ENTERED 05/04/09

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UCB 34

PREFERRED CHOICE INSURANCE, Complainant, vs. QWEST CORPORATION, Defendant.	ORDER

DISPOSITION: COMPLAINT DENIED

I. INTRODUCTION

On May 5, 2008, Preferred Choice Insurance (PCI) filed a formal consumer complaint with the Public Utility Commission of Oregon (Commission) relating to termination charges assessed by Qwest Corporation (Qwest or the Company) on PCI's account for telephone service. PCI complains that it was misled by Qwest about the terms of its service agreement and also alleges that Qwest failed to provide PCI with adequate service. On May 20, 2008, Qwest timely submitted a motion to dismiss the complaint.

On January 6, 2009, a telephone hearing was held in this matter before an Administrative Law Judge. Robin Woolhiser, the owner of PCI, appeared on behalf of complainant. Alex Duarte appeared on behalf of respondent, Qwest. During the hearing, testimony was taken and evidence was admitted into the record.

Witnesses for Qwest included Adrienne Gaines, a Qwest Executive/ Regulatory Escalations Analyst; Garry Hicks, Supervisor of Network Operations in Qwest's Bend central office; Bryce Welsh, a network technician in Qwest's Bend central office; and Paula Herbert, a Senior Sales Account Executive for Qwest. Mr. Woolhiser testified on behalf of PCI.

II. DISCUSSION

PCI initiated telephone service with Qwest on April 2, 2007, in the form of eight telephone lines.

PCI was billed under Qwest's "Business Prime" plan. Under Qwest's Commission-regulated tariffs, this plan provides various discounts from Qwest's standard monthly prices that vary with the length of the customer's commitment. For example, customers who commit to a one-year term of service under the “Business Prime” plan receive a 10 percent discount from Qwest’s standard rates, customers who commit to a two-year term receive a 15 percent discount, and customers who commit to a three-year term receive a 20 percent discount.[1] PCI’s bills from Qwest reflected a 20 percent discount from Qwest’s standard rates. PCI’s written bills also stated that, “YOU HAVE ENTERED INTO AN AGREEMENT TO MAINTAIN THIS SERVICE UNTIL 03-27-2010. IF YOU REMOVE THIS SERVICE BEFORE THAT DATE, YOU WILL BE ASSESSED AN EARLY TERMINATION FEE OF $300 PER LINE.”[2]

Despite this notation on PCI’s bills warning that termination fees would apply if PCI terminated its service prior to March 27, 2010, PCI terminated its service on March 2, 2008. Qwest reviewed PCI’s account, determined that PCI had provided no justification for early termination, and assessed PCI’s account $3,258 in early termination fees and forfeiture of discounts.[3]

PCI’s complaint and testimony raise two issues. First, PCI argues that it was not bound to a three-year term of service, and that termination fees are thus inappropriate. Specifically, PCI alleges that it switched its service to Qwest only after it was assured by a Qwest sales representative that PCI would not be held to a long-term agreement. Second, PCI contends that its termination of service was justified because Qwest failed to deliver the pricing and quality of service PCI expected.

A. Procedural Issues

After a prehearing conference, the scope of the hearing was narrowed to a single issue: whether problems with Qwest’s service justified PCI’s termination of service. With respect to PCI’s claims that it was misled into switching to Qwest, PCI was advised that it could raise any claims of deceptive trade practices or fraud with the Oregon Department of Justice or in a proceeding brought in civil court.[4] For purposes of this decision, we analyze PCI’s assertions under the Commission-approved tariffs under which PCI received service, which were reflected in PCI’s billing—Qwest’s three-year Business Prime Plan.

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[1] Qwest’s Exchange and Network Service Price List, Section 5.9.1.A.4.

[2] *See, e.g.*, Qwest/2 and Qwest/6 (PCI’s bills for May 2007 and June 2007).

[3] Specifically, Qwest charged PCI $2,400 in fees for early termination of service ($300 for each of the eight lines) and an additional $858.10 for recovery of “Welcome to Qwest” discounts Qwest found to be forfeited by the early termination. Qwest contends that PCI was required to stay with Qwest for one year to retain the “Welcome to Qwest” discounts.

[4] With respect to PCI’s potential fraud, fraudulent inducement, or deceptive trade practices claims, such disputes are ordinarily handled through the Department of Justice, mediation, arbitration, or the judicial system. *See, e.g., Intelli-Com, Inc. v. GTE Northwest, Inc.*, Order No. 95-288 (contract issues outside the scope of Commission-regulated tariffs normally handled by the judicial system). During the hearing, PCI questioned Qwest sales representative Paula Herbert about statements she is alleged to have made before PCI switched to Qwest. In light of the findings on the scope of the hearing, we conclude that Ms. Herbert’s testimony relates to issues outside the scope of this order.

B. Legal Standard

Qwest's tariffs require Business Prime customers to pay termination fees if "the customer terminates the service in whole or in part *without cause* prior to the expiration date * * *."[5] Under Oregon law, PCI bears the burden of proving that the facts asserted in its complaint are more likely true than not.[6] In this case, then, PCI must prove that problems with Qwest's service justified PCI's termination of its service prior to March 27, 2010.

C. Qwest's Service

1. Parties' Positions

In support of PCI's assertion that PCI was justified in terminating its telephone service with Qwest, PCI asserts that it experienced a number of problems with one of its phone lines during the 11 months that it received service from Qwest. Specifically, PCI experienced a number of problems with one of the eight telephone numbers, which we will refer to as the "330 line," between December 14, 2007, and February 28, 2008.[7] PCI contends that the problems with this line were Qwest's fault, that the problems were not adequately addressed, and that Qwest's inadequate service harmed PCI. Consequently, PCI alleges, termination of the service was justified.

In response, Qwest submitted testimony and evidence indicating that each time PCI reported a problem with the 330 line, Qwest dispatched technicians to investigate PCI's complaint and found no problems with the line. According to Qwest, its technicians tested the line on Qwest's side of the demarcation point—the network dividing point between Qwest's equipment and the customer's premises—and detected a working dial tone and equipment that was functioning properly.

During the hearing, Qwest submitted service logs detailing the five service visits made in response to PCI's calls.[8] The logs are briefly summarized below:

> **December 14, 2007**. Qwest's service records reflect a report of no dial tone on the 330 line. A repair ticket was opened at 8:23 a.m. The responding technician reported that the line tested fine to the demarcation point. The repair ticket was closed at 1:23 p.m. the same day.

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[5] Qwest's Exchange and Network Service Price List, Section 5.9.1.A.4.h (emphasis added).
[6] *See Jackson v. U S WEST Communications, Inc.*, Order No. 99-040 at 4 ("Complainant bears the burden of proving that the relief requested should be granted * * *. The burden of proof must be met by the preponderance of the evidence, that is, by establishing that the fact asserted is more probably true than not.").
[7] There were no reported problems with PCI's other seven lines.
[8] Qwest testified that the logs were made contemporaneously with the service calls on the technicians' hand-held computers and that the data in the logs could not be subsequently changed.

> **December 21, 2007.** The records reflect another report of no dial tone on the 330 line. A repair ticket was opened at 1:24 p.m. Again, the line tested fine to the demarcation point. The repair ticket was closed at 3:22 p.m. the same day.
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> **February 1, 2008.** The records reflect a report of no dial tone on the 330 line. A repair ticket was opened at 3:21 p.m. The line tested fine to the demarcation point. The repair ticket was closed at 9:22 a.m. on February 2, 2008.
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> **February 4, 2008**. The records reflect that the 330 line was reported out of service/cannot be called. A repair ticket was opened at 8:24 a.m. The line tested fine to the demarcation point. The repair ticket was closed at 9:32 a.m. the same day.
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> **February 28, 2008**. The records reflect a report of no dial tone on the 330 line. A repair ticket was opened at 2:07 p.m. The line again tested fine to the demarcation point. The repair ticket was closed at 4:12 p.m. the same day.

Mr. Welsh, a Qwest technician who responded to one of the service calls, testified that, although he found no problems with the line during the December 21, 2007, service call, he nevertheless took extra steps to ensure Qwest's equipment was working. Mr. Welsh testified that he moved PCI's service to new facilities and rebuilt portions of the line to ensure the equipment was working properly. He testified that he took these extra steps because PCI continued to complain about undiagnosed problems with the line. Despite these efforts, PCI's problems continued.

According to Mr. Welsh and Mr. Hicks, the technicians' logs suggest that the problem was not with Qwest's equipment, but with the equipment on the customer's side of the demarcation point. Mr. Welsh testified that PCI's office is located in an apartment complex with numerous buildings. The demarcation point is located in one building, while PCI's office is located in a separate building. Mr. Welsh suspected the problem originated in the wires leading from the demarcation point to PCI's building, or possibly with the connections within PCI's office—that is, with lines or equipment not owned by Qwest. Testing continued to reveal no problems with Qwest's equipment.

PCI challenged Qwest's evidence, denying that there were any problems on PCI's side of the demarcation point. According to Mr. Woolhiser, PCI's phone line did not work before Qwest technicians arrived to test it, but worked afterward. Thus, Mr. Woolhiser suggests, Qwest must have done something to the line, despite the Company's assertions to the contrary.

PCI also questioned the validity of Qwest's records and the truth of Qwest's testimony. For example, during the hearing Mr. Woolhiser questioned Qwest's witnesses about the protocols they were required to follow during service visits and argued that Qwest's technicians failed to follow them. For instance, Qwest's witnesses explained that technicians are supposed to show customers the demarcation point and explain how the technician tests for a dial tone during service visits. Technicians are also supposed to provide customers with written documentation under certain circumstances. Mr. Woolhiser denied that he was ever shown the demarcation point or provided with documentation regarding service visits. Mr. Woolhiser also implied that Qwest might have changed its service records after-the-fact to support Qwest's position. Mr. Woolhiser also suggested that Qwest technicians did not respond quickly enough to the reported outages. Specifically, Mr. Woolhiser pointed to the February 1, 2008, service call, which was made at 3:21 p.m. on February 1, while the repair ticket was not closed until 9:22 a.m. the following morning. Mr. Woolhiser suggested this illustrated Qwest's inadequate service.

Qwest witnesses denied each of these assertions and testified that they believed all protocols had been followed.

2. Resolution

We find that PCI has failed to meet its burden of proof in this case.

The evidence presented by Qwest shows that Qwest responded to five repair calls for one of PCI's lines within a period of two months. Each time, the Qwest technician tested the line at the point of demarcation and found a working dial tone, indicating that Qwest's service was functioning properly. Despite the lack of evidence that anything was wrong with its line, Qwest took the extra step of switching out its equipment and rebuilding the line in an attempt to ensure their equipment was functioning appropriately. This new equipment also tested fine, yet PCI's problems continued. This evidence, which we find to be credible, suggests that the problems were not with Qwest's equipment. We conclude that PCI has failed to show that Qwest's equipment was at fault.

With respect to PCI's challenges to Qwest's evidence, we find unpersuasive PCI's suggestion that Qwest changed its service records after-the-fact in a manner that benefitted Qwest in this proceeding. This contention arose after one of Qwest's witnesses, Mr. Hicks, became confused during the discussion of an exhibit. Mr. Hicks explained that Qwest's service records could be printed in different formats. Mr. Woolhiser suggested that this was an admission that the records could be changed, despite Qwest's assertions to the contrary, and suggested that Qwest might have modified the records. Qwest's witnesses consistently explained that while the print format for the logs could be changed, the underlying data itself could not.[9] We find no credible evidence to dispute Qwest's assertion on this point and reject the assertion that the logs were amended after-the fact.

With respect to PCI's allegations that Qwest technicians failed to follow all of Qwest's protocols when making service visits, we find that PCI's assertions on this point, even if true, would fail to demonstrate that PCI's termination of its service was justified. As noted previously, Mr. Woolhiser asserted that Qwest technicians never showed him the demarcation point, provided him with written documents, and/or otherwise followed

[9] In addition, a typographical error was found on a summary of the service logs created by Qwest for use at the hearing. *See* Qwest/17. This summary was not printed directly from the service logs, but was created separately. Mr. Woolhiser pointed out that two numbers were transposed on the summary of the December 21, 2007, service call.

company protocols during the service visits. Despite these assertions, Mr. Woolhiser later admitted in response to testimony from Mr. Welsh that he did in fact speak with Mr. Welsh during at least one visit, and accompanied Mr. Welsh to the demarcation point. Given the contradictions on this point and the relative lack of probative value provided by the protocol issue, we find that PCI's contention fails to demonstrate that Qwest failed in its service obligations.

Finally, we disagree with PCI's assertions that Qwest failed to respond to its service calls quickly enough. Qwest responded to every service call on the day it was made, with the exception of PCI's call on February 1, 2008. That call was made at 3:21 p.m., near the end of the business day, and was addressed by 9:22 a.m. the next morning. There is no evidence that PCI asked Qwest to make an after-hours service call to address the issue the same day. To the contrary, the service logs reflect that PCI would be available for the service technician during normal business hours on the day of the call (8 a.m. until 5 p.m.).

Throughout the course of this proceeding, PCI has expressed frustration at carrying the burden of proof while possessing few of the documents or key pieces of proof that bear on the issues. While the burden on a complainant can be a difficult one, we conclude that Qwest has adequately explained its actions here and provided ample evidence that Qwest met its service obligations. Qwest timely responded to PCI's service calls and, when it did so, found nothing wrong with the equipment under Qwest's control. For these reasons, PCI's complaint is denied.

IT IS ORDERED that the complaint of Preferred Choice Insurance is denied, and this docket is closed.

Made, entered, and effective MAY 0 4 2009.

Lee Beyer
Chairman

John Savage
Commissioner

Ray Baum
Commissioner

PUBLIC UTILITY COMMISSION OF OREGON

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 by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.