

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| CALDWELL CHIROPRACTIC CENTER, |) | |
| |) | CASE NO. QWE-T-06-10 |
| COMPLAINANT, |) | |
| |) | |
| v. |) | |
| |) | |
| QWEST CORPORATION, |) | ORDER NO. 30129 |
| |) | |
| RESPONDENT. |) | |

On May 5, 2006, Caldwell Chiropractic Center (the "Center") filed a complaint with the Commission regarding a billing dispute with Qwest Corporation. After attempts to settle the dispute informally were unsuccessful, the Commission issued a Summons to Qwest on June 20, 2006. Qwest timely filed an Answer to the Complaint. On August 22, 2006, the Center filed supplemental information and Qwest submitted a letter in response on September 6, 2006. Neither party requested a hearing. After reviewing the Complaint and the materials submitted by both parties, the Commission issues this Order.

THE COMPLAINT

According to the Complaint, the Center has been a Qwest customer for more than 15 years. The Center has had two telephone numbers that it regularly uses: its primary line (459-4354) and its facsimile or fax line (459-9438). In May 2001, Dr. John Downey (the owner of the Center) contacted Qwest to discuss obtaining an Internet phone connection that would "allow my phone lines to be functional while receiving internet service." Complaint at 1. Following this discussion with the Qwest service representative, the Center used the fax line (459-9438) for its dial-up Internet service. The Center acknowledges in its Complaint that using the fax line to access the Internet "disabled the fax/phone [line] for the short times when the internet was in use." *Id.* What was allegedly not apparent to Dr. Downey at the time of his conversation with the Qwest service representative was that the service representative made a service order for a third line (454-7296), presumably to serve as the Internet telephone connection. According to Qwest, this third line was ordered on May 7, 2001 and "installed" on May 10, 2001. Qwest Answer at 2. The third line is the focus of this dispute.

In September or October 2005, Dr. Downey called Qwest to upgrade the Center's telephone service to digital subscriber line (DSL) service.¹ During that conversation, the Qwest service representative asked Dr. Downey if Qwest could be the assigned long-distance carrier on the third line that according to the representative, was a part of the Center's account. Dr. Downey maintains he had a complete lack of knowledge about the third line's existence. Dr. Downey asserts that this was the first time he learned that the third line was connected back in May 2001. Complaint at 1. Upon learning of this third line, Dr. Downey asked that it be disconnected.

In support of his Complaint Dr. Downey asserts that the third line was not connected to a separate telephone jack or separate Internet connection at the Center. Complaint at 1. According to the Complaint, if one were to call this third number, a caller would hear a ring but there was no device in the Center with which employees could hear it ring or answer the line. *Id.* Despite Qwest's claim that it sent the Center a "confirmation letter" after the line was installed, Dr. Downey maintains that the Center never received such a letter for this line. Moreover, he asserts that the Center did not receive any notice on its monthly billing statements that would disclose the presence of the third line. *Id.*

To resolve the dispute, Dr. Downey asked Qwest for a full credit or refund for the third line from October 2005 back to May 2001. Qwest provided a credit for one year of payments on the disputed line totaling \$598.17, but declined to provide a refund beyond September 2004.

QWEST'S ANSWER

Qwest asserts in its Answer that its business records reveal that an order for the third line was placed on May 7, 2001 and that notes indicate that Qwest was to contact "Lisa" at 459-4354 (the primary telephone number used by the Center) when the order was complete. Answer at 2. Qwest also insists that its business records made contemporaneously with the recorded events indicate that "John" called on May 10, 2001 to check on the order for an additional line and that service was installed on May 10, 2001. *Id.*

Qwest further asserts that its business practice is to send a confirmation letter to the customer when a new line is installed. *Id.* "This letter would have informed [the Center] of the

¹ DSL service allows a customer to use a single digital line to conduct voice communications and access the Internet at the same time – as opposed to one or the other with a conventional line.

additional line installation.” *Id.* However, due to the voluminous nature of its records, Qwest does not maintain copies of its confirmation letters sent to each customer.

Qwest also insists that its monthly telephone bills disclose “the number of lines in service as well as the amount charges for the services rendered.” *Id.* The Center’s bills show that it was billed for a “primary line and two additional lines.” Despite these monthly bills Qwest claims the Center never objected.

Qwest states that on September 13, 2005, the Center informed Qwest that it wanted the third line removed. *Id.* Additionally, Qwest states that in an effort to satisfy a customer, it provided a credit to the Center of 14 months of payments.² *Id.* at 2-3. Qwest requests that the Center’s request for further credits be denied and that the Complaint be dismissed.

SUPPLEMENTAL FILINGS

The Center supplemented its Complaint with copies of its monthly telephone bills for 2001, and six months of bills for each of 2003, 2004 and 2005. The telephone number for the disputed line does not appear on any of these bills.

Responding to Qwest’s argument that the total number of lines was disclosed on the bills, the Center states that the notations on the bill of “2 ADDL LINE-PRI BUS FLAT” and “1 PRIVATE BUSINESS LINE” do not clarify to the Center that it was being charged for three lines.

The Center further states that in May 2001, when it contacted Qwest about obtaining an Internet connection, it accessed the Internet over its fax line and not the third line. The Center believed that the extra charge on its monthly billing was for the Internet connection and not for another telephone line. Dr. Downey believed that the additional monthly charge “made my internet connection possible and [assumed] therefore the charge was legitimate.” Supplement at 1. It was not until he discovered that the charge was for an unused third line that he objected to the monthly charge. *Id.*

Qwest’s rebuttal letter states that it believed the bills supplied the Center supported its position for several reasons. Qwest notes that the February bills for 2003 and 2004 “itemize the

² There is an unexplained lapse of two months between the Center’s first request for disconnection and a subsequent request by the Center for the disconnection; hence, Qwest reimbursed for a year of payments and for the two months of payments made after the first request for disconnection.

existence of three lines.”³ Second, the Center’s June 2001 bill shows, under the heading of “SERVICE ADDITIONS AND CHARGES,” a \$52 fee for a service line connected on May 10, 2001, referring to the installation of the third line. The added service was one “ADDL LINE-PRI BUS FLAT.” Finally, starting in June 2004, “Qwest adopted a new billing format that itemized the number of lines being provided each month.” *Id.* Qwest maintains that the Center’s monthly bills from June 2004 onward show that the Center had three business lines on its account. Qwest asserts that its one-year’s credit is reasonable.

COMMISSION FINDINGS

The Commission believes that the parties have provided sufficient evidence for us to decide this matter. The Commission has jurisdiction to hear this dispute pursuant to *Idaho Code* §§ 61-302, 61-503, 61-641, and 61-642.

We turn first to the period of recovery. The Center’s Complaint seeks recovery of all payments made to Qwest for the third line from October 2005 to May 2001. Under Idaho law, the Commission has the authority to grant a reimbursement or credit to a utility customer not to exceed three years of payments prior to the dispute. *See Idaho Code* §§ 61-641 and 61-642. Thus, the Commission may only consider payments made by the Center to Qwest for the third line for three years, from October 2005 to October 2002.

Turning next to the underlying dispute, it is apparent to us that there was a miscommunication between Dr. Downey and the Qwest customer service representative in May 2001. As Dr. Downey explained in the Complaint, he wanted to “establish an internet phone connection that would allow [the Center’s] phone lines to be functional while receiving internet service.” Complaint at 1 (emphasis added). At that time, prior to the availability of DSL service, the surest way to accomplish this objective – access the Internet service without interfering with the functionality of the existing two lines – and maintain the Center’s existing dial-up service was to add a separate third line.⁴ Thus, the service representative apparently interpreted the Center’s inquiry as an order for a third line. Qwest installed the third line on May

³ Commission Telephone Customer Relations Rule 101 requires that Qwest annually provide the Center “a clear and concise written explanation of all the services for which the customer subscribes and the charges for those services.” IDAPA 31.41.02.101.

⁴ Dial-up Internet service acts as a telephone call made from your computer to the Internet service provider. The line will register as “busy” for the duration of the operator’s time accessing the Internet and preclude the use of that line for voice or fax communications. It is unknown whether DSL service was available to the Center in 2001 and it likely was not an option for the Qwest representative to recommend at that time.

10, 2001, the same day Qwest's business records indicate that "John" called to check on the order for the additional line.

We further find that the monthly telephone bills would put a reasonable person on notice that a new line was installed in May 2001. The June 2001 bill shows a \$52.00 installation charge for a "SERVICE LINE CONNECTED" on May 10, 2001, and an addition to the Center's local monthly service of "1 ADDL LINE-PRI BUS FLAT." These billing notations and the increased charges are sufficient to indicate that an additional private business line was added to the Center's local service package. It is also apparent that the Center had three business lines on the February 2003 and 2004 bills. The "itemized monthly service" sections on these bills show that the Center had three business lines:

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|---|------------------------|
| 2 | ADDL LINE-PRI BUS FLAT |
| 1 | PRIVATE BUSINESS LINE |

While these notations may not be immediately understood by a customer, they are sufficient to alert a customer to the need to inquire about the meaning of the charges.

The monthly bills beginning in June 2004 each indicate that the Center had three access lines. These bills also indicate in two separate places that there is a monthly local 911 fee of \$1.00 per access line, for a total 911 fee of \$3.00 per month. Although the Center was on notice that another line was added in May 2001 and could determine that thereafter the cost of its local monthly service increased substantially, the Center may not have objected because it thought it was receiving and paying for the requested service – access to the Internet.

Taken together, we find there were miscommunications and misunderstandings at the time the Center talked to Qwest about obtaining Internet access. However, there is substantial evidence that the Center could have and should have known that it was paying for a third telephone line. Qwest has already provided the Center with a reimbursement for one year. We find that no additional credit is required. The Commission concludes that the Complaint should be dismissed.

ORDER

IT IS HEREBY ORDERED that the Complaint of Caldwell Chiropractic Center is dismissed.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order. Within seven (7) days after any person has petitioned for

reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code §§ 61-626 and 62-619.*

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 22nd day of September 2006.



PAUL KJELLANDER, PRESIDENT

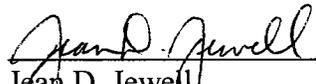


MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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