

## **DECISION MEMORANDUM**

**TO:           COMMISSIONER KEMPTON  
COMMISSIONER SMITH  
COMMISSIONER REDFORD  
COMMISSION SECRETARY  
WORKING FILE**

**FROM:       NANCY HYLTON  
DON HOWELL, DEPUTY ATTORNEY GENERAL**

**DATE:       MAY 11, 2010**

**RE:         FORMAL COMPLAINT OF BRIAN STUTZMAN, BUSINESS PHONE  
SPECIALISTS, INC., ON BEHALF OF GRACE JOINT SCHOOL  
DISTRICT NO. 148 AGAINST QWEST COMMUNICATIONS**

On May 6, 2010, the Commission received a “formal” complaint (Atch. A) from Brian Stutzman of Business Phone Specialists, Inc., (BPS) against Qwest Communications. Mr. Stutzman is acting on behalf of the Grace Joint School District No. 148 (District). The District claims that telephone equipment at Thatcher Elementary School was damaged by a power surge on the telephone line during the process of porting service from Paetec to Qwest. The District maintains that Qwest caused the damage and requests that Qwest pay \$1,500 to cover the cost of replacing Thatcher Elementary School’s telephone equipment. Atch. A. at 2. Qwest denies responsibility for the damage and has refused to pay the requested amount. The District and Mr. Stutzman are unsatisfied with the outcome of the informal procedures to resolve the complaint and have filed this formal complaint.

### **BACKGROUND**

The District and Mr. Stutzman claim that a “power surge” damaged telephone equipment at Thatcher Elementary during the process of porting telephone service from Paetec, its former service provider, to Qwest. Atch. A at 1. BPS was retained by the District to investigate and repair or replace the damaged equipment. Atch. A at 3. BPS determined the damaged equipment could not be repaired cost-effectively and subsequently replaced the equipment. Mr. Stutzman alleges the technician on site stated a power surge on the telephone

line caused the damage to the telephone system. BPS billed the District \$1,675, with \$1,500 of that amount constituting the damage claim against Qwest.

On December 7, 2009, the District submitted a claim, including the statement from BPS. Atch. B. On December 16, 2009, Joni L. Duran, Qwest Manager of Service Claims, sent a letter (Atch. C) to Dr. Brogan denying the claim and stating the basic phone lines used by the District (208-427-6346 and -0008) at the address (Thatcher Elementary) are not designed to, or capable of carrying the amount of amperage it would take to ruin a phone system. She went on to say that a Qwest technician, sent on November 5, 2009, was unable to locate any trouble in the Qwest facilities or any unusual amperage on the lines.

On December 23, 2009, the District sent a fax to the Qwest Service Claims department to request that the claim be submitted to a supervisor. Atch. D. According to Qwest, the claim was again denied.

On February 5, 2010, Brian Stutzman faxed a letter to Qwest asking for reconsideration of the claim. Atch. E. On February 18, 2010, Qwest sent another letter denying the claim. Atch. F. The letter cited Idaho Basic Local Exchange Tariff 2.4.1 (Atch. G) and asked that Mr. Stutzman provide any information he had establishing gross negligence or willful misconduct by Qwest.

On February 25, 2010, Mr. Stutzman faxed the vendor bill along with a copy of Qwest's February 18 letter (Atch. H) with a note in the margin that said "blowing up a phone system at cutover" and pointing to the circled words "gross negligence" in the letter. Qwest did not respond to Mr. Stutzman.

On March 23, 2010, Mr. Stutzman sent another letter (Atch. I) along with another copy of the BPS invoice to Qwest saying he had not received the anticipated check and requested that Ms. Duran call him.

On April 19, 2010, Mr. Stutzman went to Denver and hand-delivered yet another copy of the March 23, 2010, letter and invoice. On April 20, 2010, Ms. Duran left a voice message for Mr. Stutzman reiterating the claim was denied.

According to Qwest, on April 26, 2010, Mr. Stutzman left a message for Ms. Duran indicating he'd come to Denver again, if necessary. At that point, the matter was referred to Qwest's security department.

## THE COMPLAINT

Mr. Stutzman asserts that Qwest has not been responsive to his claims, sending form letters but not returning his calls. He insists the Commission had jurisdiction over this matter because the Company has acted with "gross negligence" referring to Qwest's Exchange and Network Service Catalog 2.4.1. The Company's Exchange and Network Services Catalog contains a liability limitation. In particular, Section 2.4.1A states:

NO LIABILITY SHALL ATTACH TO THE COMPANY FOR DAMAGES ARISING FROM ERRORS, MISTAKES, OMISSIONS, INTERRUPTIONS, OR DELAYS OF THE COMPANY . . . IN THE COURSE OF ESTABLISHING, FURNISHING, ARRANGING, MOVING, TERMINATING, OR CHANGING THE SERVICE OR FACILITIES . . . IN THE ABSENCE OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

(Capitals in original and underline added).

Mr. Stutzman also pointed out that the Commission's Telephone Customer Relations Rule 401.02 provides that parties may have a face-to-face meeting to resolve complaints. Rule 401.02 (emphasis added) states:

**Procedure on Review.** The Commission will process these requests as informal complaints pursuant to the Commission's Rules of Procedure, IDAPA 31.01.01.000 et seq. Telephone service shall not be terminated nor shall termination be threatened by notice or otherwise in connection with the subject matter of the complaint while the complaint is pending before the Commission so long as the customer continues to pay all amounts not in dispute, including current telephone bills. Upon request by any party, the parties and a representative of the Commission shall be required to meet and confer.

Staff indicated to Mr. Stutzman that although we could assist him with submission of a damage claim as part of the informal complaint process, Staff could not make a finding on the legitimacy of the claim or require the Company to pay damages for which it denied responsibility. Ultimately, Staff believes as set out below it is not within the Commission's jurisdiction to award damages. Staff recommended that he pursue his damage claim through the Small Claims Court.

## LEGAL ANALYSIS

In essence, BPS and the School District seek recovery of its damages for the alleged gross negligence of Qwest. *Idaho Code* § 62-616 provides that the Commission shall have the

authority to investigate and resolve telecommunication complaints which concern the quality and availability of local exchange service; or whether the price and conditions of service are in conformance with filed price lists; or whether the carrier acted in compliance with the Commission's Telephone Customer Relations Rules. See also *Idaho Code* § 62-622(5); IDAPA 31.41.01. However, the Commission is an agency of limited jurisdiction and may only exercise that authority delegated to it by the Legislature. *Washington Water Power v. Kootenai Environmental Alliance*, 99 Idaho 875, 591 P.2d 122 (1979). Since the Commission's inception in 1913, it has not been authorized to award damages. There is nothing in the Telecommunications Act that authorizes the Commission to award damages for the negligence of a telecommunications company. *Idaho Code* §§ 62-601 *et seq.* Although the Commission has authority to recover "civil penalties" from telephone corporations that violate statutes, orders or rules, civil penalties are not the same as damages. *Idaho Code* § 62-620. In particular, civil penalties are brought in the name of the State of Idaho and such penalties recovered by the State are paid into the General Fund. *Id.*

The inability of the Commission to award damages under Title 62 is similar to the prohibition in Title 61. More specifically, *Idaho Code* § 61-702 provides that "any corporation or person" injured by the conduct of a public utility may file an "action to recover such loss, damage or injury . . . in any court of competent jurisdiction. . . ." The Commission is not a judicial court.

Mr. Stutzman's reliance on Telephone Rule 401.02 is also misplaced. Rule 401.01 provides that the Commission "has authority to investigate and resolve complaints made by subscribers to telecommunication services that concern quality and availability of local exchange service, or whether price and conditions of service are in conformance with filed tariffs or price lists, deposit requirements for such services or disconnection of such service." IDAPA 31.41.01.401.01. Subsection 01 further provides that the Commission "may consider complaints regarding any telephone services over which the Commission has authority." *Id.* Subsection 02 pertains to "informal" complaints.

As noted above, the Commission does not have authority to award damages caused by the actions of a public utility. The award of damages rests with the courts of this State – not the Commission. Consequently, the Staff believes that the Commission cannot provide the requested relief in this complaint.

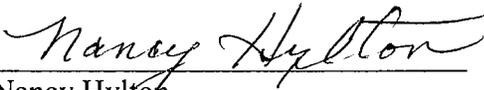
### STAFF RECOMMENDATION

The Grace Joint School District No. 148 and Mr. Stutzman are not satisfied with the outcome of the informal complaint. Consequently, this formal complaint was filed. *See* Rules 23, 24 and 54, IDAPA 31.01.01.023, .024 and .054.

Staff does not recommend the Commission accept or process the formal complaint because adjudication of a damage claim is not within its jurisdiction. Staff believes that the Commission may issue an Order denying the complaint for lack of subject matter jurisdiction.

### COMMISSION DECISION

What does the Commission wish to do about the Grace Joint School District No. 148's formal complaint? Does the Commission wish to issue a Summons to Qwest?

  
\_\_\_\_\_  
Nancy Hylton

  
\_\_\_\_\_  
Don Howell  
Deputy Attorney General

M:Grace School District\_nh\_dh

RECEIVED

2010 MAY -6 PM 1:18

IDAHO PUBLIC  
UTILITIES COMMISSION

May 5, 2010

Brian Stutzman  
Business Phone Specialists, Inc.  
Box 2376  
Idaho Falls, ID 83403-2376  
208-523-0006  
208-523-0009 fax  
brian@businessphonespecialists.com

ATTN: Commission Secretary  
Idaho Public Utilities Commission  
P O Box 83720  
Boise, ID 83720-0074

Fax 208-334-3762

Dear Commission Secretary,

I am seeking a formal complaint against Qwest Communications on behalf of Grace Joint School District 148, Gary Brogan Superintendent, Box 347, Grace, Idaho 83241. Attached is a letter from the district asking me to act on their behalf regarding this specific complaint.

In November 2009 Grace School District switched their local line service from Patec to Qwest. It was motivated by lower pricing from Qwest and the district's ability to save money.

At the time of the cut over, Qwest sent a one time spike or power surge down the line and ruined the school's phone system. My firm, Business Phone Specialists, was hired to investigate and repair or replace the school's phone system. Our technicians verified that the line port on the phone system was blown by a line surge, and determined, based on the day that it stopped working, that it happened when the cutover occurred. The date the injury to the school district's property was confirmed by the district employees as well.

We found that the Panasonic equipment was not cost effective to repair. The District was forced to buy a new phone system that normally retails for around \$4000 but was installed and billed at \$1675.00 (see enclosure).

Because this was an act of "gross negligence" by Qwest we immediately contacted them for a reimbursement to the school district. After we submitted our claim we were met with weeks of silence. Finally we got a form letter not addressing the specific facts in the case but rather a blanket rejection of responsibility. I called numerous times to Joni

Attachment A  
Decision Memorandum  
5/11/10 Page 1 of 4

Nancy  
(Copy also went  
to Ben)

Duran requesting a conference call or return calls and was met with silence. Weeks later another form letter came. Again, we requested return calls (she never answers her phone) and finally I made a trip to Denver to try to meet with her in Mid April. Finally she left an after hours message saying she would not investigate this case and it was closed and refused to discuss this with us. No discussions ever occurred, despite repeated written and oral requests from me.

The district has asked me to pursue other means and I contacted the IPUC. Nancy was extremely helpful but she too received the same form letter from Qwest. Qwest does not address the merits of the case so our next option is to ask you to open a formal complaint based upon the following:

1. It is clear that Qwest's damage to the school's phone equipment rose to the level of **Gross Negligence** under Southern Idaho Basic Local exchange Tariff 2.4.1.A
2. We feel that Qwest's refusal to talk with us, meet with us, and only mail a "form letter" after weeks of our requests violates IPUC rule 401 Part 02.

I am seeking that Qwest reimburse Grace School District # 148 the entire \$1675.00 for the phone system that was installed when Qwest broke the districts old equipment.

Again, the district has requested that I represent them on this matter so please direct all correspondences to me.

Thank you,

  
Brian Stutzman

Enclosure: Grace School District letter of authorization, bill for new equipment to replace equipment damaged by Qwest

ATTN IPUC  
Fax 208 334-4045

**GRACE JOINT SCHOOL DISTRICT NO. 148**

P.O. Box 347  
Grace, Idaho 83241

**Dr. Gary B. Brogan**  
Superintendent  
Ph: (208) 425-3984

**Billie Ann Straatman**  
Business Manager/Clerk  
Fax: (208)425-3809

April 27, 2010

Dear Brian Stutzman:

It seems you have had some difficulty trying to get Qwest to work with you on the issue created at our Thatcher Elementary School. I would like you to continue your efforts to recoup our costs by pursuing this issue with the Idaho Public Utilities Commission and or Qwest. You have a greater understanding of the process and therefore we would ask that you act on our behalf.

Sincerely,

  
Gary Brogan Ed.D.  
Superintendent

From: Brian Stutzman  
Business Phone Specialists  
966 Lincoln Road Suite F  
208 523 0006 U  
208 523 0009 F  
brian @ business phone specialists . com

Joni Duran

303 965-0101

**INVOICE**



**BPS**  
 BUSINESS PHONE SPECIALISTS  
 PO Box 2376  
 Idaho Falls, ID 83403  
 ID: 523-0006 WY: 733-8700

Thatcher 208-427-6346

DATE	INVOICE #
11/24/2009	52292

<b>BILL TO</b>
Thatcher Elementary PO Box 328 Grace, ID 83241

<b>SHIP TO</b>
Thatcher Elementary 6007 E. Thatcher Rd. Thatcher, ID 83283

P.O. NO.	TERMS	PAST DUE IF NOT RECEIVED BY	TECH	REP	
	Net 15	12/9/2009	Nate/Mike	Dean	
DESCRIPTION			QTY	RATE	AMOUNT
Equipment--11-10-09--PER BID 1-Partner ACS Control Unit (3x8) 4-Partner Speakerphone Sets 1-UPS  30 Days Parts and Labor Warranty  Complete Installation, Programming, and Training BPS to rejack as needed  Equipment is refurbished				1,200.00	1,200.00
Labor--PER BID				300.00	300.00
Fax Switch				175.00	175.00
<b>Total</b>					<b>\$1,675.00</b>

**PAYMENT POLICY:** A 1.5% finance charge (\$5.00 minimum) will be assessed on all accounts 7 days past due.

**GRACE JOINT SCHOOL DISTRICT NO. 148**

**P.O. Box 347  
Grace, Idaho 83241**

**Dr. Gary B. Brogan  
Superintendent  
Ph: (208) 425-3984**

**Bille Ann Straatman  
Business Manager/Clerk  
Fax: (208)425-3809**

December 7, 2009

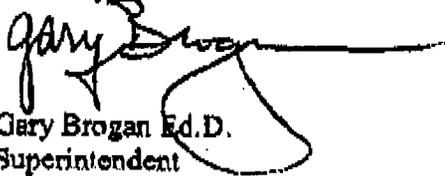
Qwest Claims Services  
Denver, CO

Dear Qwest Claims Services Representative:

On October 23, 2009 the Grace School District #148 switch providers from Pactec to Qwest. After that date it was determined that too much amperage was being sent down the line which caused issues with our phone system. More specifically it caused a line port to blow on our Panasonic Telephone System for phone number (208)427-0008. Since this system is no longer supported it caused us to purchase a new phone system. Enclosed find the bill for \$1500.00 for the cost of the new system. The fax switch listed on the invoice was not part of the original system.

Because of the damage caused by the high amperage we are requesting that Qwest pay for this replacement system. If you have further questions please feel free to give me a call.

Sincerely,



Gary Brogan Ed.D.  
Superintendent



**BUSINESS PHONE SPECIALISTS**  
**PO Box 2376**

**Idaho Falls, ID 83403**  
**ID: 523-0006 WY: 733-8700**

**INVOICE**

DATE	INVOICE
11/24/2009	52292

**BILL TO**

Thatcher Elementary  
 PO Box 328  
 Grace, ID 83241

**SHIP TO**

Thatcher Elementary  
 6007 E. Thatcher Rd.  
 Thatcher, ID 83283

P.O. NO.	TERMS	PAST DUE IF NOT RECEIVED BY	TECH	REP
	Net 15	12/9/2009	Nate/Mike	Dean
DESCRIPTION		QTY	RATE	AMOUNT
Equipment--11-10-09--PER BID				
1-Partner ACS Control Unit (3x8)			1,200.00	1,200.00
4-Partner Speakerphone Sets				
1-UPS				
30 Days Parts and Labor Warranty				
Complete Installation, Programming, and Training BPS to rejack as needed				
Equipment is refurbished				
Labor--PER BID			300.00	300.00
Fax Switch			175.00	175.00
<b>Total</b>				<b>\$1,675.00</b>

**PAYMENT POLICY:** A 1.5% finance charge (\$5.00 minimum) will be assessed on all accounts 7 days past due.

December 16, 2009

Dr. Gary Brogan  
Grace Joint School District 148  
PO Box 347  
Grace, ID 83241-0347

RE: Thatcher Elementary School  
208 427-6346

Dear Dr. Brogan:

This is in response to the claim you filed with our service claims office requesting reimbursement for the cost of a new phone system.

Qwest records show that lines at this address (208 427-6346 & 208 427-0008) are basic business lines. They aren't designed to, or capable of carrying the amount of amperage that it would take to ruin a phone system.

We show that we did send a technician out on November 5, 2009 and he couldn't find any trouble in the Qwest facilities, not was any unusual amperage detected on the lines.

Based on this information, your request for reimbursement of the Business Phone Specialists' invoice for \$1500.00 is denied.

Grace Joint School District 148 is a valued Qwest customer, and I regret any inconvenience that's occurred while resolving this matter and also that this isn't the resolution you were hoping for.

Sincerely,

Joni L. Duran, Manager  
Qwest Service Claims

Attachment C  
Decision Memorandum  
5/11/10

**GRACE JOINT SCHOOL DISTRICT NO. 148****P.O. Box 347  
Grace, Idaho 83241****Dr. Gary B. Brogan  
Superintendent  
Ph: (208) 425-3984****Billie Ann Straatman  
Business Manager/Clerk  
Fax: (208)425-3809**

December 22, 2009

Qwest Claims Services  
Denver, CO

Dear Qwest Claims Services Representative:

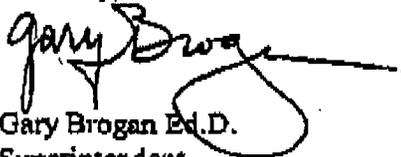
I received your letter of December 16 rejecting our claim. At this time we request you submit this to your supervisor for reconsideration. The fact is unaddressed that the damage to our phone system occurred at the time we ported our dial-tone service from Paetec to Qwest. We had been serviced by Paetec and were presented a money saving plan to switch to Qwest.

On the day of the cut over your Central Office must have sent down a surge of some type and knocked out a CO line port on our phone system. There was no problem with Paetec. It happened at the time of your cut. There is no other explanation. Our system went down when you cut us over to your system. Your technician was unable to turn down the amperage to an acceptable level of our telephone system when he came out.

To repair that system would have cost too much so we had Business Phone Specialists put a phone system in. All we are asking is for Qwest to stand behind the problem that was created by their cutover.

So far, switching over to Qwest to save money has been a very expensive proposition for our school district. The right thing seems to us, is for Qwest to cover this damage.

Sincerely,

Gary Brogan Ed.D.  
SuperintendentAttachment D  
Decision Memorandum  
5/11/10

# **FAX COVER SHEET**

**Date:** 2/5/10

**To:** Joni L Duran  
Qwest Service Claims  
800-366-2382

**From:** Brian Stutzman  
Business Phone Specialists  
966 Lincoln Suite F  
P.O. Box 2376  
Idaho Falls, ID 83403-2376  
208-523-0006 or 307-733-8700

**Fax:** [1] 208-523-0009

**Pages:** 3 including cover

---

**Subject:** Thatcher Elementary

Please call me to further discuss matters.





February 5, 2010

ATTN: Joni Duran, Manager  
Qwest Service Claims  
Denver, Co 80202

Dear Joni L Duran:

A few months ago Thatcher Elementary school in Thatcher, Idaho switched their dial tone from Paetec to Qwest. At the exact moment of the cut over the line port on their Panasonic office phone system blew. Because of product unavailability we had to install an Avaya Partner system. Because we had encouraged them to switch to Qwest we felt bad and discounted our system price considerably to \$1500.00. We told them to seek reimbursement from Qwest because the problem was created by a line surge at the time of cutover. They sent in a request and your firm initially denied it.

I don't think they made it clear that the problem occurred at the cut over due, in our experience, to a one time surge. The school district is awaiting payment so they can pay us, as their account is becoming past due.

I would be more than happy to discuss the particulars with you directly if needs be. We both are simply asking that because switching to your service appears to have caused this problem that Qwest stand behind the repair bill for damages created.

Thank you for your attention to this matter,

Brian Stutzman  
President  
Business Phone Specialists, Inc  
Box 2376  
Idaho Falls, ID 83403-2376

208-523-0006 Office

Attachment E  
Decision Memorandum  
5/11/10 Page 2 of 2

February 18, 2010

Brian Stutzman  
Business Phone Specialists, Inc.  
PO Box 2376  
Idaho Falls, ID 83403-2376

RE: Thatcher Elementary School 208 427-6346

Dear Mr. Stutzman:

In response to your request for compensation on behalf of Thatcher Elementary School for costs incurred due to service problems on telephone numbers 208 427-634 and 208 427-0008; this letter is to explain the tariffed limitation of liability governing claims against Qwest.

As a public utility, Qwest is required to file tariffs stating the rates and conditions under which it provides service with both the Federal Communications Commission (FCC) and the Idaho Public Utilities Commission. Once approved by the commissions, these tariffs become the terms of the contract for service between Qwest and its subscribers.

With regard to your request for compensation, the Southern Idaho Basic Local Exchange Tariff 2.4.1.A states: "No liability shall attach to the Company for damages arising from errors, mistakes, omissions, interruptions, or delays of the Company, its agents, servants or employees, in the course of establishing, furnishing, rearranging, moving terminating, or changing the service or facilities (including the obtaining or furnishing of information in respect thereof or with respect to the customers or users of the service or facilities) in the absence of gross negligence or willful misconduct."

In compliance with the tariff, the limitation of liability, as stated above, would apply. Should you have any information establishing gross negligence or willful misconduct by Qwest, please forward that information to me.

I trust that this information clarifies Qwest's position in denying this claim.

Sincerely,

Joni L. Duran, Manager  
Qwest Service Claims

Attachment F  
Decision Memorandum  
5/11/10

**Qwest Corporation**  
**Exchange and Network**  
**Services Catalog No. 1**

SECTION 2  
Page 39  
Release 1  
Effective: 8-1-2005

SOUTHERN IDAHO  
Issued: 7-1-2005

**2. GENERAL REGULATIONS - CONDITIONS OF OFFERING**

**2.3 PAYMENT FOR SERVICE (Cont'd)**

**2.3.5 PAYMENT PLANS**

Rates for service and facilities continue monthly and are payable as specified in 2.3.2., except as modified by the following:

**A. Installment Billing**

1. Installment billing except as otherwise provided in this document is provided, at no extra charge, to assist our customers in obtaining adequate and up-to-date telephone service.
2. Installment billing provides for billing one time charges in monthly installments where a need for it is indicated. The monthly installments normally begin with the first bill rendered after completion of the arrangements between the Company and the customer.

**2.4 LIABILITY OF THE COMPANY**

**2.4.1 SERVICE LIABILITIES**

In view of the fact that the customer has exclusive control of his communications over the facilities furnished him by the Company, and of the other uses for which facilities may be furnished him by the Company, and because of unavailability of errors incident to the services and to the use of such facilities of the Company, the services and facilities furnished by the Company are subject to the following terms, conditions and limitations.

**A. Limitations**

NO LIABILITY SHALL ATTACH TO THE COMPANY FOR DAMAGES ARISING FROM ERRORS, MISTAKES, OMISSIONS, INTERRUPTIONS, OR DELAYS OF THE COMPANY, ITS AGENTS, SERVANTS OR EMPLOYEES, IN THE COURSE OF ESTABLISHING, FURNISHING, REARRANGING, MOVING, TERMINATING, OR CHANGING THE SERVICE OR FACILITIES (INCLUDING THE OBTAINING OR FURNISHING OF INFORMATION IN RESPECT THEREOF OR WITH RESPECT TO THE CUSTOMERS OR USERS OF THE SERVICE OR FACILITIES) IN THE ABSENCE OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

NOTICE  
THE INFORMATION CONTAINED IN THIS DOCUMENT IS SUBJECT TO CHANGE.

*2 pages*

*2/25/10*

**Customer Advocacy**

1801 California St, 4th Floor  
Denver, CO 80202

877 440 8959 toll free  
800 366 2382 toll free fax



February 18, 2010

Brian Stutzman  
Business Phone Specialists, Inc.  
PO Box 2376

Idaho Falls, ID 83403-2376  
*208 523-0006 V. 10.12*

RE: Thatcher Elementary School 208 427-6346

Dear Mr. Stutzman:

In response to your request for compensation on behalf of Thatcher Elementary School for costs incurred due to service problems on telephone numbers 208 427-634 and 208 427-0008; this letter is to explain the tariffed limitation of liability governing claims against Qwest.

As a public utility, Qwest is required to file tariffs stating the rates and conditions under which it provides service with both the Federal Communications Commission (FCC) and the Idaho Public Utilities Commission. Once approved by the commissions, these tariffs become the terms of the contract for service between Qwest and its subscribers.

With regard to your request for compensation, the Southern Idaho Basic Local Exchange Tariff 2.4.1.A states: "No liability shall attach to the Company for damages arising from errors, mistakes, omissions, interruptions, or delays of the Company, its agents, servants or employees, in the course of establishing, furnishing, rearranging, moving terminating, or changing the service or facilities (including the obtaining or furnishing of information in respect thereof or with respect to the customers or users of the service or facilities) in the absence of gross negligence or willful misconduct."

*Blowing by phone system at cutover*

In compliance with the tariff, the limitation of liability, as stated above, would apply. Should you have any information establishing gross negligence or willful misconduct by Qwest, please forward that information to me.

I trust that this information clarifies Qwest's position in denying this claim.

Sincerely,

Joni L. Duran, Manager  
Qwest Service Claims

Attachment H  
Decision Memorandum  
5/11/10 Page 1 of 2

Joni Duran

303 965-0101

**INVOICE**



PO Box 2376  
Idaho Falls, ID 83403  
ID: 523-0006 WY: 733-8700

Thatcher 208-427-6346

DATE	INVOICE #
11/24/2009	52292

<b>BILL TO</b>
Thatcher Elementary PO Box 328 Grace, ID 83241

<b>SHIP TO</b>
Thatcher Elementary 6007 E. Thatcher Rd. Thatcher, ID 83283

P.O. NO.	TERMS	PAST DUE IF NOT RECEIVED BY	TECH	REP	
	Net 15	12/9/2009	Nate/Mike	Dean	
DESCRIPTION			QTY	RATE	AMOUNT
Equipment--11-10-09--PER BID 1-Partner ACS Control Unit (3x8) 4-Partner Speakerphone Sets 1-UPS  30 Days Parts and Labor Warranty  Complete Installation, Programming, and Training BPS to rejack as needed  Equipment is refurbished				1,200.00	1,200.00
Labor--PER BID				300.00	300.00
Fax Switch				175.00	175.00
			<b>Total</b>		<b>\$1,675.00</b>

**PAYMENT POLICY: A 1.5% finance charge (\$5.00 minimum) will be assessed on all accounts 7 days past due.**

Tuesday, March 23, 2010  
BPS  
966 Lincoln Suite F  
Idaho Falls, ID 83401



Joni Duram  
Qwest  
1801 California Street 4<sup>th</sup> Floor  
Denver, Colorado 80202

Dear Joni Duram

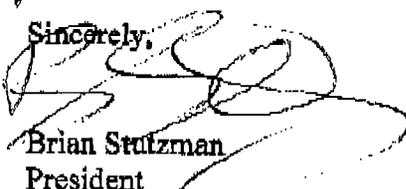
I have not received our anticipated check yet after my response on February 25, 2010 to your form letter of February 18, 2010 regarding Thatcher Elementary School 208-427-6346.

I would like to speak to you on this matter. Please call me at 208-523-0006 and ask for me via cell phone if I am not in.

To review, based upon our recommendation, Thatcher Elementary switched to Qwest Prime 36 from a local telco. They were excited to save some money and become your customer. At the moment of the cut over, there must have been a line surge or other gross negligence on your end that blew a port on their old phone system. A repair was not feasible nor cost effective and a new phone system had to be installed. We reduced our price from a high retail to an amount that covered our discounted costs. The invoice is enclosed.

Because GROSS NEGLIGENCE occurred we are seeking, on behalf of the customer, remuneration for the damages that occurred at the moment they switched to qwest. This account is so old it is heading toward collections. Please reimburse Thatcher or pay us directly right away.

Sincerely,



Brian Stutzman  
President

