

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Marshall G. Giles,)	
)	
Complainant,)	
)	
v.)	
)	Case No. 20-84-TP-CSS
United Telephone Company of Ohio d/b/a)	
CenturyLink,)	
)	
Respondent.)	
)	

**UNITED TELEPHONE COMPANY OF OHIO D/B/A CENTURYLINK'S
MOTION TO DISMISS**

Now comes United Telephone Company of Ohio d/b/a CenturyLink (“CenturyLink”) and hereby moves the Public Utilities Commission of Ohio (“Commission”), pursuant to Ohio Administrative Code 4901-1-12 and 4901-9-01, to dismiss the Complaint filed in this matter on January 13, 2020. CenturyLink requests that the Complaint be dismissed on the bases that: (1) the Commission lacks subject matter jurisdiction over the allegations raised in the Complaint, (2) the Complaint fails to state reasonable grounds upon which relief may be granted, and (3) the Complaint has been satisfied. The grounds for CenturyLink’s motion are stated fully in the attached Memorandum in Support.

Respectfully submitted,



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MEMEORANDUM IN SUPPORT

Complainant, Marshall G. Hiles, was not a basic local exchange service (“BLES”) customer of CenturyLink. Rather, he purchased a bundled package that included internet, unlimited voice local and long distance calling and associated calling features, until he voluntarily terminated service effective October 17, 2019. He filed this Complaint on January 13, 2020; its gist being that some long distance calls he placed were “dropped” from April through October 2019, and that CenturyLink failed to satisfactorily resolve this issue.

Complainant made a settlement demand of CenturyLink to resolve this matter, including (1) a waiver of all August 2019 charges; (2) an explanation of monthly charges; and (3) damages of \$15,000. Complainant accepted a credit for all August 2019 charges. Complainant is no longer a customer of CenturyLink which makes his demand for an explanation of monthly billing moot. Complainant brings this complaint solely to recover monetary damages.

The Complaint must be dismissed because the Commission lacks subject matter over non-BLES quality of service issues, because the Complaint fails to state grounds upon which relief can be granted, and because the Complaint has been satisfied.

I. The Commission Lacks Subject Matter Jurisdiction Over the Complaint.

Ohio Revised Code Section (“R.C.”) 4927.03 provides that “the commission has no authority over the quality of service and the service rates, terms, and conditions of telecommunications service provided to end users by a telephone company” except as “specifically authorized” in R.C. Chapter 4927. Emphasis supplied. R.C. 4927.08 provides service standards for the provision of BLES; however, the Complainant received a bundled package of service from CenturyLink that is expressly exempted from BLES regulation. See R.C. 4927.01(A)(1) and (2). Complainant points to no other provision in R.C. Chapter 4927 that expressly provides the Commission with jurisdiction over his quality of service allegations, because there is no such provision. Accordingly, the Complaint must be dismissed for lack of subject matter jurisdiction.

II. The Complaint Fails to State Reasonable Grounds upon which Relief Can be Granted.

Similarly, Ohio Revised Code Section 4927.21(B) requires that a complaint must state reasonable grounds in order to be considered by the Commission. To state reasonable grounds, the Complaint must seek relief that the Commission may grant. The Complainant asks the Commission to award him “a fair and just financial resolution” to his complaint. Complainant’s request is an apparent reference to the \$15,000 in monetary damages he is seeking from CenturyLink as a part of his Settlement Proposal. See Complaint, Attached Letter of November 5, 2019 “Re: Acct. # 302269407 Damages Demand” and “CenturyLink Damages Settlement Proposal,” each authored by Complainant. The request is based upon Complainant’s assertion that calls were dropped, or their volume was too low, when speaking with his doctors, attorneys, elected officials, friends with health issues and business contacts. See Complaint, Allegations Contained in the “Complaint Against CenturyLink LLC Monroe, LA, PUCO Case ID

00532845,” page 1, paragraph 4. Complainant seeks relief in tort. The Commission has held that it lacks jurisdiction to award monetary damages for such tort claims. See *Skotynsky v. Ohio Bell*, Case No. 17-2554-TP-CSS, Entry (June 6, 2018) at 6; citing *Allstate Ins. Co. v. Cleveland Elec. Illum. Co.*, 119 Ohio St.3d 301, 2008-Ohio-3917, 893 N.E.2d 824. This Complaint must be dismissed because the Commission lacks jurisdiction to provide the relief the Complainant seeks.

III. The Complaint Has Been Satisfied.

Complainant’s claim has been satisfied. As stated previously, Complainant made a settlement demand of CenturyLink to resolve this matter, including (1) a waiver of all August 2019 charges, (2) an explanation of monthly charges, and (3) damages of \$15,000. Complainant accepted a credit of all August 2019 charges. Complainant is no longer a customer of CenturyLink and its demand for an explanation of monthly billing is moot. Complainant brings this complaint solely to recover monetary damage, which this Commission is without jurisdiction to award. Because the Commission cannot award damages and the requirement to explain monthly charges is moot, Complainant’s claim must be deemed to have been satisfied by his acceptance of the full credit for August 2019 charges.

Pursuant to Commission rule (Ohio Administrative Code 4901-1-09(F)), the Complainant has 20 days to file a written response agreeing or disagreeing with the assertion that this Complaint has been settled and that, if no response is filed, the Commission may presume that satisfaction or settlement has occurred and dismiss the Complaint with prejudice.

WHEREFORE, for the foregoing reasons, CenturyLink respectfully requests that the Complaint be dismissed with prejudice.

Respectfully submitted,



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Attorney for CenturyLink

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Motion to Dismiss* has been served upon the following party by regular U.S. Mail this 3rd day of February 2020.



Dane Stinson

Marshall G. Hiles
208 Bruce Street
Eaton, Ohio 45320

This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 20-0084-TP-CSS

Summary: Motion to Dismiss of United Telephone Company of Ohio d/b/a CenturyLink and
Memorandum in Supprt
electronically filed by Teresa Orahod on behalf of Dane Stinson