

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

CALDWELL CHIROPRACTIC CENTER,)	
)	CASE NO. QWE-T-06-10
COMPLAINANT,)	
)	
v.)	
)	
QWEST CORPORATION,)	ORDER NO. 30175
)	
RESPONDENT.)	

On September 22, 2006, the Commission issued Order No. 30129 dismissing a formal complaint by Caldwell Chiropractic Center (the "Center") against Qwest Corporation. The Center disputed charges by Qwest for a telephone line that the Center maintains it did not know about and that was not disclosed to the Center. On October 11, 2006, the Center filed a Petition for Reconsideration. Qwest filed a response to the Petition on October 20, 2006. After reviewing the Petition, the response, and the evidentiary record, we issue this Order denying the Petition for Reconsideration.

BACKGROUND

A. The Complaint

According to the Complaint, the Center has had two telephone numbers that it regularly uses: its primary line for voice communications and a second line for facsimile (or fax) line. 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. Dr. Downey stated he learned of the third line when the Qwest service representative asked him if Qwest could be the assigned long-distance carrier on the third line. Dr. Downey asserted 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.

Dr. Downey asserted that the third line was not connected to a separate telephone jack or separate Internet connection at the Center. Complaint at 1. Despite Qwest’s claim that it sent the Center a “confirmation letter” after the line was installed, Dr. Downey maintained that the Center never received such a letter for this line. He further asserted 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 insisted that, according to its standard business practice, it had sent a confirmation letter to the Center. Answer at 2. In addition, Qwest asserted 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 stated that the notations on the bill did not clarify to the Center that it was being charged for three lines. The Center also 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.*

B. The Prior Order

In Order No. 30129, the Commission found that Idaho law authorized the Commission to order reimbursement to the Center for only the three most recent years of

payment. See *Idaho Code* §§ 61-641 and 61-642. Order No. 30129 at 4. The Commission therefore only considered the payments from October 2002 to October 2005 to be subject to dispute. *Id.*

The Commission found that there was a miscommunication between the Center and Qwest. It dismissed the Center's Complaint, finding that there was substantial evidence that the Center could have and should have known that it was paying for a third telephone line. *Id.* at 5. The Commission found that the Center's bills would put a reasonable person on notice that a new line was installed in May 2001. In addition, reviewing the bills submitted by the Center, the billing statements in February 2003 and 2004 indicated the presence of three telephone lines. The monthly bills beginning in June 2004 each indicated that the Center had three access lines. These bills also indicated 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. While these notations may not be immediately understood by a customer, the Commission found that they are sufficient to alert a customer to the need to inquire about the meaning of the charges and resolve any misunderstanding between the parties.

THE PETITION FOR RECONSIDERATION

In its Petition, the Center requested the Commission to reconsider and withdraw its Order No. 30129 as it believes the Commission erred in framing the Center's dispute. Petition at 1. The Center stated that its dispute is "not a denial of the existence of a third line but the denial of the existence of additional service." *Id.* at 2. The Center stated that as Qwest did not make the third telephone line "functional," the Center should not be liable for the charges. The Center believes it was unfairly charged for the third line when it was able to receive Internet service (the service it originally desired) without that line. Further, the Center believes that a review of the bills would not reveal that it was being charged for the third line and that the billing statements were misleading for not including the actual telephone number on its bills. *Id.*

Qwest submitted a response to the Petition stating that the Petition did not comply with the Commission's Rules of Procedure. Response at 2. Qwest urged the Commission to deny the Petition. *Id.* at 3.

DISCUSSION AND FINDINGS

Reconsideration provides an opportunity for a party to bring to the Commission's attention any issue previously determined and provides the Commission with an opportunity to

rectify any mistake or omission. *Washington Water Power Company v. Kootenai Environmental Alliance*, 99 Idaho 875, 591 P.2d 122 (1979). In those instances where an aggrieved party asks the Commission to reconsider its decision based upon the record, the Commission may do so. IDAPA 31.01.01.331. In this instance, the Center has not introduced any additional evidence, but has presented a new argument.

It is clear to the Commission that there was a misunderstanding between the parties. The Center states that it thought that it was paying for Internet service, but it was actually paying for a third telephone line that it claims was never disclosed.

The Center maintains that the third line was never “functional” because it was not known or published. This is not the test for functionality, however. There are many telephone lines that are functional and never published (e.g., additional lines for a company that roll over from or to the primary line, or that are used solely as a voice-mail box). As the Center stated in its Complaint, when a person called the third line, “it would ring as a working number without answer.” Complaint at 1. Thus, the line was technically functional, even if not connected to a jack or other outlet.

The Center then states that a review of the bills would not have revealed the existence of the third line. Petition at 2. Although the billing statement may not be a model of clarity, we disagree. The Center submitted to the Commission a copy of its June 4, 2001 billing statement from Qwest, the statement that it received after contacting Qwest on May 10, 2001 regarding its need for an Internet connection. On that billing statement, there is a section entitled “Service Additions and Changes” that clearly shows: (1) a monthly service addition for an additional line, (2) that a service line was supposedly connected on May 10, 2001, and (3) a charge for the federal access charge for the connected line. Although the actual phone number of the line is not shown, we find that these charges and notations are sufficient to have put a customer on notice that a line had been connected and the customer was being charged for it. We find that the Center had ample opportunity to contact Qwest and inquire as to these charges and their purpose. Further, the billing statements sent in February 2002, 2003 and 2004 and each bill sent since June 2004 stated that there were three lines on the Center’s account. Even without the actual telephone number for the third line published on the billing statement, there was sufficient information in the statements to disclose a third line.

Last in the Petition, the Center queries whether it should have had the obligation to “make the line functional” in order to then cancel the line and avoid this dispute. *Id.* We do not find that the Center had an obligation to make the third line “functional” in order to cancel it. Although the Center’s frustration is understandable, this dispute is not about whether the line worked or was “functional.” Instead, this dispute is about whether the Center had sufficient information on its bills to know that it was paying for three lines. The Center did not dispute or question the charges on its bills for five years. This misunderstanding truly is unfortunate; however, customers have an obligation to review billing statements to ensure they are paying for the services they want and need, and to contact their service provider if they do not understand the billing statements. Qwest has provided the Center with a credit for one year of payments for the third line. Given the totality of the circumstances, we do not find a basis for ordering additional refunds.

Based upon our review of the Petition for Reconsideration and the record, we affirm the findings contained in our prior Order No. 30129.

ORDER

IT IS HEREBY ORDERED that the Petition for Reconsideration is denied.

THIS IS A FINAL ORDER DENYING RECONSIDERATION. Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this Case No. QWE-T-06-10 may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules. See *Idaho Code* §61-627.

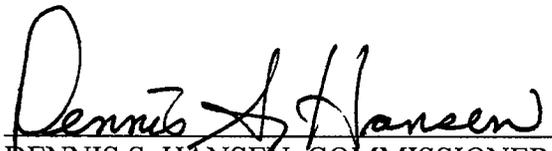
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 8th
day of November 2006.



PAUL KJELLANDER, PRESIDENT

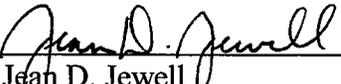


MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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