

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal Complaint of)
Utah Refractories Corporation against Qwest) DOCKET NO. 10-049-06
Corporation) ORDER OF DISMISSAL

ISSUED: August 16, 2010

By The Commission:

This matter is before the Commission on the formal complaint of Utah Refractories Corporation (Company) against Qwest Corporation (Qwest). In February 2010, the Company filed a formal complaint against Qwest for Qwest's assessment of \$2,100 in early termination fees (ETF).

At the end of 2009, the Company installed a new phone system and switched its service provider to Integra Telecom. The Company requested all seven of its lines be ported to Integra Telecom. Apparently, one of the lines, which connected to the gas house and used by Questar to take readings, was disconnected and had not been ported to Integra Telecom. When the Company called Qwest to request the line be ported, Qwest informed the Company that the line would only be ported upon the payment of the \$2,100 in ETFs (seven lines at \$300 each). The Company claims it never entered into a "verbal contract" that would impose the ETFs for termination of the contract with Qwest.

Qwest filed its Motion to Dismiss or, in the alternative, Motion for Summary Judgment to the formal complaint. Qwest stated that the Company entered into an agreement to maintain seven lines for a period of 36 months, under its Qwest Choice Business Prime Package. The agreement started on August 20, 2007 and ended August 20, 2010. In exchange for

maintaining service for the seven lines for 36 months, the Company received a 20% discount on each month's bill. Upon entering into the agreement, the Company received a "Welcome Letter" wherein the details of the agreement were reaffirmed, e.g. 20% monthly discount for each month of the 36-month agreement, notice of the ETF for each line terminated early, the notice of the termination date, etc. Additionally, the Company received monthly bills where the monthly discount was displayed, the disclosure of the ETF, and the end of the term being August 20, 2010.

Qwest stated that on November 19, 2009, the Company ported two lines to another provider. On December 28, 2009, the remaining five lines were disconnected at the Company's request. It was in December 2009, that the Company was notified of the \$2,100 ETFs.

Qwest argues the ETF is appropriate as they are permitted by law, Commission rules, and the price list—which is on file with the Commission. Qwest also argues the ETF and termination date was disclosed to the Company in its initial correspondence after the parties entered into the agreement, and also in each monthly bill. Each monthly bill notified the Company of the termination date, the ETF for each line, and also the discounts the Company was receiving each month.

Qwest argues that the Company received the benefit of its bargain, having received a 20% discount on each monthly bill for 28 months. Additionally, requiring Qwest to terminate the agreement without requiring the Company to pay the appropriate ETFs would

discriminate against other customers who were required to pay the ETF upon early termination. It requested the Commission dismiss the formal complaint.

The Division of Public Utilities (Division) filed its recommendation, recommending the Commission dismiss the formal complaint. The Division reviewed the informal and formal complaint and also the records submitted with Qwest's response. The Division agreed that the Company entered into an agreement with Qwest for the Qwest Choice Business package. The term of the contract began on August 10, 2007 and was slated to end August 20, 2010. The Division confirmed that the Company ported some of its lines to another provider on November 17, 2009 and the remainder of the lines being disconnected on December 28, 2009 at the request of the Company. The Division confirmed that the Company was sent a confirmation letter affirming the parties' agreement, expiration date, and notice of ETF in the case of early termination. The Company was notified that it would be assessed an ETF fee of \$300 per line that was cancelled early. The Division also confirmed that the Company was sent notice of the ETF and the agreement's expiration date with each monthly bill. The Division stated that Qwest did not violate any statute, Commission Rule, or price list. It recommended dismissal of the formal complaint.

The Commission finds that the parties entered into a valid agreement pursuant to the terms of Qwest's Choice Business package. That agreement required the Company to maintain service on each of its seven lines for a period of 36 months, in exchange for a monthly 20% discount. If the Company terminated the agreement early, i.e. before August 20, 2010, it would be subject to ETFs of \$300 per line, for a total of \$2,100. The Commission finds Qwest

properly assessed the ETFs and did not violate any statute, Commission Rule, or any terms of its price list.

ORDER

1. Therefore, the formal complaint of the Company is dismissed 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 16th day of August, 2010.

/s/ Ruben H. Arredondo
Administrative Law Judge

DOCKET NO. 10-049-06

- 5 -

Approved and confirmed this 16th day of August, 2010, as the Order of Dismissal
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#67677