

THE PUBLIC UTILITIES COMMISSION OF OHIO

MARSHALL G. HILES,

COMPLAINANT,

v.

CASE NO. 20-0084-TP-CSS

**UNITED TELEPHONE COMPANY OF OHIO
D/B/A CENTURYLINK,**

RESPONDENT.

FINDING AND ORDER

Entered in the Journal on March 24, 2021

I. SUMMARY

{¶ 1} The Commission grants in part the motion to dismiss this case with prejudice due to a lack of subject matter jurisdiction and Complainant's failure to state reasonable grounds upon relief can be granted filed by United Telephone Company of Ohio d/b/a CenturyLink.

II. DISCUSSION

A. *Procedural History*

{¶ 2} United Telephone Company of Ohio d/b/a CenturyLink (CenturyLink or Company) is a telephone company as defined in R.C. 4927.01 and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} Pursuant to R.C. 4927.21, the Commission has authority to consider a complaint filed against a telephone company by any person regarding any rate, practice, or service of the company relating to any service furnished by the telephone company that is unjust, unreasonable, unjustly discriminatory, or in violation of, or noncompliance with any provision of R.C. 4927.01 to 4927.20, or a rule or order adopted or issued under those sections.

{¶ 4} On January 13, 2020, Marshall G. Hiles (Complainant) filed a complaint against CenturyLink. Complainant alleges that he maintains his residence, from which he also conducts business, at 208 Bruce Street in Eaton, Ohio and was, during the time complained of, a subscriber of telephone and internet services at this location through CenturyLink. Complainant avers that beginning as early as mid-2018, he began having issues with his telephone service, but he reported the issues to CenturyLink in March 2019, with problems escalating in April 2019. Complainant claims that during the time his service was not functioning properly, he was unable to conduct business or personal affairs requiring telephone service. Specifically, Complainant states that between April and October of 2019, he experienced poor telephone service, including routinely fading and dropped telephone calls. Complainant believes that he was unable to obtain a satisfactory resolution from CenturyLink stating that speaking to various CenturyLink representatives did not result in repairs to his service. Complainant alleges that an employee of CenturyLink stated that the issue did not originate from Complainant's home, but from the Company's connection.

{¶ 5} Complainant represents that despite extending a settlement offer to the Company, the parties were unable to reach a satisfactory agreement to resolve the issues at hand. Complainant believes that the CenturyLink personnel who were assigned to responding to this complaint failed to bring the case to a resolution and were not honest when dealing with him.

{¶ 6} Complainant specifically argues that CenturyLink's actions violate R.C. 1345.01, 1321.25, 4722.01, and 4905.03 through 5725.01. As a result of issues stemming from the Company's alleged consistent failure to provide Complainant with telephone services, Complainant indicates that he has been damaged in an amount yet to be determined and includes claims that his service has caused him to fail to receive calls from attorneys, ill friends and family, and government officials. Stemming from these claims, Complainant requests relief, including monetary damages in the amount of \$15,000.

{¶ 7} On February 3, 2020, CenturyLink contemporaneously filed an answer generally denying the material allegations within the complaint and a motion to dismiss the complaint with prejudice.

{¶ 8} In its answer, CenturyLink asserts that it had record of six “trouble tickets” in response to Complainant’s requests for service. CenturyLink explains that those “trouble tickets” indicate that the Company found no trouble on its end with Complainant’s service, but in one ticket, the telephone was plugged into an incorrect port on Complainant’s end. Finally, the Company asserts that following a service call on August 23, 2019, Complainant’s issue was referred to the Company’s long-distance group for monitoring; that ticket was subsequently closed on September 9, 2019, after it was shown that the CenturyLink network was not dropping the calls but rather the calls were being dropped on Complainant’s side of the line. In its motion to dismiss, CenturyLink represents that while Complainant was its customer, having bundled telephone and internet service, he voluntarily terminated service, effective October 17, 2019. CenturyLink explains that Complainant was not a basic local exchange service (BLES) customer. Further, CenturyLink states that, while it provides internet service to Complainant, Ohio law does not authorize the Commission to exercise jurisdiction over internet and Voice Over Internet Protocol (VoIP) services.

{¶ 9} On March 2, 2020, the attorney examiner filed an Entry scheduling an in-person settlement conference for March 24, 2020. By Entry issued March 11, 2020, the attorney examiner converted the in-person settlement conference to a telephonic settlement conference due to the circumstances surrounding COVID-19. Both parties were in attendance at the settlement conference on March 24, 2020; however, the parties were unable to reach an agreement.

{¶ 10} Complainant filed a response to CenturyLink’s February 3, 2020 motion to dismiss on April 2, 2020, and CenturyLink filed a subsequent reply to Complaint’s response on April 8, 2020.

B. CenturyLink's Motion to Dismiss

{¶ 11} In its motion to dismiss filed on February 3, 2020, CenturyLink avers that the Commission lacks subject matter jurisdiction over the complaint, the complaint fails to state reasonable grounds upon which relief can be granted, and the complaint has been satisfied. CenturyLink explains that Complainant made a previous settlement demand which included a waiver of all August 2019 service charges, an explanation of monthly charges, and damages in the amount of \$15,000.

{¶ 12} CenturyLink supports its assertion that the Commission lacks subject matter jurisdiction of this complaint by citing R.C. 4927.03 which states in relevant part 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. Specifically, CenturyLink argues that because the Complainant received a bundled package of service that is exempted from BLES regulation under R.C. 4927.01(A)(1) and (2), the Commission does not have jurisdiction to hear Complainant’s case where there is not a section of R.C. Chapter 4927 that provides the Commission jurisdiction over the Complainant’s quality-of-service complaint.

{¶ 13} CenturyLink also claims that Complainant fails to state reasonable grounds upon which relief can be granted stating that, to state reasonable grounds, the complaint must seek relief that the Commission may actually grant. To that end, CenturyLink points to Complainant’s request for the Commission to award him “a fair and just financial resolution” to his complaint. CenturyLink believes that this request is referencing Complainant’s prior settlement proposal including a \$15,000 request in monetary damages. CenturyLink contends that this 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. CenturyLink argues that Complainant seeks relief in tort, and 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.

{¶ 14} Lastly, CenturyLink represents that the complaint has been satisfied. With respect to Complainant's settlement demands *supra*, CenturyLink states that Complainant already accepted a credit for all August 2019 charges by the time he had submitted his settlement proposal on September 17, 2019, which would render the demand for waiver of those charges moot. Furthermore, the Company argues that given Complainant terminated his service agreement in October 2019, rendering an explanation of charges also moot because Complainant is no longer a CenturyLink customer. Finally, CenturyLink avers that Complainant brings this complaint solely to recover monetary damages, which the Commission is without jurisdiction to award. CenturyLink reasons that because the Commission cannot award monetary damages and because the requirement to explain monthly charges is moot, Complaint's claim must be deemed to have been satisfied by his acceptance of the full credit for the August 2019 charges.

{¶ 15} In his reply, Complainant generally restates the allegations and facts from his complaint, including several attachments to the complaint containing records of service and his discussions with CenturyLink employees. Complainant argues that R.C. 1345.01 to 1345.13, R.C. 4905.03, R.C. 5725.01, R.C. 1321.35 to 1321.48, and R.C. 4722.01 are applicable to his allegations and authorize the Commission to regulate VoIP and internet services. Further, Complainant states that, under the mentioned sections of the Revised Code, the Commission has jurisdiction vis-a-vis these sections to preclude CenturyLink from engaging in various practices that Complainant states violate Ohio's consumer protection law. Finally, Complainant addresses CenturyLink's assertion that his complaint was satisfied by stating that he rejected an offer of a lifetime discount on his bill. Complainant explains his rejection by positing that there may be future circumstances in which CenturyLink effectively negates this discount by way of increases in service charges.

{¶ 16} CenturyLink filed a reply to Complainant's April 2, 2020 response on April 8, 2020. CenturyLink argues that Complainant does not address the jurisdictional grounds that the motion to dismiss is based upon. Further, CenturyLink asserts that Complainant misconstrues R.C. Chapter 1345 in that it does not provide the Commission with jurisdiction, as the Commission's jurisdiction is limited to those matters identified in Title 49 of the Revised Code. The Company states that its Memorandum in Support of its Motion to Dismiss adequately addresses all other bases for dismissal and renews its motion for those reasons.

C. *Commission Conclusion*

{¶ 17} Upon consideration of the complaint, the motion to dismiss, the response to the motion to dismiss, and the reply to the response, the Commission determines that this matter should be dismissed with prejudice for lack of subject matter jurisdiction and for failure to state reasonable grounds upon which relief may be granted. R.C. 4927.03 provides that "the Commission has no authority over the quality of service*** provided to end users by a telephone company" except as "specifically authorized" in R.C. Chapter 4927. R.C. 4927.08 specifically limits the Commission's authority over service quality standards to the provision of Basic Local Exchange Service or BLES. Under R.C. 4927.01(A)(1) and (2), the definition of BLES excludes services that are part of a bundle or package of services. Therefore, the telecommunication services provided to Mr. Hiles as part of a bundle that includes voice and internet service falls outside the service quality standards under R.C. 4927.08. Further, the complaint statute, R.C. 4927.21(B), requires that a complainant coming before the Commission must state reasonable grounds for complaint in order to be considered by the Commission. Reasonable grounds require a complainant to seek relief that the Commission has authority to grant. In this instance, Mr. Hiles is seeking monetary relief in the form of damages which the Commission has no authority to award.

{¶ 18} In making these determinations, we specifically note that Complainant had a bundled package of services that included internet, unlimited voice local and long-distance calling, and associated features until he terminated those services in October 2019. This

bundled packaged is specifically exempted from BLES regulation under R.C. 4927.01(A)(1) and (2). Furthermore, the Commission does not have jurisdiction to hear Complainant's case where there is not a section of R.C. Chapter 4927 that provides the Commission jurisdiction over the Complainant's quality of service complaint. Consequently, to the extent Complainant asserts any claims with regard to these unregulated services, such claims are outside the scope of the Commission's statutory authority.

{¶ 19} Moreover, as noted above, the Commission has exclusive jurisdiction to hear complaints against telephone companies regarding any rate, practice, or service of the company relating to any service furnished by the telephone company that is unjust, unreasonable, or unjustly discriminatory. However, the Supreme Court of Ohio has determined that the Commission's jurisdiction over service-related matters does not affect the jurisdiction of the courts of common pleas to decide claims against utilities sounding in tort and contract. *Allstate Ins. Co. v. Cleveland Elec. Illum. Co.*, 119 Ohio St.3d 301, 2008-Ohio-3917, 893 N.E.2d. 824, ¶6.

{¶ 20} In the matter at hand, Complainant indicates that he seeks monetary relief in the amount of \$15,000 from CenturyLink owing to the consequences he has suffered from the service issues alleged in his complaint. The Commission agrees with CenturyLink in that the Commission has no jurisdiction over such tort and contract claims and has no authority to award monetary relief.

{¶ 21} After reviewing the complaint, answer, motion to dismiss, and other relevant information, we find that CenturyLink's motion to dismiss is reasonable and shall be granted in part. Based on the reasoning above, the Commission lacks subject matter jurisdiction in this case with regard to all of Complainant's claims. Furthermore, Complainant failed to state reasonable grounds upon which relief can be granted. Accordingly, this complaint shall be dismissed with prejudice, and this case shall be closed of record.

III. ORDER

{¶ 22} It is, therefore,

{¶ 23} ORDERED, That, CenturyLink's motion to dismiss be granted in part. It is, further,

{¶ 24} ORDERED, That in accordance with the above findings, this complaint be dismissed with prejudice for lack of subject matter jurisdiction. It is, further,

{¶ 25} ORDERED, That a copy of this Finding and Order be served upon all parties and interested persons of record.

COMMISSIONERS:

Approving:

M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

JD/kck

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

3/24/2021 2:44:05 PM

in

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

Summary: Finding & Order granting in part the motion to dismiss this case with prejudice due to a lack of subject matter jurisdiction and Complainant's failure to state reasonable grounds upon relief can be granted filed by United Telephone Company of Ohio d/b/a CenturyLink. electronically filed by Ms. Mary E Fischer on behalf of Public Utilities Commission of Ohio