

ORIGINAL

NEW APPLICATION



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October 13, 2014

2014 OCT 16 P 2:31

AZ CORP COMMISSION
DOCKET CONTROL


THE LODGE
AT VENTANA Arizona Corporation Commission
DOCKETED

OCT 16 2014

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

DOCKETED BY 

Re: Formal Complaint Filing for Complaint Number 118610

T-03943A-14-0371

Dear Docket Control:

In accordance with the formal complaint filing procedures, please see the attached Formal Complaint (#118610) and the requested thirteen copies. Thank you for assistance in resolving this matter.

Please contact me directly with any questions.

Sincerely,



Andrea Randall
Chief Financial & Operating Officer
Ventana Canyon Alliance, LLC
(520) 577-4005

ARIZONA CORPORATION COMMISSION
FORMAL COMPLAINT FORM

COMPLAINANT Ventana Canyon Alliance, LLC	COMPLAINT NUMBER 118610	DATE October 13, 2014
ADDRESS 6200 N Clubhouse Lane Tucson, AZ 85750		PHONE (HOME)
NAME OF RESPONSIBLE PARTY Andrea Randall, CFO/COO		PHONE (WORK) 520-577-4005
NAME OF UTILITY TW Telecom	ACCOUNT NUMBER 275440	

GROUNDS FOR COMPLAINT: (COMPLETE STATEMENT OF THE GROUNDS FOR COMPLAINT. INDICATING DATE(S) OF COMMISSION/OMISSION OR ACTS OR THINGS COMPLAINED OF.) (USE ADDITIONAL PAGE IF NECESSARY.)

See Attached

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AZ CORP COMMISSION
DOCKET CONTROL

NATURE OF RELIEF SOUGHT: (USE ADDITIONAL PAGE IF NECESSARY.)

See Attached

SIGNATURE OF COMPLAINANT OR ATTORNEY

Andrea Randall, CFO/COO

Complainant: Ventana Canyon Alliance, LLC (dba The Lodge At Ventana Canyon)

Complaint Number: 118610 **Date:** October 13, 2014

Address: 6200 N Clubhouse Lane Tucson, AZ 85750

Responsible Party: Andrea Randall, CFO/COO

Work Phone: 520-577-4005

Name of Utility: TW Telecom

Account Number: 275440

Grounds for Complaint:

In June of 2014, we discovered that TW Telecom was not providing services to our property but they had continued to bill us for services for more than ten years. Our records show that we, The Lodge At Ventana Canyon, ordered service from Xspedius in 2003 and has since paid \$109,109 for services that TW Telecom billed for during that period. From 2003 to present, CenturyLink and its predecessor Qwest Communications also provided telecommunication services to Ventana. Ventana understood that Centurylink/Qwest was providing part of its telecommunication services and TW Telecom was providing the rest. From Ventana's perspective its telecommunications were working fine and so it paid TW Telecom's bills in good faith. In June 2014, however, Ventana determined that the TW Telecom service had never been connected and TW Telecom was not providing any service. Rather, CenturyLink/Qwest were providing the full service during the period. TW Telecom should refund the full \$109,109 to Ventana because it billed Ventana for a service that it never connected or provided.

TW Telecom initially made an offer of \$22,000, claiming a two year statute of limitation. This offer was later increased to \$28,000 . Since TW Telecom has not been able to prove that our service was ever connected, we believe this offer of just over two years of compensation is inadequate. We did offer to settle the dispute for \$88,000, which reflects eight years of service, as TW Telecom had acquired our account from Xspedius in 2007 and has owned our account for approximately eight years. We initially filed an "informal complaint" with the Arizona Corporate Commission and we were willing to mediate this dispute. However, TW Telecom did not respond to our request for mediation.

It appears TW Telecom's predecessor, Xspedius, did not complete the install of our services but billed us anyway and TW Telecom continued to bill us after taking over our account from Xspedius. According to the Arizona Administrative Code R14-2-508 regarding billing and collection, part D, item 4 indicates that "charges for service commence when the service is installed and connection made..." In our conversation with TW Telecom's technical team they have stated that the design of the circuit was not completed in TW Telecom's switch and the phone number(s) was never ported over. TW Telecom's attorney, Gary Witt, likewise stated that the number(s) was never "ported over" when TW Telecom took over the account.

In our phone room, TW Telecom's network interface unit (NIU) is in a loop back state. When the line remains in a loop back state, it is confirmation that the line is not able to be used or the connection is not made. Moreover, we did not experience any interruptions in service when TW Telecom took over our account and failed to "port over" our number. If Xspedius had been providing any service to Ventana that would have become apparent when TW Telecom took over the account and failed to port over the number. That there was no interruption shows that Xspedius was not providing any service. If we had experienced a disruption, we would have notified the carrier.

TW Telecom argues that we did have service at one time and they say that we should have notified them when our service was disconnected. They provided us with a copy of a trouble ticket (attached and noted as Exhibit 1) as evidence for establishing that we did have service. In reviewing the trouble ticket, it is clear that the utility carrier did not resolve the problem and the trouble ticket never even established that the problem was related to the carrier's service. In fact, the trouble ticket indicates that the customer (The Lodge At Ventana Canyon) determined that the problem was in the voicemail system. Our voicemail system is a separate, standalone system. Furthermore, if TW Telecom had provided service and it was disconnected at one point, we would have had service issues when TW Telecom took over the account and failed to port over the number. We have not had any service issues and we were not aware of any disconnection. To date, TW Telecom has not provided any records of service activity on the line.

Our discovery of not having service through TW Telecom was brought to light in preparing for the purchase of a new phone system. We contacted TW Telecom as well as Century Link and Sprint to confirm which services they were providing our property. At this time, TW Telecom admitted that the design of the circuit was not completed in TW Telecom's switch and it was confirmed that the phone number was not a working number. Up until June of 2014, we were under the impression that TW Telecom was providing a trunk service. In 2014, we also confirmed that Century Link has provided our long distance, local and trunk services since the 1980s. We have attached a copy of the TW Telecom bill as well as the Century Link bill. When we were told that TW Telecom's circuit was not completed in their switch, we immediately contacted TW Telecom to seek a refund because they had charged us for services that were never provided. Since we were not being provided service that we were entitled to, we were never an active customer of TW Telecom. Therefore, we don't believe Section 2.7.1 of the Tariff that limits refunds to 120 days or the two year statute of limitations applies to our complaint.

As previously mentioned, we were willing to resolve this dispute in mediation. However, TW Telecom has failed to respond to our request. This formal complaint also includes TW Telecom's response to the informal complaint. It should be noted, for the record, that there were several unsubstantiated and conflicting claims made by TW Telecom to the informal complaint. In TW Telecom's response (letter dated September 26, item 1), TW's attorney indicates that TW ceased providing service in 2014. This is not true. If they ceased providing service this year, we would have experienced some type of interruption or we would have been required to port over the service to a new provider. We did not transfer any service from TW Telecom because TW Telecom did not provide a service to us, and it never has. All telecom services were provided by Century Link and Sprint. After more than one request, TW ceased billing in September of 2014. Also under item 2 of their response, TW Telecom argues that service was turned up and accepted by Native Teledata on behalf of Ventana (see Exhibit 2 "Order Review"). We contacted Native Teledata and they reviewed the order. Per Native Teledata, the number listed in the order was a mere "placeholder" to be used for testing purposes and its existence or acceptance does not prove that the line was ever actually connected. Under item 3 of TW's response, TW refers to the trouble ticket that was opened in September of 2003 and claim that this ticket was resolved by their technician. Per the trouble ticket (noted as Exhibit 1), the technician made several attempts to reach the customer and then determined from the customer that the "VM system was registering some errors but working good now". Our voicemail system is a separate system and TW Telecom has nothing to do with our voicemail. Therefore, the trouble ticket does not prove that the

carrier resolved a problem, but rather it supports our position that TW Telecom has never provided a service to Ventana. Also under item 3 of their response, TW Telecom goes on to claim that we should have notified them of an interruption. We have had no such interruption because we were receiving service from Century Link/Qwest; TW Telecom never activated the service but billed Ventana for the service anyway. If the service had been active and then later disrupted, we would have notified the carrier. We do not allege that we experienced an interruption in service or service that was substandard. We allege that we were billed for services that were never provided at all.

Nature of Relief Sought:

Since we were not an installed customer of TW Telecom (formerly Xspedius), the service connection was not completed, and they did not provide us any service. Therefore, we believe that TW Telecom breached the contract and was unjustly enriched because Ventana paid TW Telecom and Xspedius \$109,109 for services that TW Telecom never provided. As a result of this contract breach and unjust enrichment, we are now demanding a full refund in the amount of \$109,109. This is the amount paid over the years in reliance on a bill from TW Telecom for services that TW Telecom never provided.

Related documentation, attachments include:

1. Exhibit 1 "Trouble Ticket"
2. TW Telecom billing statement
3. Century Link billing statement
4. Letter dated July 9, 2014 from Andrea Randall, CFO for Ventana Canyon to TW Telecom
5. Letter dated August 14, 2014 from our counsel Lewis Roca Rothgerber to Gary Witt, attorney for TW Telecom
6. Letter dated September 26, 2014 from TW Telecom outside counsel Joan Burke to ACC Investigator
7. Exhibit 2 "Order Review"

Signature of Complainant: _____

 Andrea Randall, CFO/COO

① Exhibit 1 "Trouble Ticket"

LOG_ID	EVENT_DT	EVENT_TYPE	USER_NAME	EVENT_DESCRIPTION
1166703	21:17.6	Close Ticket	asmith	This ticket has been closed. Close Time: 3.66. Clear Time: 3.65 Deferred Customer Time : 117. see Fault Responsible Org changed to: Customer - Xspedius. Clear Cause changed to: CPE HARDWARE. Clear Reason changed to: Unknown. Comments: Vm system was They do have this working good now. The VM system was registering some errors as a disconnect. Working good now.
1166702	21:10.6	Clear	asmith	clearing and closing ticket. to cpe hardware
1166684	17:52.4	Log Entry	asmith	Calling Dennis att to get update on this.
1166675	16:02.7	Log Entry	asmith	calling chris to get update on this. Never recieved callback. Called chris who directed me to Dennis @ 520-888-5860.
1166673	15:46.1	Log Entry	asmith	Ticket status, Defer Customer, was recovered to Open. The ticket was in Deferred/Referred Status for the following total length of time: 117. Comments:recover to work.
1166667	13:36.0	Recover	asmith	Vendor was supposed to call in sunday afternoon to work with swing tech to assist in troubleshooting. Doesnt look like this happend. will call to get update on this later this am.
1160568	05:03.7	Log Entry	asmith	RT 1303 TG 1432
1151274	50:46.0	Log Entry	asmith	Recieved call from Chris. she asked for us to monitor AB bits on entire circuit. I advised that there is no way that I can do that remoteley. Called Allen young who told me that the way the circuit is layed out that the 2209 can not monitor ab bits in both direction and the 310 is not capable of reading entire DS1s. and would not dispatch to prem or co to assist. I worked with Chris (vendor) and curious about translations set up. These are supposed to be Wink start inbound trunks only. Chris had to leave but I advised her to call back after 1300 to work with A Hoker. Leaving him a heads up cust tech/Chris called - trans call to tech
1151273	47:57.0	Log Entry	asmith	Was told that customer needed some assistance troubleshooting a dropped call issue. I tried getting ahold of customer but was not able to. Defering pending call back. on this.
1151224	01:29.6	Log Entry	kdauid	Ticket status, , was changed to Deferred.
1151220	57:48.0	Log Entry	asmith	Customer was deferred until 9/23/2003 05:00 PM. see called customer and left Vm 2 times asking for call back.
1151219	57:13.9	Defer Customer	asmith	Transferred from to: asmith. assigned customer did not answer. Left VM for call back.
1151218	56:48.2	Log Entry	asmith	calling customer att.
1151172	14:27.5	Assign Tech	asmith	Chris 520-577-4006.
1151169	13:52.7	Log Entry	asmith	Nancy Abrams/xmc - called for status on tkt - informed techs are aware of issue im tech - please call Nancy at 520-547-2222
1151168	12:50.9	Log Entry	asmith	with updated status asap
1151166	12:26.7	Log Entry	asmith	SUPER_POP changed from Tampa,FL to Tucson,AZ
1151082	10:10.4	Log Entry	kdauid	
1151079	08:52.3	Ticket Update	kdauid	



cust tech/Chris - stated that she is headed to the customer prem - she will be there about noon cst -
 She is going to need a tech to help busy out lines from the noc while she works the issue at prem.
 Chris said that her cell phone will not work at customer prem - please call the main # after noon cst
Ticket created on 09-20-2003 Placed in the STL-SMC Queue

1151055	29:13.8 Log Entry	kdauid
1151050	25:32.0 Open	kdauid

2



on behalf of tw telecom holdings inc. and its authorized telecommunications subsidiaries

Account Number 275440

Invoice Number: 06252796

Invoice for Telecom Services

NEED ASSISTANCE?

For Customer Care or 24-hour Maintenance: (800) 829-0420

To Pay or View Your Bill Online or Enroll in Auto Bill Pay, go to https://customerportal.twtelecom.com

Bill Date: June 1, 2014

140602/3506/1241/11



VENTANA CANYON ALLIANCE 3506
ATTN: ROBERT J DEMORE
6200 N CLUB HOUSE LN
TUCSON, AZ 85750

A BALANCE DUE, PAYMENTS, ADJUSTMENTS

Table with 2 columns: Description, Amount. Rows include Balance Due From a Previous Statement (\$890.97), Payments (\$890.97), and TOTAL Balance Due For Section A (\$0.00).

CURRENT MONTH ACCOUNT CHARGES SUMMARY

Table with 2 columns: Description, Amount. Rows include B Integrated Service Bundles (\$890.97), C Basic Service (\$0.00), TOTAL For The Current Month (\$890.97), TOTAL Balance Due From Section A (\$0.00), and TOTAL Amount Due Please Pay By 6/30/14 (\$890.97).

The 2nd Quarter 2014 Federal Universal Service Fund (USF) rate has increased from 16.4% to 16.6%.

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Moving or expanding your office space? Be sure to call your account manager 30-45 business days in advance, so we can help you be ready for business day one.

Please detach and return this remittance portion with your check in the enclosed envelope.



Check box for address change and complete form on reverse

tw telecom
PO BOX 172567
DENVER, CO 80217-2567

Account Number: 275440 Invoice Number: 06252796

VENTANA CANYON ALLIANCE

Bill Date: June 1, 2014

Due Date: June 30, 2014

Amount Due: \$890.97

If payment by Check, please include your Account Number

Amount Paid: _____

10000000027544020140601000000006252796000008909700000890972

Page 1 of 1
 JUNE 01, 2014
 Account Number: 275440
 Invoice Number: 06252796

A. BALANCE DUE, PAYMENTS, ADJUSTMENTS

Balance Due From a Previous Statement \$890.97
 Payments (890.97)
 Thank you Payment Received \$890.97
 Adjustment(s) \$0.00
TOTAL AMOUNT DUE FOR SECTION A \$0.00

B. INTEGRATED SERVICES BUNDLES

Service Location: 69411
 Name: VENTANA CANYON ALLIANCE
 Address: 6200 N CLUB HOUSE LN, TUCSON, AZ, 85750

Type of Service	PON	Charge From & To	Quantity	Amount
Access Recovery Charge		06/01/14 - 06/30/14	1	\$21.70
Complete T PBX Combo Trunk		06/01/14 - 06/30/14	24	\$0.00
Complete T PRI Access Fac		06/01/14 - 06/30/14	1	\$700.00
Federal Subscriber Line Charge		06/01/14 - 06/30/14	1	\$37.85
PICC		06/01/14 - 06/30/14	24	\$7.68
PICC		06/01/14 - 06/30/14	1	\$1.60
TOTAL Service Location: 69411				\$768.83

TOTAL Charges Without Tax For Section B

\$768.83
Taxes, Governmental Surcharges & Fees
 Federal Excise Tax \$1.66
 DEAF Tax Surcharge \$8.46
 State Sales Tax \$40.42
 County Sales Tax \$3.61
 Local Public Utility Tax \$30.75
 Local Sales Tax \$14.43
TOTAL Taxes, Governmental Surcharges & Fees \$99.33

Other Surcharges & Fees

Carrier Cost Recovery Surcharge \$0.88
 Federal Universal Service Fund (USF) Surcharge \$7.82
 AZ Universal Service Fund (AUSF) Trunk \$2.58
 Tucson Right of Way Fee \$11.53
Total Other Surcharges & Fees \$22.61

TOTAL Taxes, Surcharges & Fees For Section B

\$122.14
TOTAL CHARGES FOR SECTION B \$890.97

C. BASIC SERVICE

Service Location: 69411
 Name: VENTANA CANYON ALLIANCE
 Address: 6200 N CLUB HOUSE LN, TUCSON, AZ, 85750

Type of Service	PON	Charge From & To	Quantity	Amount
EZ LD 059		06/01/14 - 06/30/14	1	\$0.00
TOTAL Service Location: 69411				\$0.00

TOTAL Charges Without Tax For Section C

\$0.00
TOTAL CHARGES FOR SECTION C \$0.00

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Thank you for choosing this telephone

2



Page 1 of 5

VENTANA CANYON
ALLIANCE LLC
Bill Date: Aug 4, 2014
Account No: 520-577-1400 006B

Visit centurylink.com

Balance Forward	New Charges	Total Amount Due	Due Date for New Charges
\$ 00	\$759.21	\$759.21	Aug 23, 2014

Account Summary

Previous Balance
 Charges Jul 27
 Payment
 Balance Forward
 New Charges
 CenturyLink
 USB
 Total New Charges

759.84
 759.84
 \$ 00

752.22
 6.99
 \$759.21

7835500

Thank you for your payment.

For questions, call:
1 800 603-6000
1 888 481-8724

Page
3
5

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Business needs change regularly. As a valued business customer, we want to work with you to provide a complete and cost effective solution for your business.

Call (888) 544-4495 today for a free account consultation with a dedicated business sales consultant.

For billing or technical questions, please call (877) 453-9407.

01535 4411699 003702 007403 0001/0003

2



VENTANA CANYON ALLIANCE LLC
Bill Date: Aug 4, 2014
Account No: 520-577-1400 006B

For questions, call 1 800 603-6000

Includes 3rd-party charges of \$6.99 telecom and \$0.00 non-telecom.

TOTAL AMOUNT DUE \$759.21

Any amount left unpaid 30 days after bill date is subject to a 1.50% late payment charge, except internet charges.

New Charges

	Local and Other Services	USBI
Monthly Charges	669.33	
Miscellaneous Charges and Credits		6.99
Taxes, Fees and Surcharges		
Federal Excise at 3%	20.58	
State Sales at 5.6%	30.79	
Regulatory Surcharge at .19%	.98	
County Sales at .5%	2.82	
State 911 at \$.20 per access line	2.80	
Federal Universal Serv Fund at 15.7%	5.18	
Federal Universal Serv Fund at 15.8515%	13.58	
Arizona Universal Service Fund at \$.01 per line	.14	

3



VENTANA CANYON ALLIANCE LLC
Bill Date: Aug 4, 2014
Account No: 520-577-1400 006B

For questions, call 1 800 603-6000

New Charges

	Local and Other Services	USBI	
Taxes, Fees and Surcharges			
Telecommunications Relay Service Fund at 1.1%	6.02		
Subtotal	\$752.22	\$6.99	
Total New Charges			\$759.21

Local and Other Services

Monthly Charges

Charges from Aug 04 to Sep 03

Quantity	Description	Code	Item Rate	Amount
Basic Services				
14	Federal Access Charge	9ZR	6.09	85.26
14	Access Recovery Charge	9ZR42	2.38	33.32
Optional Services				
1	Directory Listing	CLT	4.75	4.75
14	Trunk-Two Way	TFB	39.00	546.00
Total Monthly Charges				\$669.33

Taxes, Fees & Surcharges Summary

The detail listed below has been included in the New Charges on this bill. This summary is provided as information only.

	Amount
Federal Excise at 3%	20.58
State Sales at 5.6%	30.79
Regulatory Surcharge at .19%	.98
<i>This charge recovers the amount CenturyLink is assessed by the Arizona Corporation Commission. This assessment funds the corporation commission, enabling it to perform its lawful duties.</i>	
County Sales at .5%	2.82
State 911 at \$.20 per access line	2.80
<i>This surcharge, funds the cost of providing emergency services communications systems in your community.</i>	
Federal Universal Serv Fund at 15.8515%	13.58
<i>This charge recovers the amount CenturyLink contributes to the Federal Universal Service Fund. This fund helps keep local phone rates affordable for all Americans.</i>	
Federal Universal Serv Fund at 15.7%	5.18
<i>This charge recovers the amount CenturyLink contributes to the Federal Universal Service Fund. This fund helps keep local phone rates affordable for all Americans.</i>	

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VENTANA CANYON ALLIANCE LLC
Bill Date: Aug 4, 2014
Account No: 520-577-1400 006B

For questions, call 1 800 603-6000

Local and Other Services

Taxes, Fees & Surcharges Summary

Table with 2 columns: Description and Amount. Rows include Arizona Universal Service Fund at \$.01 per line (.14), Telecommunication Relay Service Fund at 1.1% (6.02), Total Taxes, Fees and Surcharges Summary (\$82.89), and Total CenturyLink Local and Other Services (\$752.22).

Summary row: CenturyLink New Charges \$752.22

For Your Information

Customers using Teletype (TTY) devices can direct their inquiries to CenturyLink at 1 800 223-3131, a TTY equipped number. Go Green! Use Control Center at controlcenter.centurylink.com to view your billing and service information on-line and enroll in Paperless Billing or One Page Direct.

Charges for your monthly service are billed one month in advance. CenturyLink should receive your payment for the total amount due on or before the due date on your bill. If you are unable to pay by the due date, please contact Customer Service to avoid possible collection action. In some states you may be assessed a charge for unpaid balances. Your basic telephone service will not be disconnected for non-payment of charges for: (1) CenturyLink Unregulated Services (or other itemized services) identified by an *, (2) services of other CenturyLink companies, or (3) services of other companies included in your bill. CenturyLink packages of features and the amounts in the Account Summary may include both basic and charges that are not basic.

Third-Party Billing Block

Cramming occurs when unauthorized charges appear on your telephone bill. To help prevent unwanted third party charges on your bill, contact CenturyLink and request, at no charge, a bill block that will prevent some third party charges such as charitable contributions, dial-up Internet by non-CenturyLink companies or other non-telecommunications charges from appearing on your bill.



VENTANA CANYON ALLIANCE LLC
Bill Date: Aug 4, 2014
Account No: 520-577-8808 012B

Visit centurylink.com

Balance Forward	New Charges	Total Amount Due	Due Date for New Charges
\$.00	\$396.81	\$396.81	Aug 23, 2014

Account Summary

Previous Balance

Charges
Payment Jul 27
Balance Forward

Thank you for your payment.

New Charges

CenturyLink
USBI
Total New Charges

For questions, call:
1 800 603-6000
1 888 481-8724

Page
3
5

397.89
397.89
\$.00

264.00
132.81
\$396.81

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Business needs change regularly. As a valued business customer, we want to work with you to provide a complete and cost effective solution for your business.

Call (888) 544-4495 today for a free account consultation with a dedicated business sales consultant.

For billing or technical questions, please call (877) 453-9407.

CenturyLink, P O Box 29040, Phoenix, AZ 85038-9040

02822 4411699 007942 015883 0001/0004

3



VENTANA CANYON
ALLIANCE LLC
Bill Date: Aug 4, 2014
Account No: 520-577-8808 012B

For questions, call 1 800 603-6000

Includes 3rd-party charges of \$132.81 telecom and \$0.00 non-telecom.

TOTAL AMOUNT DUE \$396.81

Any amount left unpaid 30 days after bill date is subject to a 1.50% late payment charge, except internet charges.

New Charges

	Local and Other Services	USBI
Monthly Charges	218.43	
Miscellaneous Charges and Credits		132.81
Taxes, Fees and Surcharges		
Federal Excise at 3%	7.41	
State Sales at 5.6%	.85	
Regulatory Surcharge at .19%	.03	
County Sales at .5%	.08	
State 911 at \$.20 per access line	4.80	
Federal Universal Serv Fund at 15.7%	8.88	
Federal Universal Serv Fund at 15.8515%	23.28	
Arizona Universal Service Fund at \$.01 per line	.24	

3



VENTANA CANYON ALLIANCE LLC
Bill Date: Aug 4, 2014
Account No: 520-577-8808 012B

For questions, call 1 800 603-6000

New Charges

Table with columns: Taxes, Fees and Surcharges, Local and Other Services, USBI, Subtotal, Total New Charges. Values include \$264.00, \$132.81, and \$396.81.

Local and Other Services

Monthly Charges

Charges from Aug 04 to Sep 03

Table with columns: Quantity, Description, Code, Item Rate, Amount. Includes rows for Basic Services (Block Of 20 Sequential DID Numbers, Federal Access Charge, Access Recovery Charge) and Optional Services (Nonsequential DID Number). Total Monthly Charges: \$218.43.

Taxes, Fees & Surcharges Summary

The detail listed below has been included in the New Charges on this bill. This summary is provided as information only.

Table with columns: Description, Amount. Lists various taxes and surcharges such as Federal Excise at 3%, State Sales at 5.6%, Regulatory Surcharge at 1.19%, County Sales at .5%, and Federal Universal Serv Fund at 15.8515% and 15.7%.

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02822 4411699 007943 015885 0002/0004



VENTANA CANYON ALLIANCE LLC
Bill Date: Aug 4, 2014
Account No: 520-577-8808 012B

For questions, call 1 800 603-6000

Local and Other Services

Taxes, Fees & Surcharges Summary

Table with 2 columns: Description and Amount. Includes Arizona Universal Service Fund at \$.01 per line, Total Taxes, Fees and Surcharges Summary (\$45.57), and Total CenturyLink Local and Other Services (\$264.00).

Summary row: CenturyLink New Charges \$264.00

For Your Information

Customers using Teletype (TTY) devices can direct their inquiries to CenturyLink at 1 800 223-3131, a TTY equipped number. Go Green! Use Control Center at controlcenter.centurylink.com to view your billing and service information on-line and enroll in Paperless Billing or One Page Direct.

Charges for your monthly service are billed one month in advance. CenturyLink should receive your payment for the total amount due on or before the due date on your bill. If you are unable to pay by the due date, please contact Customer Service to avoid possible collection action. In some states you may be assessed a charge for unpaid balances. Your basic telephone service will not be disconnected for non-payment of charges for: (1) CenturyLink Unregulated Services (or other itemized services) identified by an asterisk, (2) services of other CenturyLink companies, or (3) services of other companies included in your bill. CenturyLink packages of features and the amounts in the Account Summary may include both basic and charges that are not basic.

Third-Party Billing Block

Cramming occurs when unauthorized charges appear on your telephone bill. To help prevent unwanted third party charges on your bill, contact CenturyLink and request, at no charge, a bill block that will prevent some third party charges such as charitable contributions, dial-up Internet by non-CenturyLink companies or other non-telecommunications charges from appearing on your bill.

4

July 9, 2014

TW Telecom
Attn: Angela Walker



Re: Ventana Canyon Alliance Acct #275440, Billing Dispute #380927

Dear Ms. Angela Walker:

As you requested, please be advised that we are requesting a full refund of all payments previously remitted for the above referenced account and an immediate termination of all billing going forward for the failure of TW Telecom/Xspedius to turn on our service.

In June of 2014, we were informed by your technical team that our service was never turned on, the switch was never built and the circuit ID was never completed. As you know, the billing for this account was originally established by Xspedius and remained never turned on when eventually acquired and billed by TW Telecom. Upon immediately learning that our account was never activated, I called TW Telecom to begin the billing dispute process. Per my discussion with telecom representatives, it is the telecom carrier's responsibility to only begin billing after the switch and circuit are built and established. As the customer, we have been under the impression that we did indeed have service through TW Telecom up until June of 2014.

Our current records indicate that payment remittance began in April of 2004 to Xspedius and then continued with TW Telecom in January of 2007 for total payments of \$109,108.90. Due to the error made by Xspedius and then assumed/continued by TW Telecom, we respectfully request a full refund for the entire history of our account.

If you have further questions, please contact me directly at (520) 577-4005. Thank you for your immediate attention to this matter and a prompt refund.

Sincerely,

A handwritten signature in black ink that reads "Andrea Randall".

Andrea Randall
Chief Financial & Operating Officer
Ventana Canyon Alliance, LLC

5

**LEWIS ROCA
ROTHGERBER**

Lewis Roca Rothgerber LLP
One South Church Avenue, Suite 700
Tucson, AZ 85701

John Hinderaker
Admitted in Arizona
(T) 520.629.4430 (F) 520.879.4710
JHinderaker@LRRLaw.com

Our File Number: 144222-00008

August 14, 2014

VIA ELECTRONIC MAIL

Gary Witt
Counsel
Gary.Witt@twtelecom.com
TW Telecom Holdings Inc.
10475 Park Meadows Drive
Littleton, CO 80124

RE: The Lodge at Ventana Canyon

Dear Gary:

This letter responds to your email dated August 5, 2014, and to some of the points you raised during our recent conversations. Before I address your email, however, I want to thank you again for being up front about your client's position and making a sincere effort to get to the bottom of what happened.

The threshold issue is whether TW Telecom or its predecessor in interest ever actually provided telecom services to Ventana. Notwithstanding the "trouble ticket" you provided to me, it seems unlikely that TW Telecom or its predecessor in interest ever actually provided any services. I am informed by my client that the TW Telecom network interface unit (NIU) is in a loop back state. According to my client's current phone vendor, All Communications, the loop back state should go away after the line has been tested. When the line remains in loop back, it is confirmation that the line is not able to be used. All Communications was told by a TW Telecom employee named Ryan that TW Telecom never completed the design of the circuit in their switch. I am informed that TW Telecom or its predecessor would have generated a circuit ID number when the circuit was fully connected, but TW Telecom has no records in its possession that show that a circuit ID number was ever generated. The most logical explanation is that no such records exist because the line or circuit was never fully connected in the first place.

During emails and on the telephone you pointed out that there was a default telephone number assigned to Ventana. Currently, the number is not in service. We have been informed by Native Teledata that this number was a mere "place holder" and its existence does not prove that the line was ever actually connected. Indeed, you confirmed that TW Telecom does not have any records of that number ever having been "ported over" to TW Telecom after TW Telecom acquired Xspedius Management Co., LLC. Additionally, several representatives from TW Telecom informed my client that TW Telecom had no record of there ever being any activity on the line.

Finally, the "trouble ticket" does not establish that the "place holder" number ever actually functioned. We know that during August of 2003 my client had a functioning line with another company. Thus, the mere fact that the system was functioning from my client's perspective is no indication that the TW Telecom line was actually functioning. The more logical explanation is that my client was satisfied with the situation because the existing line was functioning and not because TW Telecom's predecessor fixed anything. Indeed, the trouble ticket does not indicate that your predecessor resolved the trouble reported. In fact, the trouble ticket indicates that the customer was able to determine that the voicemail system was the problem. My client's voicemail system was and still is a standalone system, separate from the T1 or circuit in question. Furthermore, the trouble ticket does not describe anything that would confirm that the circuit was showing activity. In fact, the ticket merely describes the problem being reported and the ticket clearly notes that the technical team did not solve the problem. We conclude that the trouble ticket was related to a problem outside of the circuit in question.

Because the line never functioned and TW Telecom never actually provided any telecom services to Ventana, your reliance on the Federal Communications Act (FCA) as imposing a two-year statute of limitations on Ventana's claims is misplaced. As an initial matter, Ventana's claims are not for "overcharges" under 47 USC § 415(c). Ventana is not making a claim that TW Telecom exceeded the allowable rate or violated a schedule. See 47 U.S.C.A. § 415(g) (defining "overcharges" as "charges for services in excess of those applicable thereto under the schedules of charges lawfully on file with the Commission"). Rather, Ventana's claims for unjust enrichment and breach of contract relate to payments that Ventana made to TW Telecom for services that were simply never provided by TW Telecom at all.

Ventana's state law claims do not arise under any obligation imposed by the FCA, nor would they be preempted by that Act. See 47 U.S.C. § 414 ("Nothing in this Act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies."). Thus, the claims would not be covered under the two-year statute of limitations in either § 415 (b) or (c). This issue is explained in *Indiana Bell Tel. Co. Inc. v. Thrifty Call, Inc.*, IP02-0170-C-H/K, 2004 WL 3059705 (S.D. Ind. Dec. 2, 2004). There, the court held that various state law claims against a carrier did not arise under the FCA and were therefore not subject to the two-year statute of limitations in § 415. The court rejected the argument that § 415 applies to "every claim against a carrier, such as ordinary business claims arising from property or equipment leases, torts, employment disputes, or other routine business matters, that are neither preempted by federal law nor subject to the federal statute of limitations." *Id.* Rather, § 415 applies only "to those claims that arise under the FCA, either directly or by reason of its preemptive force." *Id.*

Other cases have similarly concluded that state law claims against carriers that do not arise under the FCA are not subject to the two-year statute of limitations in the FCA. See, e.g., *Castro v. Collecto, Inc.*, 668 F. Supp. 2d 950, 978 (W.D. Tex. 2009) *aff'd*, 634 F.3d 779 (5th Cir. 2011) (holding that statute of limitations in § 415(b) did not apply to state debt collection claims against carrier that did not arise under the FCA); *Graphtel, Inc. v. RSL Com USA, Inc.*, 05 CIV. 9280 (DAB), 2007 WL

510116 (S.D.N.Y. Feb. 14, 2007) (breach of contract claim for amounts due under telephone service agreement was controlled by state statute of limitations for breach of contract actions and was not subject to two-year limitations in FCA).

Even assuming the two-year limitation under the FCA applies, there would at least be a fact issue as to whether it began accruing in June of this year, when Ventana first discovered that TW Telecom was billing Ventana for services it was not actually providing. *See, e.g., Nw. Pub. Commc'ns Council v. Qwest Corp.*, 538 F. App'x 822 (9th Cir. 2013) (service providers' claims against telecommunications carrier accrued when service providers were on inquiry notice that it might be paying excessive rates); *Sprint Commc'ns Co., L.P. v. F.C.C.*, 76 F.3d 1221, 1226 (D.C. Cir. 1996) (claim accrues under § 415 "only when 'the plaintiff discovers, or with due diligence should have discovered, the injury that is the basis of the action'" (internal citation omitted)). Because Ventana did not have knowledge of its claims until June of this year and, from Ventana's perspective the system was functioning fine, Ventana's claims would not be time-barred under § 415, even if it applied.

My client initially offered to settle this dispute for \$110,000, which is the approximate total amount Ventana paid to TW Telecom and its predecessor(s) for the services that were never provided over a ten year period. TW Telecom offered to compensate Ventana for only the last two years of improper charges by paying \$22,000. My client is unwilling to settle its claim for \$22,000, but in an effort to resolve this dispute without having to engage in costly litigation, Ventana will reduce its initial demand and accept \$88,000, an amount equal to eight years of improper charges. My client is using eight years because TW Telecom acquired Ventana's account approximately eight years ago and we know that TW Telecom never "ported over" the line following the acquisition. Thus, there shouldn't be any dispute about TW Telecom's obligation to refund these amounts.

I appreciate your efforts to work towards a resolution and I am open to any additional information you may have to share. Please feel free to contact me with any questions or comments.

Very truly yours,



John Hinderaker
LEWIS ROCA ROTHGERBER LLP

JH

6

Law Office of Joan S. Burke

1650 North First Avenue

Phoenix, AZ 85003

Phone: 602-535-0396

joan@jsburkelaw.com

September 26, 2014

HAND-DELIVERY

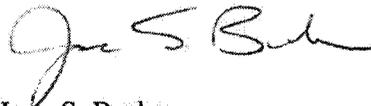
Ms. Jenny Gomez, Investigator
Consumer Services
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007-2996

RE: Andrea Randall Complaint No. 2014-118610 (The Lodge at Ventana Canyon)

Dear Ms. Gomez:

Enclosed please find the tw telecom of arizona llc response to your questions dated September 12, 2014. Please send any further communications regarding this case to me and to Mr. Gregory Diamond, Vice-President Regulatory for tw telecom (Greg.Diamond@twtelecom.com). Thank you.

Sincerely,



Joan S. Burke

Response of tw telecom of arizona llc to
Questions from ACC Investigator Gomez

1. **Please provide a detailed status of this account.**

Per the customer's request, tw telecom ceased providing service and ceased all billing on this account in 2014.

2. **Is Ventana Canyon Alliance Acct #275440 your customer? If so, did you provide service? Please explain what service was provided.**

Ventana Canyon Alliance (Account 275440) ordered "Complete T PRI Access" service from Xspedius Management Co. Switched Services, LLC, doing business as espire, on June 15, 2003. The service is tariffed in Arizona. Please see tw telecom's Arizona C.C. Tariff No. 7, at section 10.23.28 ("Tariff"). The Tariff is publically available on the Commission website and is available on the tw telecom website at the following link:

<http://www.twtelecom.com/support-information/legal-information/tariffs-charges/tariffs-notifications-forms/>. Tariff sections referenced in this response are included as Attachment 1.

Service was turned up by Xspedius and accepted by Ventana Canyon on August 28, 2003. Please see Order Detail Review, page 2 included as Attachment 2. With the exception of a single trouble ticket in September 2003, where the service fully restored, neither the customer, nor its telecommunication consultant, nor any other party ever notified tw telecom of an interruption or degradation in service. tw telecom paid Qwest/CenturyLink for the type 2 circuit required for the Ventana Canyon account during the entire period of service. (This service was provisioned in such a way that tw telecom leased the circuit from Qwest to provide the service.)

In 2007, Time Warner Telecom of Arizona, LLC acquired the assets of Xspedius and grandfathered all tariffed services including the service provided to Ventana Canyon. The name Time Warner Telecom of Arizona, LLC was changed to tw telecom of arizona llc in 2008.

3. **Did customer pay \$109,108.90 since 2003? Please explain.**

Yes, Ventana Canyon paid espire and tw telecom approximately \$109,000 over 11 years for the service.

tw telecom Position on Refund Claim

Ventana Canyon Waived any Claim for Refund.

Between 2003 and 2014, a single trouble ticket was opened by the customer. This trouble ticket was opened on September 20, 2003, and closed as resolved by an Xspedius technician five days later. After that, there is no indication at all that service to this customer was ever degraded or interrupted from 2003 until cancellation of the service in 2014. During this same period tw telecom paid Qwest/CenturyLink for the type 2 circuit required for the Ventana Canyon account. Neither the customer nor any other party notified tw telecom of any interruption of service.

If, as Ventana Canyon now alleges, it experienced an interruption in service, it was obliged to notify tw telecom of the interruption before it would be entitled to any refund or service credit. Section 2.4.1 of the Tariff requires that an interruption be "reported to or known by the Company" before the Company can be liable for any claim for damages. Even assuming, arguendo, that an interruption occurred, the Company was not aware of such alleged interruption and no interruption was reported to the Company by Ventana Canyon or any other party.

Section 2.4.5 of the Tariff provides that the "Company will make no refund of over-payments by a Customer unless the claim for such overpayment has been submitted in accordance with Section 2.7.1 below." Section 2.7.1 provides objections to "billed charges must be reported to the Company within 120 days of receipt of billing. Any claim not filed within this time period shall be deemed waived." Repeatedly, Ventana Canyon received and paid monthly bills never objecting (until 2014) to the billed charges.

Section 2.13.2.A provides that "credits pursuant to this section shall be Customer's sole remedy for service interruption claims." Further, "[n]o credit allowance will be made for any interruption in service ... [t]hat was not reported to the Company within thirty (30) days of the date that service was affected." Tariff Section 2.13.2.F.8. Under the Tariff, assuming Ventana Canyon experienced a service interruption, it was obliged to notify tw telecom within thirty (30) days of the service interruption. Ventana Canyon's failure to give tw telecom notice causes the claim to be deemed waived. Tariff Section 2.7.1.

Ventana Canyon's Claim for Refund of Eleven Years of Payments is Barred

Even if Ventana Canyon had a valid claim for refund (which tw telecom disputes), recovery should be limited to the 120 day period allowed under the Tariff. Moreover, if this 120 day limitation period is deemed inadequate (and the facts do not show that to be the case), then the customer's demand for a refund is still subject to the two year statute of limitation for a claim for the refund of a utility payment. Title 42 of the Arizona Revised Statutes addresses reparation of "any rate, fare, toll, rental or charge made by any public service corporation":

All complaints concerning excessive or discriminatory charges shall be filed with the commission within two years from the time the cause of action accrues, and the action to enforce the order shall be brought within one year from the date of the order of the commission.

A.R.S. §40-248(B). Section 40-248(B) limits tw telecom's liability for any over payment made by any customer to two years.

XC - Special Access Biller (SAB)

Home Order Action Accounts Receivable Data Maintenance Billing Comments Search Help

Order Detail Review

Customer Order Information

Order No:	10005357	Sales City:	tuc
Prov Rec Date:	8/4/2003	Order Date:	8/4/2003
Customer Id:	36343	Customer Name:	Lodge at Ventana Canyon
Order Status:	Closed	Address:	6200 N Club House Ln Tucson, AZ 857501339
Order Type:	loc	Expedite:	n
Contract Length:	1 Month(s)	Disconnect Reason:	
Change Reason:		NC:	
PIU:	100	NCI SEC:	
NCI ACT:			
Xom Order ID:	21251		

Building Location1 Information:

Building/Location nst / 07
 Sales City: tuc
 Cust/Company: Xpedius Management Co. LLC
 Room/Floor: Ste 1203/12
 Building: Bank of America Bldg.
 Address: 33 N Stone Ave

Building Location2 Information:

Building/Location y9y / 02
 Sales City: tuc
 Cust/Company: Lodge at Ventana Canyon
 Room/Floor: /
 Building: 6200 N Club House Ln
 Address: 6200 N Club House Ln

Customer Order Billing Data

Accepted Date: 8/26/2003
 Monthly Recur Charge: \$0.00
 First Install Charge: \$0.00
 Additional Install Charge: \$0.00

Circuits Information

Circuit ID	Status	Customer Circuit Id	Customer PO Number
pb520 382 9999	a		

Rate History

Effective Date	Created Date	Employee ID	Cir Monthly Chg	Cir 1st Inst Chg	Cir Inst Addl Chg	Change Code
8/26/2003	08/04/2003		\$0.00	\$0.00	\$0.00	

Remarks:

08/04/2003 17:50 this order replaces xom 20380. cust originally requested a pri and changed order last week to complete t. He only needs one telephone number-new numbers reserved is 520-382-9999. He is not using the remaining channels on this t1 at this time. Please order type 2

t1

out of the tucson main co

08/14/2003 12:28 per nancy abrams customer would like this turned up 8/21/03 at 300pm

08/22/2003 10:03 Translations Completed for this customer on STS 001-0-111 42.

08/28/2003 10:40 ande complete.

08/28/2003 13:47 Service turned up on 8/26, no LNP. Vendor (Thomas w/Native Teledata 520-631-2255) just called and accepted service. Order good to close.

Back