

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Formal Complaint of )  
Dimas Rodarte against Qwest Corporation ) DOCKET NO. 09-049-42  
) REPORT AND ORDER  
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ISSUED: August 31, 2009

By The Commission:

This matter is before the Commission on Dimas Rodarte's formal complaint against Qwest Corporation (Qwest) for charging early termination fees (ETF) for his termination of his internet and wireless phone services.

Mr. Rodarte ordered Qwest broadband and wireless service, through Global Satellite, LLC, and allegedly entered into a 24 month commitment to receive wireless phone and internet service. His outstanding balance is \$1,344.94, which includes ETFs, unpaid monthly amounts owing for wireless service, long-distance charges and broadband service which have remained unpaid for over a year. He claims he was charged more each month than the price he was quoted by a salesman. Apparently, however, he exceeded his minutes allowance in at least one month and was charged for that, and was charged for the modem and installation charges. Qwest later manually credited some amounts to Mr. Rodarte's account. When he cancelled his wireless phones and internet, he faced an ETF of \$200 for each of the wireless phone lines and for the internet, totalling \$600 in ETFs.

The Division of Public Utilities (Division) submitted its recommendation requesting a hearing. The Division stated that "this is a billing issue concerning a bundled service package that includes home phone services. It felt that "there were inconsistencies

between what Mr. Rodarte was told and what he is actually being billed, therefore we recommend the PSC schedule a hearing.” It requested a hearing for further clarification.

Qwest moved for dismissal of the Complaint. Qwest contended that Mr. Rodarte seeks relief for services, i.e. internet and wireless, that the Commission does not regulate and for which it cannot grant relief. It points to Utah Code § 54-8b-9 and section 54-2-1(25)(b)(i) to argue wireless services are excluded from the definition of telephone corporation. It further argues that internet services are interstate services regulated by the Federal Communications Commission (FCC) and not by the Utah Commission or any other state commission. Therefore, it argues there is no basis upon which the Commission may consider the complaint.

It also filed a reply to the Division’s recommendation. It pointed out that the Division did not dispute that the Commission does not have jurisdiction to regulate Mr. Rodarte’s internet service or wireless service. It again pointed to federal and state law in arguing that broadband and wireless services were not regulated by the Commission. It also disputed that this was about a billing issue, as the underlying service involved non-regulated services. It argued that if the Division’s position were accepted, the Commission could exercise jurisdiction in many internet and broadband service disputes when those complaints involved disputed questions of fact or billing disputes, something which would gut existing state and federal laws. It again asked to dismiss the Complaint.

**ORDER**

The Commission has reviewed the Division’s recommendation and Qwest’s Motion and reply. The basis of Mr. Rodarte’s complaint stems from his internet and wireless

service. The Commission does not have jurisdiction over the internet service for which he seeks relief. As noted by Qwest, “wireline broadband services [are] ‘information services’ and not ‘telecommunications services’ and [are] under the FCC’s jurisdiction.” *See Report and Order and Notice of Proposed Rulemaking*, Federal Communications Commission, CC Docket 02-33, 01-337, 95-20, 98-10, WC Docket 04-242, 05-271, 05-150A1. As also noted by Qwest, state statutes exempt internet services from the definition of “telephone corporation.” *See Utah Code § 54-2-1(25)(b)(i)*. Additionally, the Commission does not have jurisdiction over wireless services in this matter pursuant to Section 54-8b-9 and 54-2-1(25)(b)(i). The Commission does not have jurisdiction over the matter and must dismiss the Complaint. If Mr. Rodarte believes his issue involves a matter of consumer protection, he may contact the Utah Division of Consumer Protection by filing a complaint online at [www.consumerprotection.utah.gov](http://www.consumerprotection.utah.gov) or by calling 1-800-721-7233.

Pursuant to Sections 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this Order by filing a written request with the Commission within 30 days after the issuance of this 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 does not grant a request for review or rehearing within 20 days after the filing of the request, 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

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requirements of Sections 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 31<sup>st</sup> day of August, 2009.

/s/ Ruben H. Arredondo  
Administrative Law Judge

Approved and confirmed this 31<sup>st</sup> day of August, 2009, as the Report and Order of the Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary  
G#63359