

In the Matter of the Formal Complaint)
of Everett Peck vs. Qwest)
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)

DOCKET NO. 05-049-74
REPORT AND ORDER

ISSUED: October 24, 2005

SYNOPSIS

Complainant having failed to demonstrate that Qwest Corporation violated any provision of statute, rule, or tariff, we dismiss.

By The Commission:

PROCEDURAL HISTORY

On June 6, 2005, Complainant Everett Peck filed a formal complaint seeking resolution of service quality problems with Respondent Qwest Corporation's ("Qwest") One Number Service. On June 20, 2005, the Division of Public Utilities ("Division") sent Complainant a letter advising that he should pay the undisputed portions of his Qwest bills for regulated telephone services in accordance with Commission rule. On July 5, 2005, Respondent filed its Answer, Motion to Dismiss and Motion for Permission to Discontinue Service claiming Complainant had not alleged any Qwest violation of tariff, rule, or statute. On July 13, 2005, the Division recommended dismissal based on its determination that One Number Service is not a regulated service and its conclusion that Qwest had violated no tariff, rule or statute.

On October 14, 2005, hearing was held before the Commission's Administrative Law Judge. At hearing, Complainant represented himself and provided sworn testimony. Qwest was represented by Robert Brown. Laura Scholl and Becky Demartini-Allen testified for Qwest. Paul Mecham testified on behalf of Complainant.

BACKGROUND, DISCUSSION, AND FINDINGS

A. Background

Qwest One Number Service is a complimentary service, when selected at time of wireless sign-up, that permits customers to have a single telephone number for both their residential Qwest land line and Qwest wireless telephones. Calls placed to the customer's number ring first to the wireless telephone and, if unanswered, then to the customer's home phone. If the call remains unanswered, it is forwarded to the customer's voice mail box. According to Qwest, this process can take approximately 12 to 14 rings before a caller reaches the customer's voice mail box. Customers retain the ability to turn One Number Service on and off by dialing a sequence of numbers from their telephone. When turned off, calls ring to the home phone only.

Complainant has been a Qwest wireless customer since 1999 and has used Qwest One Number Service since that time. Mr. Peck uses both his land line and wireless number for his business and relies on One Number Service to forward customer calls between his wireless and home phones to lessen the number of missed customer calls. He first complained about One Number Service in 2003, believing that it took too many unanswered rings for a caller to reach his voice mail. Complainant also noticed at that time that prior to a call being transferred to his voice mail, and while the phone was still ringing, Qwest would insert a message asking the caller if, for a fee, the caller would like Qwest to leave a message for the person being called. Complainant believed that Qwest's insertion of this unsolicited request (hereinafter referred to as the "I called" message") added unnecessary delay to callers waiting to access his voice mail. As a result of his complaint to Qwest in 2003, Complainant says the "I called" message was

removed from his One Number Service, the wait time for a caller to reach his voice mail was reduced by a few rings, and he considered the problems with his service solved.

Complainant first noticed the most recent problems with his One Number Service in March 2005 when someone who had attempted to telephone him told him that it took a great number of rings (somewhere between 15 and 18, according to Mr. Peck) to reach his voice mail and that the caller first had to listen to Qwest's "I called" message. Mr. Peck's own test of his service confirmed that it took this many rings to reach his voice mail. Mr. Peck has spent many hours dealing with Qwest customer service representatives and technicians, both on the phone and in person, in an attempt to solve this perceived problem.

The root of Mr. Peck's complaint is that Qwest should not solicit callers with the "I called" message offer while their calls are being routed via the One Message Service. He feels that removal of the "I called" message would go a long way toward solving his complaint that callers have to endure too many unanswered rings before reaching his voice mail. Due to his claimed problems with the One Number Service, Complainant has refused to make any payments to Qwest, for either land line or wireless service, since approximately March 2005. He views his land line and wireless telephone accounts as one account and therefore believes he should not have to pay any of his bill for any period during which his One Number Service has not been satisfactory.

Qwest views One Number Service as a complimentary wireless feature not subject to Commission regulation and seeks dismissal of this complaint for lack of jurisdiction. In support of its position, Qwest points to the fact that One Number Service is listed on Qwest's internet site as a wireless feature.

In refuting Complainant's service quality allegations, Qwest notes that both of Mr. Peck's complaints about his One Number Service appear to have been triggered by his receipt of payment demand letters from Qwest for overdue balances on his account. In other words, Qwest counters Mr. Peck's refusal to pay his billed based on his claimed dissatisfaction with One Number Service by noting that Mr. Peck was past due on his bill even before his most recent complaint and that he only complained upon receiving Qwest's past due notice.

Qwest argues that, since One Number Service is free, Complainant is not entitled to any billing credit or refund related to One Number Service. Qwest also points out that in its continuing efforts to satisfy Mr. Peck's concerns Qwest has credited his account approximately \$1,600 since February 2001 even though Qwest's own investigation has consistently failed to uncover any problem with his One Number Service. Qwest notes that if Complainant was unhappy with the One Number Service feature, he could have easily turned the feature off, and that at all relevant times his land line and wireless phone service was otherwise working properly. Finally, Qwest argues Complainant is in violation of Commission rules since he has failed during the pendency of his complaint to pay the undisputed portion of his bill.

Qwest also notes that the "I called" message feature is a feature of the calling party's telephone service, not Mr. Peck's land line service nor his wireless One Number Service. Therefore, if the calling party's service has the "I called" message feature enabled, the calling party will be offered this service while waiting to be transferred to Complainant's voice mail; nothing can be done to Complainant's One Number Service to avoid this. Qwest is not certain what was done in 2003 to satisfy Complainant's concerns with One Number Service, but claims its current network configuration does not allow Qwest to reduce the number of rings necessary before callers reach Complainant's voice mail box.

In May 2005, Qwest terminated Complainant's wireless service for nonpayment. Complainant later terminated his Qwest land line service while his complaint to the Commission was pending. At the time of filing of his complaint, Mr. Peck's balance due to Qwest was approximately \$500.00. Qwest subsequently applied Complainant's security deposit to this balance, resulting in Mr. Peck currently owing Qwest approximately \$123.00 for each of his land line and wireless services.

B. Discussion and Findings

The threshold issue in this matter is whether, as Qwest argues, One Number Service is a wireless feature not subject to Commission jurisdiction. In support of its position, Qwest points out that this feature is not listed on any Qwest land line service tariff or price list, but that it is listed on Qwest's own internet website as a wireless feature available to Qwest wireless customers. Complainant, on the other hand, argues that One Number Service is a regulated service because it is only available to Qwest wireless customers who also have Qwest land line residential service and it will not work unless a land line telephone is involved.

The parties agree that One Number Service cannot function if a customer does not subscribe to both Qwest land line and wireless service. Given that One Number Service is not available without Qwest residential service and that One Number Service transfers calls to the customer's land line telephone, we conclude there is a sufficient nexus between a customer's land line service and the One Number Service feature to support our exercise of jurisdiction over this complaint.

However, on the facts presented, we cannot find that the number of rings necessary for callers to reach Complainant's voice mail differed significantly from the number of rings typically required for One Number Service. Nor do we find insertion of the "I called"

message to be a violation of Qwest's obligations to Complainant since this message is triggered as a feature of the caller's telephone plan, not Complainant's land line or wireless plan. We are therefore unable to conclude that Qwest's provision of One Number Service in this matter violated any applicable customer service quality standards, rule, tariff, or statute.

Wherefore, based upon the foregoing information, and for good cause appearing, the Administrative Law Judge enters the following proposed

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. The complaint of EVERETT PECK against QWEST is dismissed.
2. Pursuant to *Utah Code Annotated* §§ 63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of *Utah Code Annotated* §§ 63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 24th day of October, 2005.

/s/ Steven F. Goodwill
Administrative Law Judge

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Approved and Confirmed this 24th day of October, 2005, as the Report and
Order of the Public Service Commission of Utah.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

G#46202