24. **Qwest has, on numerous occasions, taken the position that the standard for its provision of services and billing under Arizona law and regulations is one of "buyer beware."** For example, its Answer to the Amended Complaint stated that "[Qwest] has no duty to assure that the customer is using" services for which it is being charged (Qwest's Answer to Amended Complaint at Paragraph 15), which is

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."

quite remarkable given that it has never been able to produce any record showing that the “toll trunk” service was ordered, let alone understood, and the long history of disputes on the Hotel’s phone bills.

25. Furthermore, Qwest employees have admitted that they could observe that the Hotel was not, in fact, using the services for which it was being billed. *See* Exhibit 6, Andre Dubois email dated June 11, 2010 (“We wouldn’t see usage out on them since they were not measured, but would see any intra-lata calls. . . and I didn’t see any of that.) Qwest never shared these facts with Complainant, even though Complainant repeatedly questioned the billing relating to the Hotel.

26. *At no time, to the best of Complainant’s knowledge, has Qwest asserted that (a) the services in question were actually ordered or (b) that the bill was clear or understandable.*

27. *Furthermore, Qwest has continued simply to ignore the long history of disputes concerning the Hotel’s bills, which specifically include questions about charges on the Hotel bill and numerous requests that Qwest clarify the nature and purpose of the services for which it was billing Complainant.*

Qwest Failed to Request or Keep Records

28. Moreover, Qwest documents produced through discovery admit, among other things, that Qwest’s “small business rules are different [. Qwest’s small business group] dont [sic] require paperwork they use the rmcs w dont [sic] have any paperwork it appears the bill was being paid every month spoke with collector Cheryl she had never had a conversation, most

of time paid thru vru, this office wouldnt [sic] keep paperwork for [small business group] and [small business group] didnt [sic] require.” See Exhibit 4 to GBW Testimony at page 5 (Jo Ann Hensley email/conversation notes of November 2010) (emphasis added).

29. Qwest has never provided a policy stating what, in fact, its “small business rules” were – if any were kept or followed at all – during the time of the alleged overcharging, or if any such rules were even reduced to writing.
30. While Qwest’s document states that its other business groups apparently “require forms and keep copies of them” (see Exhibit 4, near bottom of page 4) as required by law, Qwest has admitted that this was not the case for the Hotel or, apparently, other customers that Qwest processed through its “SBG,” or small business group.
31. **Qwest has not explained why its small business group operated (and perhaps still operates) by different rules and did not maintain any records of the Hotel’s orders or, apparently, other customer orders.**
32. Qwest should have required and kept forms regarding the services it placed on the Hotel, which would have avoided Qwest charging for services never ordered.
33. Qwest did not have authority to have different sets of rules for dealing with commercial customers
34. Qwest’s “rules” applying to “small business” customers were less advantageous to those customers because they did not require that Qwest keep

critical account information in writing or require a written order form from the Customer.

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

35. 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.

36. 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

37. 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.

38. 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.")

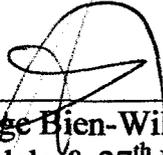
39. In addition, A.R.S. 40-241 (Power to examine records and personnel of public service corporations; filing record of examination) provides the Commission with the authority and right to obtain the documents and information from Qwest that it has been unwilling to provide to Complainant.

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 12th day of March, 2012.



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

ORIGINAL filed this 12th day of March, 2012, with:

Arizona Corporation Commission

Copy served upon:

Norman G. Curtright, Corporate Counsel
Qwest Corporation
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Phoenix, Arizona 85012