

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal Complaint of)
Tower Tolleson against Qwest)
Communications)
)

DOCKET NO. 09-049-48
REPORT AND ORDER

ISSUED: September 29, 2009

By The Commission:

This matter is before the Commission on Tower Tolleson’s formal complaint against Qwest Communications, Inc. On July 30, 2009, Mr. Tolleson filed his formal complaint against Qwest. He claims a Qwest representative quoted him a price of \$116.24 per month— inclusive of fees, taxes and surcharges, for local phone service, long distance service, high-speed internet, DirectTV, wireless service, and other services. Since December 2007 and through August 2008, his bills have been higher than the \$116.24 amount he claims he was quoted. Mr. Tolleson generally complains of the higher-than-expected bills. It is not clear that Mr. Tolleson complains about the phone service or related prices, just generally about the entire price of the bundled package, which includes unregulated service, i.e. internet, wireless, and DirectTV. Mr. Tolleson also complains that Qwest has failed to help him cut costs after he lost his job. He requests that he be

paid all monetary losses of all misrepresentations and billing of the verbal contract of \$116.24 per month along with fines levied and proper punishment by the local and federal communications bureaus be issued to this company for its misappropriations

Tolleson Complaint, p.2.

Mr. Tolleson’s complaint is not the clearest, in that it does not specifically state which service he feels resulted in the higher prices, or even how Qwest violated any laws or

tariffs with respect to those services. Although on the one hand he claims there was no contract, he admits he entered into a contract with Qwest whereby Qwest would provide “phone, local, long distance, internet, net work backer, advanced modem, [DirectTV]- 3 rooms, HD/DVR in living room with all sports channels and premium package channels all total would only cost \$116.24.” A review of his statements shows his primary complaint stems from charges related to unregulated services, i.e. DirectTV, wireless, and internet. He first complains that Qwest charged him for sports channels he did not order. *Tolleson Complaint*, p.1 (“I told her that I did not watch sports and did not need those sports channels.”). He then complains that the internet/DSL charges were resulting in a higher overall bill or were not the type of DSL service he expected. *See id.* (“I talked with Mary Ellen December 16th of 2008 Qwest billing me \$84.83 for internet and 9.99 network backer and complained about the costs that they lied.”; on “June 10th 2009 I spoke to Merry Gavrella a Qwest executive [about the DSL]; “I was quoted 31.99 for 7GB DSL in my bundled service when it was really 7 mbps.”). He finally complains that the addition of his Verizon wireless service did not reduce his overall bill (“Then in December we added our Verizon Mobile Phone bill to the Qwest Bundle looking for some kind of relief of the cost of these bills.”) *See id.* He does complain that he was charged for long distance charges, but only because he was charged by companies who were not Qwest, not that he should not have been charged for the calls he made. *See id.* at p.1.

Ultimately, the Commission cannot grant the relief Mr. Tolleson seeks. If by stating he be “paid all monetary losses of all misrepresentations and billing” he means he desires money damages for some kind of alleged breach of contract or tortious conduct, the Commission does not have power to grant that. *See Utah Code Ann. § 54-7-20; see also McCune v. Mountain*

Bell Tel., 758 P.2d 914 (Utah 1988) (holding that the “district court, not the Commission, . . . has jurisdiction to consider claims for . . . torts committed by a public utility.”)

Additionally, the Commission cannot grant any relief related to the satellite television charges, as it has no jurisdiction over the claims as stated by Mr. Tolleson. Neither does the Commission have jurisdiction over the claims as stated by Mr. Tolleson in relation to internet and wireless charges. 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)*. 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).

However, even if the Commission were able to assert jurisdiction over Mr. Tolleson’s claims, it is not clear what relief he seeks, or that the company has not already tried to satisfy his complaints. In fact, Qwest’s own evidence, as well as *Mr. Tolleson’s own admissions*, shows Qwest tried to satisfy Mr. Tolleson’s complaints, with Qwest even offering concessions it likely had no obligation to offer.

Mr. Tolleson admits he had a contract with Qwest and had an obligation to pay for services he used. Obviously, there is a dispute about the price he was to pay. But the evidence presented by Qwest reconciles some of the possible discrepancy about price. The evidence submitted by Qwest, i.e. copies of Mr. Tolleson’s bills, show charges on varied bills for

local taxes, fees and surcharges, long distance charges, directory assistance charges, three extra receivers, HD access for DirectTV, pay-per-view charges, etc. Qwest also stated that Mr. Tolleson failed to apply for the DirectTV rebate offer in a timely manner, which would have further reduced his monthly bill by \$15 for a period of twelve months.

Mr. Tolleson complains that he was charged for the NFL Sunday ticket package which he did not order. However, Qwest responded, and his bills show, that he was either credited for the charge, or the charge was removed. (One bill shows a line where the NFL Sunday Ticket appears, but the charge shows up as \$0).

Mr. Tolleson also complains that Qwest did not help him cut his bills when he lost his job, and when he called them in June 2009, about 1 ½ years after he began his service. In his first attempt to get them to reduce the price, Qwest changed some services in order to cut prices. However, when the changes were made, it would have resulted in somewhat higher prices because the lack of services “bundling”—which reduces a customer’s bill incrementally each time he/she adds a service. When Qwest realized the increase, and in an effort to resolve Mr. Tolleson’s complaints, according to Mr. Tolleson’s own statement, Qwest offered to 1) “change [his] service back” to what he had before he made the changes *and* offered “six months offer of free DSL”, *Tolleson Complaint*, p.2., and then offered to 2) “give [him] six months free DSL and [he could] terminate the contract in December *without penalty fees*, or [he could] terminate the contract now *without the penalty of \$200.*” *Tolleson Complaint*, p. 2. In response to Qwest’s offer, Mr. Tolleson was apparently angered that they attempted to resolve his complaints “by waiving or canceling fees and trying to giveaway some services”, *Tolleson Complaint*, p.2, and that Qwest “made sure to give us *free* DSL services on [its] own without my consent or

knowledge” *Tolleson e-mail response to Qwest Motion to Dismiss*. Thus, even after offering to waive or cancel fees which Mr. Tolleson had an obligation to pay, and offering to give some of its services to Mr. Tolleson, he was not satisfied. It is not clear to the Commission, therefore, what relief Mr. Tolleson desires.

ORDER

Therefore, the Commission dismisses the formal complaint with prejudice.

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.

DATED at Salt Lake City, Utah, this 29th day of September, 2009.

/s/ Ruben H. Arredondo
Administrative Law Judge

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Approved and confirmed this 29th day of September, 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#63629