

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Formal Complaint of )  
Kelemon Panoussi against Qwest ) DOCKET NO. 12-049-24  
Corporation d/b/a CenturyLink QC )  
)  
In the Matter of the Formal Complaint of ) DOCKET NO. 12-049-25  
Kelemon Panoussi against Qwest )  
Corporation d/b/a CenturyLink QC ) ORDER OF DISMISSAL  
)  
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ISSUED: November 28, 2012

SYNOPSIS

The Commission enters this Order granting CenturyLink’s motion to dismiss the above complaints.

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By The Commission:

I. DOCKET NO. 12-049-24

(Mr. Panoussi’s contract claim for DSL service against CenturyLink)

On October 3, 2012, Kelemon Panoussi (“Mr. Panoussi”) filed a formal complaint against Qwest Corporation d/b/a CenturyLink QC (“CenturyLink”) alleging CenturyLink is failing to honor its \$29.99/per month price for life contract for DSL Internet service. See Formal Complaint, filed October 3, 2012.

Pursuant to an action request, the Division of Public Utilities (“Division”) filed a response recommending Commission dismissal of Mr. Panoussi’s complaint. See Division’s Memo, filed November 1, 2012. The Division’s response explains that Mr. Panoussi initially received a discount for DSL service beginning November 2008 and then, in November 2009, he received a 12-month promotion for \$19.99/per month, after which time the price increased to

\$29.99/per month. See id. at 1. The Division attempted to help resolve the dispute by explaining to Mr. Panoussi that the different pricing structures and discounts on his CenturyLink account were dependent upon the services he added or deleted since November 2008. See id. at 2. The Division also explained to Mr. Panoussi that the Commission does not regulate the issues he is complaining about. See id. Nevertheless, the Division notes Mr. Panoussi continues to insist upon CenturyLink honoring the price he says he was promised. See id. The Division recommends dismissal because Internet service and pricing issues are not within the Commission's jurisdiction. See id. The Division notes the Commission does not regulate service rates or terms of service, and Internet services are interstate services which are regulated by the Federal Communications Commission. See id. Under U.C.A. § 54-2-1(25)(b)(i), the Division also notes that "internet services" does not meet the definition of a "telephone corporation," and therefore Mr. Panoussi's complaint is beyond the scope of the Commission's jurisdiction. See id. The Division summarizes its recommendation as follows: "[t]he Division does not find that CenturyLink violated any statute, rule or tariff[,] and recommends the complaint be dismissed." Id.

On November 1, 2012, CenturyLink filed a motion to dismiss this complaint for lack of jurisdiction.<sup>1</sup> See CenturyLink's Motion to Dismiss, filed November 1, 2012.

CenturyLink argues dismissal is appropriate because the Commission does not have jurisdiction over broadband, the Internet service about which Mr. Panoussi is complaining. See id. at 7-8.

On November 2, 2012, the Commission issued a notice, informing Mr. Panoussi that a motion to

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<sup>1</sup> CenturyLink also moved to consolidate this docket with Docket No. 12-049-25. However, because we dismiss each docket in turn, we do not address CenturyLink's motion for consolidation.

dismiss had been filed and he had until November 16, 2012 to file a response. See Notice of Filing of Motion to Dismiss, issued November 2, 2012. On November 8, 2012, Mr. Panoussi filed a response in which he continues to contest the contract price for DSL service but fails to respond to the jurisdictional argument raised by CenturyLink. See Panoussi Filing, filed November 8, 2012. Mr. Panoussi's response was filed on the backside of the Commission's notice issued November 2, 2012. See id. On November 13, 2012, CenturyLink filed a reply brief. See CenturyLink's Reply, filed November 13, 2012. CenturyLink asserts in its reply that Mr. Panoussi's November 8, 2012 response supports CenturyLink's motion for dismissal of this complaint because he ignored the jurisdictional argument and confirmed his complaint is based on his high-speed Internet service – a service over which the Commission does not have jurisdiction. See id. at 2-3.

II. DOCKET NO. 12-049-25

(Mr. Panoussi's billing complaint against CenturyLink)

Shortly after Mr. Panoussi filed the complaint above, he filed a second formal complaint alleging that CenturyLink was not providing adequate time (i.e., 20 days) for him to pay his bill. See Formal Complaint, filed October 16, 2012.<sup>2</sup> In support of his complaint, Mr. Panoussi included copies of rules R746-240-4(D) and R746-240-6(A)(1) of the Utah Administrative Code. See id. Rule 746-240-4(D) states: "Statement Due Date—An account holder shall have not less than 20 days from the bill date to pay the new balance, which date shall

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<sup>2</sup> It is unclear from the face of complaint whether Mr. Panoussi's complaint relates to Internet service and/or another service provided by CenturyLink. The Division explains in its response that "[a]t the time Mr. Panoussi filed his informal complaint concerning not having enough time to pay his bill; he had telephone service with CenturyLink. While the complaint was under investigation he stated to the Division that he was canceling his telephone service with CenturyLink as they were not honoring the price he agreed to pay for his internet service." Division's Memo at 2, filed November 15, 2012. Therefore, we read Mr. Panoussi's complaint broadly to include telephone service.

be the statement due date.” Utah Admin. Code R746-240-4(D). Rule 746-240-6(A)(1) addresses delinquent accounts and states the following: “A service bill which has remained unpaid beyond the statement due date is a delinquent account. A telecommunications corporation shall not consider an account holder’s bill past due unless it remains unpaid for a period of 20 calendar days after the billing date printed on the bill.” Utah Admin. Code R746-240-6(A)(1).

In response to a Commission action request, the Division of Public Utilities (“Division”) filed a response recommending the Commission dismiss Mr. Panoussi’s complaint. See Division’s Memo, filed November 15, 2012. According to the Division, CenturyLink explained the following in response to Mr. Panoussi’s complaint: bills are considered due upon receipt; the “pay by” date is included on the bill as a courtesy; and the “pay by” date is determined by adding 16 calendar days to the bill mailing date, which is 4 days from the billing date, or the date on which the bill is printed. See id. at 1. The Division explains, this process according to CenturyLink complies with both R746-240-4(D), which requires an account holder have at least 20 days from the bill date to pay, and R746-240-6(A), which provides that an account is considered overdue when it is not paid within 20 days from the billing date printed on the bill. The Division reviewed Mr. Panoussi’s CenturyLink bills and determined the statement due date for each bill was 20 days from the date on the bill. See id. at 2. The Division explained this to Mr. Panoussi; however, according to the Division, Mr. Panoussi disagreed with the Division and stated he has 20 days *from the date he receives the bill* to make payment. See id. The Division recommends dismissal of this action, as it did not find CenturyLink in violation of any Commission rule, tariff, or statute.

CenturyLink filed a motion to dismiss on November 1, 2012. See CenturyLink's Motion to Dismiss, filed November 1, 2012. CenturyLink argues this complaint should be dismissed for failure to state a claim because the Utah Administrative Code regulations governing billing set the time between the bill date and the date due, and does not address the *date received*.<sup>3</sup> See id. at 3, 9. The Commission issued a notice on November 2, 2012, informing Mr. Panoussi that a motion to dismiss had been filed and he had until November 16, 2012 to file a response. See Notice of Filing of Motion to Dismiss, issued November 2, 2012. On November 8, 2012, Mr. Panoussi filed a response in which he refers to a conversation he had with CenturyLink about the timeliness of his bill, but he fails to substantively respond to CenturyLink's motion to dismiss. See Panoussi Filing, dated November 8, 2012. Mr. Panoussi's response was filed on the backside of the Commission's notice issued November 2, 2012. See id. On November 13, 2012, CenturyLink filed a reply brief. See CenturyLink's Reply, filed November 13, 2012. CenturyLink argues Mr. Panoussi is improperly challenging the time periods set forth in Utah Admin Code R746-240-4(D), because he believes that rules should permit a customer 20 days from receipt of an invoice to pay the bill. See id. at 3. CenturyLink argues R746-240-4(D) does not support Mr. Panoussi's interpretation, and Mr. Panoussi failed to address this issue in his reply brief.<sup>4</sup> See id. Accordingly, CenturyLink argues Mr. Panoussi's complaint should be dismissed.

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<sup>3</sup> CenturyLink also argues this complaint should be dismissed for lack of jurisdiction because it relates to Mr. Panoussi's bill for Internet service. See CenturyLink's Motion to Dismiss at 2, 7-8. However, because we read Mr. Panoussi's complaint to include telephone service, see supra n.2, we do not address this argument.

<sup>4</sup> CenturyLink also argues this complaint should be dismissed because it relates to Mr. Panoussi's bill for Internet service. However, the Commission does not address this issue. See supra n.3.

### III. ISSUE AND STANDARD OF REVIEW

Under Rule 12 of the Utah Rules of Civil Procedure, which we apply pursuant to R746-100-1(C) of the Utah Administration Code, the Commission is obligated to dismiss an action “whenever it appears by suggestion of the parties or otherwise that the [Commission] lacks [subject matter] jurisdiction.” Utah R. Civ. P. 12(h)(2). In addition, Rule 12(b)(6) of the Utah Rules of Civil Procedure, which is incorporated by reference by Utah Admin. Code R746-100-1(C), permits a party to file a motion to dismiss for “failure to state a claim upon which relief can be granted.” Utah R. Civ. P. 12(b)(6). In ruling on a motion to dismiss for failure to state a claim, the Commission construes the complaint in the light most favorable to the complainant and indulges all reasonable inferences in its favor. Cf. Munteer v. Utah Power & Light Co., 823 P.2d 1055, 1058 (Utah 1991).

### IV. ANALYSIS

Based on the arguments presented, no basis exists to grant Mr. Panoussi relief. Mr. Panoussi’s first complaint relates to his Internet service. The Utah Public Service Commission is, by statute, charged with supervising and regulating “every public utility in this state.” Utah Code Ann. § 54-4-1 (2010). While a “public utility” generally includes every “telephone corporation,” see Utah Code Ann. § 54-2-1(16)(a), “Internet service” provided by a “telephone corporation” is expressly excepted. See Utah Code Ann. § 54-2-1(25)(b)(ii). Therefore, the Commission lacks jurisdiction over Mr. Panoussi’s Internet claim against CenturyLink.

Mr. Panoussi's second complaint relates to the timing of his bill for telephone service.<sup>5</sup> According to Mr. Panoussi, he should be permitted 20 days from the date he receives his bill to remit payment. Under the Rules of Administrative Procedure, "[a]n account holder shall have not less than 20 days from the bill date to pay the new balance, which date shall be the statement due date." Utah Admin. Code R746-240-4(D) (emphasis added). R746-240-4(D) is intended to apply uniformly to all customers. If we were to apply Mr. Panoussi's interpretation, a uniform application would be impossible and a customer could assert he received his bill on a fictitious date just to receive additional time to pay before his bill is considered overdue. A plain reading of R746-240-4(D) does not support Mr. Panoussi's claim – i.e., that he be granted 20 days from the *date of receipt* to make payment. Accordingly, Mr. Panoussi has failed to state a claim upon which relief can be granted for his claim concerning the timing of his CenturyLink bill.

ORDER

For the foregoing reasons, CenturyLink's motion is granted and Mr. Panoussi's complaints are dismissed.

DATED at Salt Lake City, Utah this 28<sup>th</sup> day of November, 2012.

/s/Melanie A. Reif  
Administrative Law Judge

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<sup>5</sup> Because Mr. Panoussi's complaint is not clear whether it relates to his Internet service and/or another service, *see supra*, and because the Division's response refers to telephone as well as Internet service, *see supra*, we construe his complaint broadly to include telephone service generally, as we are entitled to do pursuant to U.R.C.P. 12(b)(6).

Approved and confirmed this 28<sup>th</sup> day of November, 2012, as the Order of Dismissal of the Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg  
Commission Secretary  
DH#239438

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28<sup>th</sup> day of November, 2012, a true and correct copy of the foregoing was served upon the following as indicated below:

By Electronic-Mail:

Kelemon Panoussi ([yclemen@yahoo.com](mailto:yclemen@yahoo.com))  
4347 West Stane Avenue  
Salt Lake City, UT 84120-1620

Torry R. Somers ([torry.r.somers@centurylink.com](mailto:torry.r.somers@centurylink.com))  
CenturyLink

By Hand-Delivery:

Division of Public Utilities  
160 East 300 South, 4<sup>th</sup> Floor  
Salt Lake City, Utah 84111

Office of Consumer Services  
160 East 300 South, 2<sup>nd</sup> Floor  
Salt Lake City, Utah 84111

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Administrative Assistant