

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Complaint of Michael T.)	
Anderson,)	
Complainant,)	
)	
vs.)	
)	
Qwest Corporation,)	
Respondent.)	

DOCKET NO. 02-049-25

REPORT AND ORDER

ISSUED: September 11, 2002

By the Commission:

DISCUSSION

This matter was commenced by a formal complaint filed January 25, 2002. Qwest filed an Answer and Motion to Dismiss on April 12, 2002. On April 25, 2002, Complainant filed a Motion for an Enlargement of Time. Qwest did not file any pleading responsive to that motion. On June 4, 2002, Complainant filed his Response to Respondent's Motion to Dismiss, with a certificate of service certifying service upon counsel for Qwest. Qwest again did not file any responsive pleading. On August 30, 2002, Qwest filed a Notice to Submit for Decision in which it erroneously stated that Complainant had not filed a response to Qwest's Motion to Dismiss.

For reasons unknown to the Commission, Qwest is apparently unaware of the response filed by the Complainant in this matter. Qwest has, however, sought a decision on the motion, so we will address the motion without a response from Qwest.

The complaint in this matter disputes charges made by Qwest as a result of the customer reporting no dial tone. Qwest claims that in response to the customer's complaint it checked the line on its side of the Network Interface, and found no problem. It then assessed a charge of \$85.00, plus tax, for a total of \$90.61, for a Trouble Isolation Charge.

Qwest's motion asserts two grounds for this matter to be dismissed. The first is a claim of lack of jurisdiction by this Commission. Qwest asserts that the charge in question is for an unregulated service from Qwest Corporation's Services Catalog, and that the charge appears as an unregulated service on customer billings. Qwest therefore claims that this Commission lacks any jurisdiction over the charges. We do not necessarily agree that the service is an unregulated service. Whether it is an unregulated service or not is not dispositive, however. The Commission has the authority to determine what can and cannot appear on a customer's utility bill, regardless of whether the charges are regulated or not. Qwest's assertion that this Commission has no jurisdiction over these charges is incorrect.

Qwest's second argument for dismissal is its claim that it is undisputed that Qwest provided the Trouble Isolation service, billed Complainant in accordance with its Exchange and Network Services Catalog, and therefore there is no valid dispute. That is a factual issue. Complainant responded to these allegations by stating that the day after his complaint to Qwest his dial tone was restored, nothing was done during that time to the inside wiring, and he has had no trouble since. Complainant also made the assertion in his original complaint that because he was partially delinquent in paying his bill at the time, Qwest may have erroneously shut off service causing the lack of dial tone. Such factual issues cannot be resolved in the context of a motion to dismiss.

Because factual issues exist, the motion to dismiss would normally be denied and a hearing scheduled. However, paragraph (5) of Complainant's response states:

As far as complainant is concerned, the Commission can grant respondent's Motion to Dismiss. Complainant has no intentions of remitting \$90.61 to respondent, unless ordered by Judicial Court of Competent Jurisdiction. Plain and simple, if respondent wants payment of \$90.61 then respondent needs to file a Small Claims action, of which complainant will present as a defense paragraph 2 of this response.

In reading Complainant's response it appears that this statement was made based upon the belief that this Commission does not have jurisdiction. As stated above, we do not agree with that assertion by Qwest. Yet, the response indicates acquiescence to dismissal. Given the determination above that this Commission does have jurisdiction to at least determine if the disputed charge can properly appear on Complainant's bill, it seems appropriate to allow Complainant to continue to pursue this complaint if he so desires. Accordingly the order will provide that if Complainant wishes to pursue this complaint, he may within 30 days of this order so notify the Commission, and a hearing will then be scheduled. If Complainant does not so notify the Commission within 30 days, his Complaint will be dismissed and this matter closed.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that if Complainant wishes to proceed with his Complaint in this matter, he shall notify the Commission within 30 days of the date of this Order, and a hearing will then be set. If Complainant does not so notify the Commission, this matter will be dismissed.

Dated at Salt Lake City, Utah, this 11th day of September, 2002.

/s/ Douglas C. Tingey
Administrative Law Judge

Approved and Confirmed this 11th day of September, 2002, 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#30820