



CARLA M. BUTLER

September 20, 2019

Via Electronic Filing Only

Gary Widerburg
Commission Administrator
Utah Public Service Commission
Heber M. Wells Building, 4th Floor
160 East 300 South
Salt Lake City, UT 84111
psc@utah.gov

Re: Docket No. 19-049-09

Dear Mr. Widerburg:

Attached for filing please find CenturyLink's Response and Motion to Dismiss, along with a Certificate of Service.

If you have any questions, please call me.

Sincerely,

A handwritten signature in black ink that reads "Carla M. Butler". The signature is written in a cursive style.

Carla M. Butler
Paralegal

Enclosures
cc: Service List

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Attorney for Qwest Corporation d/b/a CenturyLink QC

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Formal Complaint of
Anne Francis against Qwest Corporation
d/b/a CenturyLink QC

DOCKET NO. 19-049-09

**CENTURYLINK'S MOTION TO
DISMISS OR IN THE ALTERNATIVE
RESPONSE TO COMPLAINT**

On August 5, 2019, Anne Francis submitted an informal complaint against Rocky Mountain Power (“RMP”) alleging that the power line on her property was at an unsafe height, and that RMP did not have the right to have a pole and power line on her property located at 450 S. 400 E, River Heights, Utah (the “Property”). RMP responded to the informal complaint advising the Public Service Commission of Utah (the “Commission”), that it had the right to be on the Property, and it verified that its lines were well within NESC requirements. Based on RMP’s response the informal complaint was marked as resolved. Unsatisfied with the outcome, Ms. Francis filed a formal complaint against RMP in Docket No. 19-035-34, alleging the identical facts as the informal complaint. Similarly, Ms. Francis filed the identical formal complaint (the “Complaint”) against Qwest Corporation d/b/a CenturyLink QC (“CenturyLink”), alleging that its facilities are attached to RMP’s poles, and there is not an easement for utility lines on the Property. The Complaint should be dismissed as it lacks subject matter jurisdiction, and fails to state a claim upon which relief can be granted.

NO SUBJECT MATTER JURISDICTION

The Complaint alleges that CenturyLink does not have a right to have a utility line on the Property. CenturyLink has a lawful right to have a utility line on the Property. Regardless, this dispute is a land use issue that is not properly before the Commission.

As part of the informal complaint RMP indicates that the overhead power lines on the Property have been in place since the 1950's. Through a joint use agreement, CenturyLink uses RMP's pole to attach its facilities at the Property, which were in place before Ms. Francis acquired the Property. The Complaint acknowledges that when Ms. Francis moved on the Property in 1990 the utility lines were already in place, and the Property was acquired with such knowledge.¹

CenturyLink has a lawful right to retain the utility line in question. Regardless, the issue about whether or not CenturyLink has a lawful easement or other lawful right to be on the Property, is not appropriately before the Commission. In its Order on Motion to Dismiss in Docket No. 17-049-09, the Commission acknowledged that easement issues "involve complicated questions of property law, title, and land use, and must be addressed through a civil action."² Thus, the Commission has previously determined that it does not have jurisdiction to determine whether a utility's equipment is located within a legal utility easement.³ The Complaint should be dismissed based on the Commission's lack of subject matter jurisdiction over the land use issue in question.

¹ See, Complaint, "Past History" section.

² See, Order on Motion to Dismiss, Docket No. 17-049-09, *citing Taylor v. PSC*, Case No. 20030694-CA (UT Ct. App.) March 17, 2005.

³ See, Order on Motion to Dismiss, Docket No. 17-049-09.

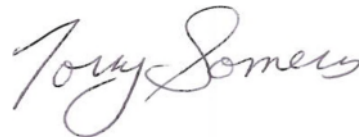
FAILURE TO STATE A CLAIM

Further, the Complaint should be dismissed for failure to state a claim upon which relief can be granted. Ms. Francis does not allege that CenturyLink violated any of its offerings and pricing or violated any Commission statute or rule.

For the above stated reasons, CenturyLink respectfully requests that the Commission dismiss the Complaint with prejudice.

RESPECTFULLY SUBMITTED this 20th day of September, 2019

CENTURYLINK



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Attorney for CenturyLink

CERTIFICATE OF SERVICE

Docket No. 19-049-09

I hereby certify that on the 20th day of September 2019, I caused a true and correct copy of the foregoing CENTURYLINK'S RESPONSE AND MOTION TO DISMISS to be served upon the following persons via electronic mail at the e-mail addresses shown below.

Public Service Commission:

psc@utah.gov

Anne Francis

Annefrancis82@gmail.com

Utah Division of Public Utilities:

Justin Jetter – jjetter@utah.gov

Erika Tedder – etedder@utah.gov

CENTURYLINK



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