

Decision No. R14-1320

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14F-0868T

SAN ISABEL TELECOM, INC.,

COMPLAINANT,

V.

CENTURYTEL OF EAGLE, INC. DOING BUSINESS AS CENTURYLINK,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
LIFTING TEMPORARY INJUNCTION;
DISMISSING FORMAL COMPLAINT
WITHOUT PREJUDICE; REFERRING THE
COMPLAINT TO CONSUMER ASSISTANCE
AS AN INFORMAL COMPLAINT; AND
REQUIRING A 20-DAY STATUS FILING**

Mailed Date: October 31, 2014

I. STATEMENT

1. On August 18, 2014, San Isabel Telecom, Inc. (Complainant or San Isabel) filed a pleading captioned as an “Informal Complaint” with the Commission. The pleading listed CenturyLink and CenturyTel of Eagle as “Respondents.” Complainant explains that Respondents sent Complainant a letter requesting an \$81,000 security deposit. If payment is not made as requested, Complainant asserts that Respondent intends to suspend all service order

activity for Complainant.¹ Complainants provide no claim for specific relief in the Formal Complaint.

2. Complainant asserts that pursuant to the Statement of Generally Available Terms and Conditions (SGAT) entered into between Complainant and Respondent, even though Complainant was late on two payments to Respondent within a 12-month period, according to the terms of the SGAT, Complainant is not considered repeated delinquent and as such, Respondent has no basis for requiring Complainant to pay a security deposit.

3. Complainant further states that the letter is written as an informal complaint because Respondent's billing group in Monroe, Louisiana refuses to discuss the procedure used to require a substantial deposit from Complainant.

4. Complainant asserts two issues to be resolved. The first issue is whether the SGAT or Respondent's Interstate tariff controls for determining the deposit amount, since each document contains different policies.

5. The second issue raised by Complainant is whether CenturyTel of Eagle is a part of CenturyLink when determining how the deposit is determined or whether each is a separate entity with separate deposit policies.

6. On August 19, 2014, the Commission Director issued an Order to Satisfy and Answer to Respondent, requiring Respondent to satisfy the matters in the Complaint or answer the Complaint in writing within 20 days from service of the Order. In addition, a hearing on the Complaint was scheduled for October 30, 2014.

¹ Complainant attached a letter from Respondent dated August 11, 2014 purporting to suspend all service order activity for Complainant on August 21, 2014 unless a security deposit of \$81,000 is paid to CenturyLink.

7. At the Commissioners' Weekly Meeting on August 20, 2014, the Commission referred this matter to an Administrative Law Judge (ALJ) for disposition as a Formal Complaint. The matter was subsequently assigned to the undersigned ALJ.

8. On September 8, 2014, Respondent filed its Answer to the Complaint. In addition, Respondent included a Motion to Stay oDismiss the Complaint (Motion).

9. Respondent notes that the Complaint is not in standard formatting; however, Respondent nonetheless generally denies the allegations contained in the Complaint.

10. As part of its Motion, Respondent points out that Complainant specifically indicated that the letter set out the request that the matter should be treated as an "Informal Complaint." Respondent notes that the structure of the Complaint and its signatory confirm that the Complaint was not intended to proceed as a formal complaint. Respondent also points out that the Complaint is not signed by an attorney pursuant to Commission Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1201, Commission's Rules of Practice and Procedure.

11. As a result, Respondent requests that the proceeding be stayed or dismissed as a Formal Complaint. Respondent further states that it is willing to continue discussions with Complainant regarding the subject matter of the Complaint. Respondent also requests that the procedural schedule, including the evidentiary hearing scheduled for October 30, 2014 be vacated and the parties be directed to discuss and negotiate matters addressed in the Complaint letter, and provide a status report to the Commission regarding those discussions.

12. By Interim Decision No. R14-1196-I, issued October 1, 2014, because it was not clear why this matter was referred to the ALJ as a Formal Complaint, clarification from Complainant was ordered. Respondent proposed reasonable procedural alternatives, but before any of those procedures could be adopted, Complainant was required to file a pleading in order

to clarify its intent in this matter. The procedural schedule, including the evidentiary hearing scheduled for October 30, 2014 was vacated and the proceeding stayed. Complainant was to file a pleading declaring its intent in this matter no later than October 21, 2014.

13. Finally, Respondent was temporarily enjoined from suspending all service order activity for Complainant and temporarily enjoined from disconnecting Complainant's service, in order to ensure that telecommunications end users will have uninterrupted telephone service until this matter is resolved.

14. On October 20, 2014, San Isabel filed a pleading in reply to Interim Decision No. R14-1196-I, clarifying that its intent is to treat this matter as an informal complaint. In addition, San Isabel requests that Commission Telecommunications Staff serve as an intermediary in this matter in order to resolve the controversy of the deposit requested by CenturyLink.

II. FINDINGS AND CONCLUSIONS

15. Commission Rule 4 CCR 723-1-1301 of the Commission's Rules of Practice and Procedure sets out the procedures for a party to register an informal complaint with the Commission. Subsection (b) sets out the methods by which Commission Staff may respond to, or manage an informal complaint. Under subsection (b)(V), Commission Staff may file a formal complaint against the regulated entity, when permitted by statute, or request that the Commission issue a show cause order pursuant to subsection (b)(VI).

16. Under Rule 723-1-1302, any person may file a formal complaint pursuant to the procedures set out by that Rule. The Rule further establishes the form of a formal complaint including the required elements that a formal complaint is to contain.

17. It is not clear why this matter was referred as a “formal complaint.” The letter sent to the Commission by San Isabel is clearly captioned as “Informal Complaint.” In addition, the third paragraph of page 3 of the letter states, “[t]his letter is written as an informal complaint ...” The intent of San Isabel is clear – it wishes this matter to be handled informally. This is substantiated by its October 20, 2014 filing in which it indicates for a third time that it wishes to treat the matter informally.

18. As a result, the Formal Complaint will be dismissed without prejudice. The matter will be referred to the Consumer Assistance Department in the Commission’s External Affairs Section to handle this matter as an informal complaint. CenturyLink states that it is willing to continue discussions with Complainant regarding the subject matter of the Complaint. Therefore, CenturyLink will be held to that representation by requiring good faith negotiations through the informal complaint process with Consumer Assistance Staff.

19. While San Isabel requested that Commission Telecommunications Staff serve as an intermediary in order to resolve the controversy of the deposit required by CenturyLink, this matter will follow the informal complaint process as outlined in Rule 1301. Should the matter not be resolved by Consumer Assistance Staff, the parties may request mediation as set forth in Rule 1301. As for Commission Telecommunications Staff, should technical questions arise requiring its expertise, it may clarify any questions or misunderstandings if it so chooses. **However, the parties are advised that pursuant to Rule 4 CCR 723-1-1007(c), while Staff may provide informal assistance, any opinions expressed by staff “do not represent the official views of the Commission, but are designed to aid the public and to facilitate the accomplishment of the Commission’s functions.” Most importantly, “[n]othing communicated by the Commission staff constitutes legal advice.”**

20. Although this Proceeding will be closed, San Isabel and CenturyLink will be directed to discuss and negotiate the matters addressed in the Complaint letter through the Commission's informal complaint process under Rule 1301, and provide a status report 20 days after discussions begin to Commission Telecommunications Staff regarding those discussions. If it appears that no resolution can be reached between the parties, each party may of course then assert any rights each may have, either contractually or legally.

21. Additionally, the temporary injunction imposed on CenturyLink in Interim Decision No. R14-1196-I is lifted.

22. Pursuant to § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. The Formal Complaint in this matter shall be dismissed without prejudice.
2. San Isabel Telecom, Inc. and CenturyTel of Eagle, Inc., doing business as CenturyLink shall discuss and negotiate the matters addressed in San Isabel Telecom, Inc.'s Complaint letter through the Commission's informal complaint process under Rule 4 *Code of Colorado Regulations* 723-1-1301.
3. The dispute between San Isabel Telecom, Inc. and CenturyTel of Eagle, Inc., doing business as CenturyLink shall be referred to the Commission's Consumer Assistance Department for processing and disposition.
4. San Isabel Telecom, Inc. and CenturyTel of Eagle, Inc., doing business as CenturyLink shall file a status update no later than 20 days after the informal negotiation process begins to Commission Telecommunications Staff as to whether any progress has been achieved.

5. The temporary injunction imposed on CenturyTel of Eagle, Inc., doing business as CenturyLink pursuant to Interim Decision No. R14-1196-I is hereby lifted.

6. This Proceeding is now closed.

7. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

8. As provided by §40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the Recommended Decision shall become the decision of the Commission and subject to the provisions of §40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in §40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

9. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

PAUL C. GOMEZ

Administrative Law Judge