

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UCB 27

WHILE AWAY BOOKS,)
)
 Complainant,)
)
 vs.)
)
 QWEST CORPORATION,)
)
 Defendant.)

ORDER

DISPOSITION: COMPLAINT DISMISSED WITH PREJUDICE

On June 23, 2005, While Away Books (Complainant) filed a formal complaint against Qwest Corporation (Qwest). Complainant alleges that Defendant breached an agreement regarding rates to be billed under a service agreement.

On July 1, 2005, Qwest filed a motion to dismiss the complaint. In the motion, Qwest refutes Complainant’s allegations and provides numerous exhibits to support the request to dismiss the complaint with prejudice. On July 26, 2005, Complainant filed a response opposing the motion.

For the reasons that follow, we find that Complainant has failed to state a claim for relief and that Qwest’s motion to dismiss should be granted.

Background

These facts are not disputed by the parties:

1. In October 2004, Complainant, in response to a solicitation offer, ordered a service package through Qwest’s Winback Business Customer Incentive Program. Complainant received Qwest’s standard’s welcome letter confirming the type of service ordered and explaining the conditions associated with the Winback program credits.

2. The terms of Qwest's Winback Business Customer Incentive Program is contained in Tariff; Advice No. 1996, Section 5.2.11, B. 2(d.). The program credits a business customer's first three months service on the condition that the business customer remains a Qwest customer for a minimum of one year.

3. Qwest billed Complainant for services provided for November and December of 2004, and January and February of 2005. The monthly rate for each month is listed as \$77.79 (including applicable tax/fees). On each statement, Qwest listed the applicable Winback Discount Credit.

4. Complainant did not contact Qwest after receiving Qwest's monthly statements for November, December, January and February to dispute the monthly rate or question the Winback Discount Credit.

5. On March 28, 2005 Complainant contacted Qwest and reviewed its recent account billing with a service representative. The following day, March 29, 2005, Qwest received a request to move Complainant's account to another telephone service provider.

6. On March 29, 2005, Qwest terminated Complainant's service and billed Complainant for all the prior credits given under Qwest's Winback program, per Tariff; Advice No. 1996, Section 5.2.11, B. 2(d.).

7. Complainant's final bill, dated May 13, 2005, seeks payment of the \$241.92 amount for the credits applied to Complainant's previous statements as part of the Winback program, as well as a \$1.49 long distance charge, for a total of \$243.41.

Discussion

In its complaint, Complainant asserts that Qwest breached a verbal commitment that his rates would not increase and contests Qwest's efforts to collect the amounts previously credited. It explains:

They told me that their rates were no more than my current rates. I resisted their offer for a while but finally told them I would change to their service under 1 condition. The condition was that their promised rates would stay the same. Within 3 months, their rates increased 15%. * * * I then went back to my normal vendor. They subsequently sent me an uncontracted termination fee bill that I refuse to pay!

Complaint at pg. 4 (June 23, 2005.)

Complainant's assertions, however, are not supported by the undisputed facts contained in Qwest's motion to dismiss. Contrary to Complainant's assertion, the monthly service charges listed in its monthly statements did not increase 15 percent, but

rather remained consistent at \$77.79 per month. The table below summarizes Complainant's statements for November 2004 through February 2005:

Bill Date	11/19/04	12/19/04	1/19/05	2/19/05
Monthly Charge	\$77.79	\$77.79	\$77.79	\$77.79
Other charges	\$69.78	\$4.99	\$7.02	\$6.45
Credits	\$125.89	\$63.89	\$63.89	\$0.00
Taxes/Fees	\$3.85	\$3.05	\$3.26	\$11.11
Total Amount Due	\$25.53	\$21.94	\$24.18	\$95.35

While Complainant's total amount due sharply increased in its February bill, the increase was attributable to the expiration of the Winback credits. Moreover, the Welcome Letter, which Complainant admits to receiving, states, in part:

If you were eligible for and received Winback credits as part of your recent Qwest purchase, then you must retain that service for one year or be billed back any credits received as part of the Winback offer.

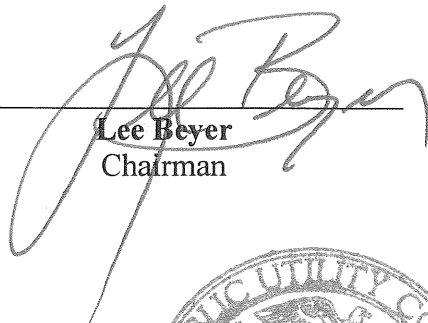
Qwest Motion to Dismiss, Exhibit B, page 2 (July 1, 2005).

Accordingly, Complainant has failed to establish that it is entitled to any relief. Qwest's motion to dismiss is granted. This docket should be closed.


ORDER

IT IS ORDERED that the Complaint of While Away Books against Qwest Corporation is dismissed with prejudice, and this docket is closed.

Made, entered, and effective AUG 02 2005 .



Lee Beyer
Chairman



John Savage
Commissioner



Ray Baum
Commissioner



A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.