

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Complaint of ELWOOD & LYNN)) <u>DOCKET NO. 01-049-40</u>
NIELSON, Complainant)	
vs.)) <u>REPORT AND ORDER</u>
QWEST CORPORATION, Respondent)	

ISSUED: December 6, 2001

SYNOPSIS

Complainants having with one exception failed to sustain their burden of persuasion, the Commission ordered one part of Respondent's claim abated and dismissed the complaint as to the rest.

Appearances:

David L. Grindstaff	For	ELWOOD & LYNN NIELSON
Mark E. Hindley	For	QWEST CORPORATION

By the Commission:

PROCEDURAL HISTORY

Pursuant to notice duly served, the above-captioned matter came on regularly for hearing the tenth day of July, 2001, before A. Robert Thurman, Administrative Law Judge, at the Commission Offices, Salt Lake City, Utah. Evidence was offered and received, and the Administrative Law Judge, having been fully advised in the premises, now enters the following Report, containing proposed findings of fact, conclusions of law, and the Order based thereon.

FINDINGS OF FACT

1. Complainant is a residential customer of Respondent, a telephone corporation certificated by this Commission.
2. This matter arose from a dispute concerning an involuntary block of long distance service which Respondent placed on certain service accounts established by Complainant Elwood Nielson. The blocks were placed for non-payment of charges to various long distance carriers, for which Respondent serves as billing agent, dating back as far as 1996. In the course of processing the dispute, Respondent discovered several old final bills, pertaining to service for Complainants' children or for service to Complainant Lynn Nielson at other addresses.
3. As of the hearing date, Respondent's claims against Complainants may be summarized as follows:

	<u>Telephone #</u>	<u>Address</u>	<u>Acc't Holder</u>	<u>Am't.</u>
1.	801/328-0306-539	114 E. Harvard Ave.	Lynn Nielson	\$ 497.58
2.	801/947-7660-668	2205 East 9800 South	Sheri Nielson	104.47
3.	801/572-6781-142	2205 East 9800 South	Elwood Nielson	45.77
4.	801/944-7350-510	2205 East 9800 South	Elwood Nielson	1,007.31
5.	801/944-7350-510	2205 East 9800 South	Elwood Nielson	148.65

6.	801/944-7350-510	2205 East 9800 South	Elwood Nielson	203.75
7.			Total	\$2,008.53

4. Lines 1 and 3 of the summary relate solely to Respondent's own charges; line 4 relates solely to charges by long distance carriers billed by Respondent; and the other lines relate to both types of charges. Complainants dispute their liability for the amounts in lines 1 through 4. In regard to line 1, Complainant Lynn Nielson denies ever having established the service or having lived on Harvard Ave. In regard to line 2, they deny liability for their daughter's debt. In regard to line 3, they deny having established the account. In regard to line 4, they assert that the charges are almost exclusively access charges from carriers they never chose or authorized or toll charges which accrued despite the fact that Complainants had requested a long distance block.

5. Complainant's claim that the long distance charges were carrier access charges was rebutted by Complainant's witness's testimony that at the time most of the charges accrued, 1996 - 1997, long distance carriers did not impose such charges. Further, Complainant's witness testified that long distance blocks could be defeated by various stratagems including accepting collect calls and using 10-10 numbers to place calls.⁽¹⁾ Since Complainants adduced no evidence to prove there was no access by other parties, thus excluding the use of such stratagems, we find that the long distance charges aggregated in line 4 of the summary above are properly billed and that Respondent is entitled to collect the same. To the extent Complainants further dispute those charges, they must take up their complaints with the carriers concerned or other parties who may have abused Complainants' service.

6. In regard to line 1, there was testimony that the premises served were occupied by a former girl friend of Complainants' son. Since the account was established with Complainant Lynn Nielson's social security number, and other personal information which would be available to Complainants' son, we believe there is a sufficiently strong possibility of identity theft to find that Complainants are not liable for that portion of Respondent's claim.

7. There is no evidence to show any of the other charges claimed by Respondent are erroneous or illegal.

CONCLUSIONS OF LAW

The Commission has party and subject-matter jurisdiction. With the exception of the charges to the Harvard Avenue address, Complainants have failed to prove facts which would entitle them to relief under Section 54-7-20, UCA 1953, as amended. That statute entitles a customer to reparations only upon a showing of charges beyond Respondent's published tariff, or a discriminatory application of the tariff. The facts alleged by Complainant do not indicate such overcharge or discrimination.

In regard to the claim relating to the account established by or for Complainants' daughter, since she resided with her parents, under Commission rules, any occupant of the premises, including Complainants, who had access to the service, are liable for such charges.

Respondent is, under the law, not only allowed but required to charge in accordance with its tariff in order to prevent invidious discrimination among customers. Accordingly, with the above exception, the charges imposed on Complainant are lawful, and Respondent is entitled to collect the same. The complaint must be dismissed as to all charges except those relating to the Harvard Avenue address.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

- the complaint of ELWOOD & LYNN NIELSON against QWEST CORPORATION, be, and the same hereby is, dismissed with the proviso that the charges properly owing to Respondent are abated in the sum of. FOUR HUNDRED NINETY-SEVEN AND 58/100 (\$497.58) DOLLARS.
- If ELWOOD & LYNN NIELSON wish to proceed further, ELWOOD & LYNN NIELSON may file a written petition for review within 20 days of the date of this Order. Failure so to do will forfeit the right to appeal to the Utah Supreme Court.

Dated at Salt Lake City, Utah, this 6th day of December, 2001.

/s/ A. Robert Thurman
Administrative Law Judge

Approved and Confirmed this 6th day of December, 2001, as the Report and Order of the Public Service Commission of Utah.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Richard M. Campbell, Commissioner

Attest:

/s/Julie Orchard
Commission Secretary

G#27388

1. Testimony of Mary Gavrilla, Transcript of Proceedings (Tr.) at 35-36.