

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Complaint of)	
LISA BARKER,)	
Complainant,)	
)	
vs.)	
)	
Qwest Corporation,)	
Respondent.)	

DOCKET NO. 02-049-46

REPORT AND ORDER

ISSUED: October 4, 2002

By the Commission:

Complainant filed the formal complaint in this matter on May 21, 2002. Qwest responded on June 20, 2002, with an Answer and Motion to Dismiss. The Division of Public Utilities filed a memorandum with its recommendations on September 11, 2002. Customer complaints being designated informal proceedings under Commission rules, and there appearing to be no disputed factual issue necessary to the resolution of this matter, we deem it ripe for disposition without hearing or submission of further evidence. 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. Complainant alleges, and for purposes of deciding Respondent's motion to dismiss, we find that:
 - A. From January through October 1998, Complainant had telephone service at an apartment on 1st Avenue in Salt Lake City. Her telephone line was somehow connected to or crossed with the telephone line for another apartment in the same building.
 - B. Complainant paid bills containing charges for services including 900 calls and long distance that should not have been billed to her, but rather should have been billed to the line in the other apartment. Complainant seeks a refund of those charges that should have been billed to the other customer.
3. Complainant made an informal complaint with the Division of Public Utilities on August 21, 2001, and filed a formal complaint with this Commission on May 21, 2002.
4. In its answer, Respondent asserts:
 - A. Complainant was billed for only one 900 call and that charge was later adjusted off her bill. Respondent also denies any improper billing of for long distance services.
 - B. Complainant did not request any repairs or otherwise complain to Qwest about the alleged problems with her service at the 1st Avenue address.

C. According to Qwest's records, none of Complainant's bills contained charges for service for the line in the other apartment.

5. Respondent also states several affirmative defenses, including application of *Utah Code Ann.* § 54-7-20(2) requiring complaints concerning charges to be filed with the Commission within two years from the time the charge was made.

DISCUSSION

The Commission's power is limited to and must be consistent with the governing statutes. *Utah Code Ann.* § 54-7-20(2) states in relevant part:

All complaints concerning unjust, unreasonable or discriminatory charges shall be filed with the commission within one year, and those concerning charges in excess of the schedules, rates and tariffs on file with the commission shall be filed with the commission within two years, from the time such charge was made.

For purposes of deciding Respondent's motion to dismiss, we consider the factual allegations contained in the complaint and answer in the light most favorable to Complainant. However, even giving all of the allegations such consideration, the conclusion must be reached that the Complaint was not filed within the time required by statute. The charges complained of occurred well over two years ago. We are unable to proceed further.

CONCLUSIONS OF LAW

Complainant has failed to allege facts which would entitle her to relief under Utah Code Annotated § 54-7-20(2). Respondent's motion to dismiss should be granted, and the complaint should be dismissed.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The motion of QWEST CORPORATION, to dismiss the complaint of LISA BARKER is granted, and this matter is dismissed.
2. If any party wishes to proceed further, that party 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 4th day of October, 2002.

/s/ Douglas C. Tingey
Administrative Law Judge

Approved and Confirmed this 4th day of October, 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