

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal Complaint of)
Tamara Houser against Qwest Corporation)

DOCKET NO. 09-049-41

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REPORT AND ORDER

ISSUED: August 31, 2009

By The Commission:

This matter is before the Commission on the formal complaint of Tamara Houser against Qwest Corporation for an early termination fee (ETF) charged when Ms. Houser ended her internet service.

Ms. Houser had a bundled service package including both phone and internet service. This complaint concerns only her internet. When Ms. Houser's internet service was mistakenly disconnected, she called Qwest to complain about the disconnection and asked they restore it. Qwest agreed to reconnect the internet service but stated it "would be several days before they could get someone to reconnect [her] internet." Before Qwest restored her service, Ms. Houser decided to cancel her internet. Her next bill contained an ETF of \$200, for terminating service before the end of her two-year term. She claims she did not know she was subject to a two-way commitment. She complains about the charge of the ETF and asks that we disallow its recovery.

The Division of Public Utilities (Division) filed a recommendation recommending the Commission schedule a hearing on the matter. The Division specifically commented that Qwest had not complied with Utah Code 54-4-37(4)(c) which states, "A public utility shall ensure that its account holders receive: a clear, concise description of services or merchandise being billed." The Division further states that it did not believe Qwest provided sufficient

evidence the customer agreed to the terms of internet service leading to an ETF. It requested a hearing for further clarification.

Qwest moved to dismiss the Complaint. Qwest contended that Ms. Houser seeks relief for services that the Commission does not regulate and for which it cannot grant relief. It argues that internet services are interstate services regulated by the Federal Communications Commission (FCC) and not by the Utah Commission. Alternatively, it also provided evidence it claimed established that Ms. Houser did agree to the terms of the internet service leading to the ETF.

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 Ms. Houser's internet service. It again pointed to federal and state law in arguing that internet and broadband services were not regulated by the Commission. It also disputed that this was about a billing issue, as the underlying service involved a non-regulated service. It argued that if the Division's position were accepted, the Commission could exercise jurisdiction in many internet service disputes when those complaints involved billing disputes or could be characterized as such. It also contended that the ETF was not about a service or merchandise, but about a contractual term in an agreement. Finally, Qwest notes that Ms. Houser did not complain about not receiving a bill with clear and concise description of the services or merchandise billed, but simply did not want to pay the ETF. 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 Ms. Houser's complaint stems from her internet service. The

Commission does not have jurisdiction over the internet service for which she 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, our state statutes exempt internet services from the definition of “telephone corporation.” *See Utah Code § 54-2-1(25)(b)(i)*. The Commission does not have jurisdiction over the matter and must dismiss the Complaint. If Ms. Houser believes her issue involves a matter of consumer protection, she may contact the Utah Division of Consumer Protection by filing a complaint online at 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 requirements of Sections 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.

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DATED at Salt Lake City, Utah, this 31st day of August, 2009.

/s/ Ruben H. Arredondo
Administrative Law Judge

Approved and confirmed this 31st 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#63360