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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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COMMISSIONERS

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

IN THE MATTER OF:

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

COMPLAINANT,

v.

QWEST CORPORATION,

RESPONDENT.

DOCKET NO. T-01051B-10-0200

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 stated 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, stating that
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 date, 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. Qwest's Motion stated that Complainant had failed to file
10 written testimony as directed by the Procedural Order issued on February 17, 2011, and that without
11 written testimony Qwest was unable to prepare its responsive testimony. Qwest requested that
12 Complainant be directed to provide written testimony prepared by each of Complainant's witnesses
13 and that the procedural schedule be revised to allow Complainant to file written testimony and Qwest
14 to file responsive testimony. Qwest further requested that Complainant be admonished for failing to
15 comply with the Procedural Order and that Complainant be informed that future failure to comply
16 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 stated 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 stated that Complainant's
26 vague descriptions do not articulate facts that would tend to support the Complaint; that the
27 Complaint lacks specific allegations of wrongful acts committed by Qwest or any allegations of
28 resulting harm for which the Commission might provide redress. The MTD stated that Complainant's

1 witnesses will testify about billing issues and inaccurate account billings, but does not provide basic
2 facts surrounding the Complaint, such as the telephone services involved, the time periods, the
3 account numbers, or the charges disputed. Qwest further stated that Complainant's summary of
4 testimony raises new issues not alleged in the Complaint. Based on the lack of information provided
5 by Complainant, Qwest stated that it cannot reasonably prepare for hearing or prepare written
6 testimony in its defense. Therefore, Qwest requested 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 stated 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 requested that
13 the Commission order Qwest to respond to Complainant's discovery requests. Complainant's
14 response stated that imposing a requirement to file written testimony and exhibits is unwarranted and
15 unjust and in conflict with Commission rules. Complainant requested 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 requested 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 the 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 that, among other things, continued the
21 hearing from July 11, 2011 to February 13, 2012, and reset 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 stated that Qwest's responses to Complainant's discovery requests have been deficient; that counsel
4 for 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 requested 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 its reply to Complainant's motion to compel discovery
12 and its reply to Complainant's motion for sanctions. Qwest asserted that Complainant's motion to
13 compel discovery fails to show how the documentation requested is relevant to the issues alleged in
14 the Amended Complaint and therefore should be denied. Further, Qwest stated 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 On December 22, 2011, by Procedural Order, a procedural conference on Complainant's
18 Motion to Compel and Request for Sanctions was scheduled for January 12, 2012. The Procedural
19 Order also discussed the Commission's limited resources and that Complainant's failure to comply
20 with Commission orders and failure to follow proper procedures had already lead to delay. The
21 Procedural Order put Complainant on notice that further failure to comply with procedural orders; or
22 further unnecessary delay; or the failure to follow proper procedure; could result in Complainant
23 being ordered to obtain counsel to further litigate the Amended Complaint.

24 On December 27, 2011, Complainant filed Surrebuttal Testimony.

25 On January 9, 2012, Qwest filed Objections to Testimony and Exhibits Filed by Complainant.

26 On January 12, 2012, the procedural conference was held as scheduled. Qwest and Staff
27 appeared through counsel and Complainant appeared on his own behalf. Discussions were held on
28 Complainant's motion to compel and request for sanctions. During the course of discussions on the

1 issues raised in the motion to compel and the request for sanctions, Complainant stated that he
2 wanted to conclude the discussions at the procedural conference and present his request for sanctions
3 before the Commissioners. Complainant stated that he would not provide any more comments on the
4 issues raised in the motion and request for sanctions. The Complainant's motion to compel and
5 request for sanctions were denied, and Complainant was instructed on the procedural process for
6 litigating a Complaint before the Commission. Further, Complainant was advised that he would be
7 allowed to amend his complaint to include any additional allegations and that he would be provided
8 additional time to conduct discovery. Therefore, the hearing scheduled to begin on February 13,
9 2012, was vacated and the parties were instructed that the hearing would be rescheduled by
10 Procedural Order.

11 On February 10, 2012, by Procedural Order, the hearing was continued from February 13,
12 2012 to July 2, 2012, and a revised procedural schedule was established. Complainant was placed on
13 continuing notice that the failure to comply with procedural orders; or further unnecessary delays; or
14 the failure to follow proper procedures could result in Complainant being ordered to obtain counsel to
15 further litigate the Amended Complaint.

16 On March 12, 2012, Complainant filed a Second Amended Complaint.

17 On March 28, 2012, Qwest filed a Motion to Dismiss ("Motion").

18 On April 12, 2012, Qwest filed its Answer to the Second Amended Complaint.

19 On April 13, 2012, by Procedural Order, Complainant was directed to file a response to
20 Qwest's Motion by May 4, 2012.

21 On May 4, 2012, Complainant docketed a response to Qwest's Motion and requested that the
22 Motion be denied.

23 On May 11, 2012, Complainant docketed Complainant's Discovery Requests.

24 On May 16, 2012, Qwest filed objections to Complainant's discovery requests and reiterated
25 its request for dismissal of some of the claims raised in the Amended Complaint.

26 In light of the fact that the February 10, 2012, Procedural Order ordered Complainant to file
27 testimony in support of its Second Amended Complaint, and that Complainant has failed to comply
28 with this and other procedural requirements, a procedural conference should be scheduled to hear oral

1 argument from Complainant and Respondent on the issue of whether Complainant should be ordered
2 at this time to obtain counsel to assist him in litigating the Amended Complaint. Further, because the
3 hearing in this matter is set to begin on July 2, 2012, and Complainant has not filed testimony as
4 directed in the February 10, 2012, Procedural Order, the hearing date should be vacated.

5 IT IS THEREFORE ORDERED that a **Procedural Conference** shall be held on **May 29,**
6 **2012 at 1:00 p.m.,** or as soon thereafter as is practicable, at the Commission's offices, 1200 West
7 Washington, Hearing Room 2, Phoenix, Arizona, **to hear oral argument from Complainant and**
8 **Respondent on the issue of whether Complainant should be ordered, at this time, to obtain**
9 **counsel to assist him in litigating the Amended Complaint.**

10 IT IS FURTHER ORDERED that the **hearing scheduled for July 2, 2012, is hereby**
11 **vacated.**

12 IT IS FURTHER ORDERED that **Complainant is hereby under continuing notice that the**
13 **failure to comply with procedural orders; or further unnecessary delays; or the failure to**
14 **follow proper procedures may result in Complainant being ordered to obtain counsel to further**
15 **litigate the Amended Complaint.**

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

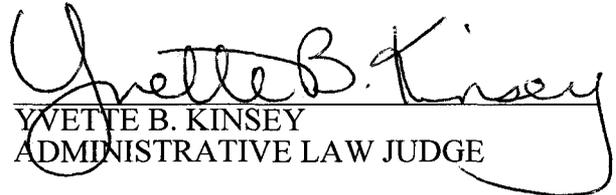
18 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
19 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

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

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 18th day of May 2012.

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7
8 
YVETTE B. KINSEY
ADMINISTRATIVE LAW JUDGE

9
10 Copies of the foregoing emailed/mailed/delivered
11 this 18th day of May 2012, 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 dba CENTURLINK-QC
19 20 East Thomas Road, First Floor
20 Phoenix, AZ 85012-3132

21 Janice Alward, Chief Counsel
22 Legal Division
23 ARIZONA CORPORATION COMMISSION
24 1200 West Washington Street
25 Phoenix, AZ 85007

26 Steven M. Olea, Director
27 Utilities Division
28 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

ARIZONA REPORTING SERVICE, INC.
2200 North Central Avenue, Suite 502
Phoenix, AZ 85004-1481

26 By: 
27 Debra Broyles
28 Secretary to Yvette B. Kinsey