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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

Arizona Corporation Commission
DOCKETED

JUL 30 2013

DOCKETED BY ne

IN THE MATTER OF:

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

COMPLAINANT,

v.

QWEST CORPORATION,

RESPONDENT.

DOCKET NO. T-01051B-10-0200

DECISION NO. 74004

ORDER

Open Meeting
July 17 and 18, 2013
Phoenix, Arizona

BY THE COMMISSION:

This Order comes before the Arizona Corporation Commission ("Commission") dismissing, at the Complainant's request, the above-captioned Formal Complaint ("Complaint") filed by George Bien-Willner, for Glendale & 27th Investments, LLC ("Complainant") against Qwest Corporation ("Qwest"), with prejudice.

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. On May 17, 2010, Complainant filed a Complaint against Qwest alleging that Qwest had incorrectly billed Complainant, who owns and operates Sterling International Hotel, for a 1-800 line that should have terminated in 2004. Complainant requested relief in the amount of approximately \$10,000.

1 2. On June 10, 2010, Qwest filed an Answer to the Complaint, denying the allegations in
2 the Complaint. Qwest's Answer stated that as a gesture of goodwill and not as an admission of
3 liability, Qwest provided Complainant a credit dated back to July 2009, and Qwest requested that the
4 Commission dismiss the Complaint.

5 3. On August 16, 2010, by Procedural Order, Qwest's Motion to Dismiss was denied and
6 a procedural conference was set for September 8, 2010.

7 4. On August 20, 2010, Complainant filed a letter requesting that the procedural
8 conference scheduled for September 8, 2010, be rescheduled for early October, due to a conflict in
9 Complainant's business schedule.

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

14 6. On August 27, 2010, a Procedural Order was issued resetting the procedural
15 conference for October 7, 2010, and granting Qwest's request to appear telephonically.

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

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

23 9. On December 7, 2010, Staff filed a Motion to Forego Staff Participation in Informal
24 Mediation. Staff stated that it had reviewed the issues in this matter during the informal complaint
25 proceeding; that Staff acted as a mediator during the informal process; that the informal process
26 allows complainants who are unfamiliar with Commission proceedings to attempt to resolve their
27 issues in a more relaxed setting; that both Complainant and Qwest are familiar with Commission
28 proceedings; and that additional informal proceedings were unnecessary. Staff stated that re-

1 examining the issues at the informal complaint level would be an inefficient use of Staff's limited
2 resources and that this matter should continue as a Formal Complaint.

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

5 11. On January 5, 2011, Staff filed its Reply in Support of Staff's Motion, reasserting its
6 position that the matter should proceed through the Formal Complaint process. Staff stated that
7 Complainant will be afforded due process through the Formal Complaint proceeding.

8 12. On February 15, 2011, Complainant filed a letter requesting immediate assistance in
9 addressing the issues raised in this docket. Complainant's letter further stated that Complainant
10 believes that this matter has been unjustly delayed to the benefit of Qwest.

11 13. On February 17, 2011, a Procedural Order was issued granting Staff's Motion. The
12 Procedural Order also scheduled the hearing in this matter to commence on May 2, 2011, and
13 established other procedural deadlines.

14 14. On March 3, 2011, Complainant docketed Discovery Interrogatories and a Request for
15 Production.

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

18 16. On April 1, 2011, Qwest filed a Motion for an Order Revising the Procedural
19 Schedule, and Compelling Complainant to Comply. Qwest's Motion stated that Complainant had
20 failed to file written testimony as directed by the Procedural Order issued on February 17, 2011, and
21 that without written testimony Qwest was unable to prepare its responsive testimony. Qwest
22 requested that Complainant be directed to provide written testimony prepared by each of
23 Complainant's witnesses and that the procedural schedule be revised to allow Complainant to file
24 written testimony and Qwest to file responsive testimony. Qwest further requested that Complainant
25 be admonished for failing to comply with the Procedural Order and that Complainant be informed
26 that future failure to comply could result in dismissal of the Complaint.

27 17. On April 13, 2011, by Procedural Order, Qwest's Motion was granted. Complainant
28 was again directed to file written testimony for its witness(es) with a new deadline of May 10, 2011.

1 Complainant was put on notice that its failure to file written testimony and to abide by the procedural
2 deadlines established in the Procedural Order could result in dismissal of the Complaint.

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

5 19. On May 23, 2011, Qwest filed a Motion to Dismiss ("MTD"). The MTD stated that
6 based on Complainant's failure to file written testimony and associated exhibits, as twice directed by
7 Procedural Order, the Complaint should be dismissed. The MTD further stated that Complainant's
8 vague descriptions did not articulate facts that would tend to support the Complaint and that the
9 Complaint lacked any specific allegations of wrongful acts committed by Qwest or any allegations of
10 resulting harm for which the Commission might provide redress. The MTD stated that Complainant's
11 witnesses will testify about billing issues and inaccurate account billings, but does not provide basic
12 facts surrounding the Complaint, such as the telephone services involved, the time periods, the
13 account numbers, or the charges disputed. Qwest further stated that Complainant's summary of
14 testimony raised new issues not alleged in the Complaint. Based on the lack of information provided
15 by Complainant, Qwest stated that it could not reasonably prepare for hearing or prepare written
16 testimony in its defense. Therefore, Qwest requested that the Complaint be dismissed.

17 20. On June 1, 2011, Complainant filed a Response to Qwest's Motion to Dismiss and a
18 Motion to Compel Discovery Responses. Complainant's response stated that Complainant filed a
19 half-page Complaint; that Complainant had requested (on March 3) discovery from Qwest and that
20 Complainant had not received the discovery; that Qwest's insistence on detailed, advance written
21 testimony and exhibits would have little impact on the outcome of the case; and that Complainant had
22 failed to provide exhibits and other information because Qwest had not responded to its discovery
23 requests. Complainant requested that the Commission order Qwest to respond to the discovery
24 requests. Complainant's response stated that imposing a requirement to file written testimony and
25 exhibits is unwarranted and unjust and in conflict with Commission rules. Complainant requested that
26 Qwest's MTD be denied.

27 21. On June 7, 2011, Qwest filed a Reply in Support of its Motion to Dismiss and a
28 Response to Complainant's Motion to Compel Discovery. Qwest reiterated that the Complaint

1 should be dismissed based on Complainant's repeated failure to file written testimony; that
2 Complainant's generalized and unsupported allegations may raise issues outside of the scope of the
3 Complaint during the hearing; that Complainant never served its (March 3) discovery request on
4 Qwest, but instead filed it in the docket; and that Complainant did not raise the issue of the March 3
5 discovery with Qwest until Complainant filed its response. Qwest requested that if the Complaint is
6 not dismissed, that the Commission alternatively grant Qwest time to respond or object to the March
7 3 discovery request.

8 22. On July 1, 2011, by Procedural Order, the hearing scheduled for July 11, 2011, was
9 converted to a procedural conference to discuss Complainant's failure to comply with orders to file
10 written testimony and associated exhibits related to the Complaint. The Procedural Order advised
11 Complainant that failure to appear for the procedural conference could result in the dismissal of the
12 Complaint.

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

17 24. On July 11, 2011, a procedural conference was held as scheduled. Qwest appeared
18 through counsel and Complainant appeared telephonically on his own behalf. Discussions were held
19 regarding Complainant's failure to comply with the previous orders issued in this proceeding.
20 Complainant reiterated that the half-page Complaint provided sufficient information for Qwest to file
21 responsive testimony and that Complainant should not be required to file written testimony and
22 associated exhibits in this matter. Complainant was advised that the Complaint lacked sufficient
23 information to ascertain the issues that needed to or could be resolved by the Commission and that an
24 Amended Complaint would be required, specifically discussing all claims, actions requested to be
25 taken by the Commission, and any other requested relief. Further, Complainant was advised that the
26 failure to file an Amended Complaint, with the specificity described above could result in the
27 Complaint being dismissed. In addition, concerns were expressed regarding Complainant's failure to
28

1 comply with Commission orders and Complainant's failure to follow proper procedure in regards to
2 litigating this matter.

3 25. On August 3, 2011, a Procedural Order was issued that, among other things, continued
4 the hearing from July 11, 2011 to February 13, 2012, and reset the filing deadlines in this matter.

5 26. On September 2, 2011, Complainant filed an Amended Complaint.

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

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

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

9 30. On November 14, 2011, Complainant filed its Direct Testimony.

10 31. On December 12, 2011, Qwest filed its Rebuttal Testimony.

11 32. On December 12, 2011, Complainant filed a Motion to Compel Discovery Responses
12 and for Sanctions Against Norman G. Curtright and Qwest Corporation. Complainant's motion to
13 compel stated that Qwest's responses to Complainant's discovery requests have been deficient; that
14 counsel for Qwest had misrepresented facts concerning Qwest's responses; that Qwest and counsel
15 for Qwest have failed to correct the deficiencies and misrepresentations in the responses even with
16 ample time to do so. Complainant's motion to compel requested that Qwest identify specific
17 personnel responsible for its responses to interrogatories; that Qwest supplement its discovery
18 responses; that Qwest be ordered to refrain from further thwarting the discovery process; that Qwest
19 be required to pay a reasonable amount for the time and expenses associated with pursuing these
20 discovery matters; and that the Commission order any other relief that it may deem appropriate.

21 33. On December 16, 2011, Qwest filed its reply to Complainant's motion to compel
22 discovery and its reply to Complainant's motion for sanctions. Qwest asserted that Complainant's
23 motion to compel discovery fails to show how the documentation requested is relevant to the issues
24 alleged in the Amended Complaint and therefore should be denied. Further, Qwest stated that
25 Complainant's motion for sanctions is outlandish and reckless; Qwest has not made false or
26 misleading statements; and Complainant's request for sanctions should be denied.

27 34. On December 22, 2011, by Procedural Order, a procedural conference on
28 Complainant's Motion to Compel and Request for Sanctions was scheduled for January 12, 2012.

1 The Procedural Order also discussed the Commission's limited resources and that Complainant's
2 failure to comply with Commission orders, failure to follow proper procedures had already lead to
3 delay.

4 35. On December 27, 2011, Complainant filed Surrebuttal Testimony.

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

7 37. On January 12, 2012, a procedural conference was held as scheduled. Qwest and Staff
8 appeared through counsel and Complainant appeared on his own behalf. The Complainant's motion
9 to compel and request for sanctions were denied. Complainant was instructed on the procedural
10 process for litigating a Complaint before the Commission. Further, Complainant was advised that he
11 would be allowed to amend his complaint to include any additional allegations and he would be
12 provided additional time to conduct discovery.

13 38. On February 10, 2012, a Procedural Order was issued continuing the hearing
14 scheduled for February 13, 2012 to July 2, 2012, and resetting other procedural deadlines.

15 39. On March 12, 2012, Complainant filed its Second Amended Complaint.

16 40. On March 28, 2012, Qwest filed a Motion to Dismiss Complainant's Second
17 Amended Complaint.

18 41. On April 12, 2012, Qwest filed its Answer to Complainant's Seconded Amended
19 Complaint and Affirmative Defenses.

20 42. On April 13, 2012, a Procedural Order was issued requiring Complainant to file a
21 response to Qwest's Motion to Dismiss.

22 43. On May 4, 2012, Complainant filed its Response to Qwest's Motion to Dismiss.

23 44. On May 11, 2012, Complainant filed its Discovery Requests.

24 45. On May 16, 2012, Qwest filed its Objections to Complainant's Discovery Requests.

25 46. On May 18, 2012, a Procedural Order was issued scheduling a procedural conference
26 for May 29, 2012, to discuss Complainant's failure to file testimony as directed in the February 10,
27 2012, Procedural Order.

28

1 47. On May 23, 2012, Complainant filed his response to the May 18, 2012, Procedural
2 Order, stating that he would be unable to attend and requesting that the procedural conference be
3 rescheduled.

4 48. On May 24, 2012, a Procedural Order was issued resetting the procedural conference
5 scheduled for May 29, 2012, to June 13, 2012.

6 49. On June 13, 2012, a procedural conference was held as scheduled. Qwest appeared
7 through counsel and Complainant appeared on his own behalf. Discussions were held regarding
8 whether the Complainant needed the assistance of counsel to further litigate the Amended Complaint.
9 Complainant was advised of the procedural steps that would be required prior to this matter going to
10 hearing and the proper procedure to be followed during the evidentiary hearing proceeding.
11 Complainant stated that he believed he did not need the assistance of counsel to further litigate the
12 Amended Complaint.

13 50. On July 27, 2012, by Procedural Order, Respondent's Motion to Dismiss was partially
14 granted and the hearing in this matter was reset to begin on November 5, 2012.

15 51. On August 17, 2012, Complainant filed additional discovery requests.

16 52. On August 31, 2012, Complainant filed the updated testimony of George Bien-
17 Willner.

18 53. On September 28, 2012, Qwest filed a Notice of Filing Response Testimony.

19 54. On October 1, 2012, Complainant filed a letter requesting that the hearing in this
20 matter be continued due to Complainant's ongoing medical issues. On the same date, Qwest filed a
21 Status Report advising the Commission that settlement of the issues had not been achieved and stating
22 that Qwest does not oppose a continuance of the hearing.

23 55. On October 4, 2012, a Procedural Order was issued granting Complainant's request to
24 vacate the hearing scheduled for November 5 and 6, 2012. Further, all other procedural deadlines
25 were suspended and Complainant was directed to file an update with the Commission, on or before
26 April 5, 2013, advising the Commission on the status of the Complaint.

27 56. On June 12, 2013, Complainant filed a Notice of Settlement and Motion to Dismiss
28 with Prejudice ("Notice"). The Notice states that all disputes between Complainant and Qwest have

1 been settled, without admissions of liability. Complainant requests that the Commission dismiss the
2 above-captioned Complaint with prejudice and acknowledges that such a dismissal will bar
3 Complainant from bringing the matter before the Commission again.

4 **Resolution**

5 57. A.R.S. §40-246(A) grants the Commission authority to hear complaints and states that
6 complaints may be brought by “any person, or association of persons” setting forth any act or thing
7 “done by any public service corporation” in violation or claimed to be in violation, of any provision
8 of law or any order or rule of the Commission.

9 58. Further, A.A.C. R14-3-109(C) allows for the dismissal of complaints.

10 59. The above-captioned Complaint has spanned over three years. The parties have
11 reached a settlement of all issues and Complainant considers the settlement to be a just and fair
12 resolution. Further, Complainant has acknowledged that such a dismissal will bar the Complainant
13 from bring this matter before the Commission again. Therefore, we find it in the public interest to
14 grant Complainant’s request to dismiss the Complaint with prejudice.
15

16 **CONCLUSIONS OF LAW**

17 1. Qwest is a public service corporation pursuant to Article XV of the Arizona
18 Constitution and A.R.S. 40-246.

19 2. The Commission has jurisdiction over Qwest.

20 3. It is in the public interest to grant Complainant’s Motion to Dismiss the above-
21 captioned Complaint with prejudice.
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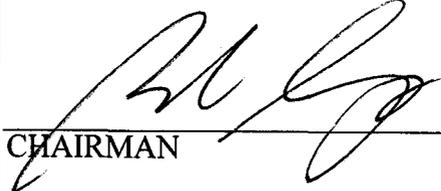
ORDER

IT IS THEREFORE ORDERED that the Complainant's Motion to Dismiss the above-captioned Complaint with prejudice is hereby granted.

IT IS FURTHER ORDERED that the above-captioned docket shall be administratively closed.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

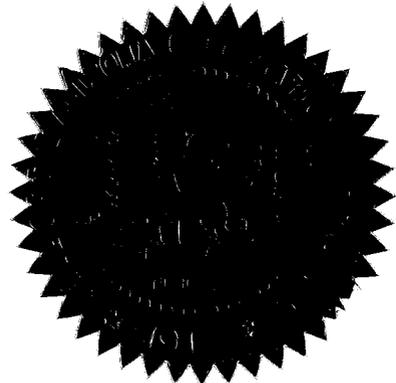

CHAIRMAN


COMMISSIONER


COMMISSIONER


COMMISSIONER


COMMISSIONER



IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 30th day of July 2013.


JODI JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: GEORGE BIEN-WILLNER, FOR GLENDALE & 27TH
INVESTMENTS, LLC, v. QWEST CORPORATION

2 DOCKET NO.: T-01051B-10-0200

3 George Bien-Willner
4 GLENDALE & 27TH INVESTMENTS, LLC
3641 North 39th Avenue
Phoenix, AZ 85019-3601
5 jerrybw@gmail.com

6 Norman G. Curtright, Corporate Counsel
QWEST CORPORATION d/b/a/ CENTURYLINK
7 20 East Thomas Road, First Floor
Phoenix, AZ 85012-3132
8 norm.curtright@centurylink.com

9 Janice Alward, Chief Counsel
Legal Division
10 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
11 Phoenix, AZ 85007

12 Steven M. Olea, Director
Utilities Division
13 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
14 Phoenix, AZ 85007

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