



CenturyLink®

James B. Farr

Regulatory Affairs Director – Idaho and Utah
Room 1015A
250 Bell Plaza
Salt Lake City, Utah 84111

Office: 801-238-0240
Fax: 801-237-6542
james.farr@centurylink.com

August 8, 2017

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. 17-049-09

Dear Mr. Widerburg:

Attached for filing please find CenturyLink's Motion To Dismiss Or In The Alternative Response To Complaint, along with a Certificate of Service.

If you have any questions, please call me.

Sincerely,

Attachment
cc: Service List

Torry R. Somers
CenturyLink
6700 Via Austi Pkwy.
Las Vegas, NV 89119
Ph: (702) 244-8100
Fax: (702) 244-7775
torry.r.somers@centurylink.com

Attorney for Qwest Corporation d/b/a CenturyLink QC

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Formal Complaint of
Stephen D. and Tamara Thomas against
Qwest Corporation d/b/a CenturyLink QC

DOCKET NO. 17-049-09

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

On March 28, 2017, Steve Thomas filed a formal complaint (the "March 28th Complaint") against Qwest Corporation d/b/a CenturyLink QC ("CenturyLink"). The March 28th Complaint alleged that CenturyLink was improperly charging to have a utility line relocated on Mr. Thomas' property. The March 28th Complaint was dismissed after Mr. Thomas informed the Public Service Commission ("Commission") that he reached a mutually agreeable resolution with CenturyLink. Despite agreeing to resolve the matter with CenturyLink, Mr. Thomas is now unwilling to pay his portion of the utility line relocation, and on July 10, 2017, Mr. Thomas and Tamara Thomas once again filed a complaint with the Commission (the "July 10th Complaint"). The underlying allegations in the July 10th Complaint are identical to the allegations in the March 28th Complaint that was already dismissed by the Commission. The July 10th Complaint should be dismissed since it is based upon the same facts as the March 28th Complaint, lacks subject matter jurisdiction, and fails to state a claim upon which relief can be granted.

THE ISSUES IN THE COMPLAINT WERE ALREADY DISMISSED BY THE COMMISSION

On March 28, 2017, Mr. Thomas filed a Complaint with the Commission alleging it was improper for CenturyLink to charge him to relocate a utility line on his property located at 41 West State Street, Farmington, Utah. Despite acknowledging that the utility line was in place “for over 20 years”¹, Mr. Thomas did not want to pay for the utility line relocation, and requested that the Commission order CenturyLink to split the cost of the utility line relocation.² Before CenturyLink could move to dismiss the March 28th Complaint based on lack of subject matter jurisdiction, it reached a resolution with Mr. Thomas, wherein CenturyLink and Mr. Thomas agreed to split the cost of the relocation.³ Mr. Thomas even advised the Commission that splitting the cost of the relocation was a “fair resolution.”⁴ Based on Mr. Thomas’ request, the Commission dismissed the March 28th Complaint.⁵ Despite agreeing to split the cost of the relocation, Mr. Thomas now refuses to pay anything for the utility line relocation.

The July 10th Complaint should be dismissed since it involves the same issue that was before the Commission in the previously dismissed March 28th Complaint.

NO SUBJECT MATTER JURISDICTION

Even if the Commission does not dismiss the Complaint on the grounds that it is the same issue addressed in the March 31, 2017 Commission dismissal of Docket No. 17-049-04, the July 10th Complaint should be dismissed based on the Commission’s lack of subject matter jurisdiction. The July 10th Complaint alleges that CenturyLink does not have a right to have a utility line on

¹ According to CenturyLink’s Network Design System (NDS), this pole line has been in place since at least since 1960.

² See, Docket No. 17-049-04, March 28th Complaint,
Website: <https://psc.utah.gov/2017/03/28/docket-no-17-049-04/>

³ See, Docket No. 17-049-04, March 30th email request to withdraw complaint from Mr. Thomas to the Commission.
Website: <https://psc.utah.gov/2017/03/28/docket-no-17-049-04/>

⁴ *Id.*

⁵ See, Docket No. 17-049-04, March 31, 2017 Order of Dismissal.
Website: <https://psc.utah.gov/2017/03/28/docket-no-17-049-04/>.

Mr. and Mrs. Thomas' property. CenturyLink has a lawful right to have a utility line on the Thomas' property. This dispute is a land use issue that is not properly before the Commission.

CenturyLink and its predecessors have had a utility line on the property located at 41 West State Street, Farmington Utah, long before the complainants owned the property.⁶ Mr. and Mrs. Thomas did not acquire the property until November 2012. By Mr. Thomas own acknowledgment, CenturyLink had a utility line on the property "for over 20 years."⁷ CenturyLink believes it has a lawful right to retain the utility line in question. 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.

The July 10th Complaint should be dismissed based on the Commission's lack of subject matter jurisdiction over the land use issue in question.

FAILURE TO STATE A CLAIM

Lastly, the July 10th Complaint should be dismissed for failure to state a claim upon which relief can be granted. Mr. and Mrs. Thomas do not allege that CenturyLink violated any of its offerings and pricing or violated any Commission statute or rule.

Mr. Thomas previously agreed to split the cost of the utility line relocation.⁸ It is apparent from the July 10th Complaint that Mr. Thomas is not willing to split the costs of the relocation, despite the previous agreement. Instead of honoring this commitment previously conveyed to the Commission, Mr. Thomas is now alleging that CenturyLink has no right to be on the property. As discussed above, this is not an issue appropriately before the Commission.

⁶ See, property abstract records attached hereto as Ex. A.

⁷ See, March 28th Complaint.

⁸ See, See March 30th email.

For the above stated reasons, CenturyLink respectfully requests that the Commission dismiss the July 10th Complaint with prejudice.

RESPECTFULLY SUBMITTED this 8th day of August, 2017

CENTURYLINK



Torry R. Somers
6700 Via Austi Pkwy.
Las Vegas, NV 89119
Ph: (702) 244-8100
Fax: (702) 244-7775
torry.r.somers@centurylink.com

Attorney for CenturyLink

EXHIBIT A

TO

CENTURYLINK'S MOTION TO DISMISS

DOCKET NO. 17-049-09

AUGUST 8, 2017

PROPERTY ABSTRACT RECORD

Serial Number: 07-028-0033

Abstract		
Serial Number: 07-028-0033	Tax District: 24	Exempt: No
Tax Name & Address for Tax Year 2017 THOMAS, STEPHEN D & TAMARA A 65 WEST STATE ST FARMINGTON, UT 840250000	Situs Address: 41 W STATE ST FARMINGTON 84025	Parcel Dates: 1/1/81 to Acres: 0.55000

Dedication Plat
0 (This represents the most recent Dedication Plat.)

Legal Description
 BEG 160.0 FT W FR THE NE COR OF LOT 5, BLK 3, PLAT A, FARMINGTON TS SURVEY, & RUN TH S 312.2 FT; TH W 87.50 FT; TH N 200.00 FT; TH E 30.0 FT; TH N 112.0 FT; TH E 57.50 FT TO THE POB. CONT 0.55 ACRES

Parent	Child	Effective Date

Type	Party	KOI	Entry Number	Book & Page	Inst. Date	Rec. Date & Time	Consideration	Vesting Doc.	See Also	X-Refs	
										Entry Number	Book & Page
Grantor:	HOLBROOK, KIM	AFFIDAVIT	2713407	5685-461	01/10/2013	1/14/13 09:03:00	\$0.00			2700759	5648-1376
Grantee:	TO WHOM IT MAY CONCERN, ASPEN TITLE INSURANCE AGENCY, ASPEN TITLE INSURANCE AGENCY,										
Grantor:	ALLEN, STEVEN R	WARRANTY DEED	2711932	5679-1205	12/31/2013	1/3/13 16:36:00	\$10.00	Yes		2700658	5648-863
Grantor:	ALLEN, CLAUDIA B										
Grantee:	THOMAS, STEPHEN D										
Grantee:	THOMAS, TAMARA A ASPEN TITLE INSURANCE AGENCY, ASPEN TITLE INSURANCE AGENCY,										
Grantor:	MERS,	SUBSTITUTION OF TRUSTEE & RECONVEYANCE	2706556 X	5665-679	12/05/2012	12/11/12 12:41:00	\$0.00			2207965	4131-999
Grantor:	LEHMAN BROTHERS BANK FSB,										
Grantor:	NSM LLC,										
Grantee:	ALLEN, STEVEN R										
Grantee:	ALLEN, CLAUDIA B CORELOGIC SOLUTIONS LLC CORELOGIC SOLUTIONS LLC										
Grantor:	THOMAS, STEPHEN D	TRUST DEED	2700759 X	5648-1376	11/13/2012	11/14/12 16:21:00	\$127,500.00			2713407	5685-461
Grantor:	THOMAS, TAMARA A										
Grantee:	US BANK NA,										
Grantee:	MERS, ASPEN TITLE INSURANCE AGENCY, ASPEN TITLE INSURANCE AGENCY,										
Grantor:	ALLEN, STEVEN R	WARRANTY DEED	2700758 X	5648-1375	11/13/2012	11/14/12 16:21:00	\$10.00				
Grantor:	ALLEN, CLAUDIA B										
Grantee:	THOMAS, STEPHEN D										
Grantee:	THOMAS, TAMARA A										

ASPEN TITLE INSURANCE AGENCY, ASPEN TITLE INSURANCE AGENCY.									
Grantor:	ALLEN, STEVE	WATER PETITION	2273404	4290-266	04/05/2007	5/24/07 08:41:00	\$0.00		
Grantee:	BENCHLAND WATER DISTRICT, BENCHLAND WATER DISTRICT, BENCHLAND WATER DISTRICT,								
Grantor:	EQUITY TITLE INSURANCE AGENCY INC,	AFFIDAVIT	2211865	4142-1381	10/19/2006	10/19/06 16:41:00	\$0.00	2207964	4131-998
Grantee:	SCHULTHIES, VAL TR								
Grantee:	SCHULTHIES, SUSAN H TR								
Grantee:	VAL SCHULTHIES AND SUSAN H SCHULTHIES TRUST 04/29/2005, EQUITY TITLE INS AGENCY INC, EQUITY TITLE INS AGENCY INC,								
Grantor:	ALLEN, CLAUDIA B	TRUST DEED	2207965	4131-999	10/02/2006	10/4/06 16:09:00	\$190,000.00	2706556	5665-679
Grantor:	ALLEN, STEVEN R								
Grantee:	MERS, LEHMAN BROTHERS BANK, EQUITY TITLE INS AGENCY INC, EQUITY TITLE INS AGENCY INC,								
Grantor:	VAL SCHULTHIES AND SUSAN H SCHULTHIES TRUST,	WARRANTY DEED	2207964	4131-998	10/03/2006	10/4/06 16:09:00	\$10.00	Yes	2211865 4142-1381
Grantor:	SCHULTHIES, SUSAN H TR								
Grantor:	SCHULTHIES, VAL TR								
Grantee:	ALLEN, CLAUDIA B								
Grantee:	ALLEN, STEVEN R EQUITY TITLE INS AGENCY INC, EQUITY TITLE INS AGENCY INC,								
Grantor:	SCHULTHIES, VAL	WARRANTY DEED	2072182	3784-113	04/29/2005	5/10/05 08:21:00	\$0.00	Yes	07-028-0044
Grantor:	SCHULTHIES, VAL DEE								
Grantor:	SCHULTHIES, SUSAN H								
Grantee:	SCHULTHIES, VAL								
Grantee:	SCHULTHIES, SUSAN H								
Grantee:	VAL SCHULTHIES AND SUSAN H SCHULTHIES TRUST 04/29/2005,								

	JOHN WALDO HOLBROOK & MCDONOUGH, JOHN WALDO HOLBROOK & MCDONOUGH,										
Grantor:	BONNEVILLE TITLE COMPANY, INC.	RECONVEYANCE	1682882	2868-286	08/09/2001	8/17/01 10:23:00	\$0.00		07-028-0075	1579689	2624-665
Grantee:	FORD, DORSALLE BONNEVILLE TITLE COMPANY, INC., BONNEVILLE TITLE COMPANY, INC.,										
Grantor:	NORTH AMERICAN MTGE CO,	SUBSTITUTION OF TRUSTEE	1682881	2868-284	07/03/2001	8/17/01 10:22:00	\$0.00		07-028-0075	1579689	2624-665
Grantee:	BONNEVILLE TITLE COMPANY, INC., BONNEVILLE TITLE COMPANY, INC., BONNEVILLE TITLE COMPANY, INC.,										
Grantor:	FORD, DORSALLE	TRUST DEED	1579689	2624-665	03/01/2000	3/10/00 07:32:00	\$62,000.00		07-028-0075	1682881 1682882	2868-284 2868-286
Grantee:	NORTH AMERICAN MTGE CO, COOPER & BRINGHURST L C, COOPER & BRINGHURST L C,										
Grantor:	MCPHIE, DAVID A	RECONVEYANCE	1509241	2491-175	02/08/1999	4/30/99 10:50:00	\$0.00		07-028-0037	1401739	2286-206
Grantee:	FORD, E BLAIR										
Grantee:	FORD, DORSALLE DESERET FIRST CREDIT UNION, DESERET FIRST CREDIT UNION,										
Grantor:	SCHILLTHIES, VAL	WATER PETITION	1327475	2139-80	03/06/1997	6/6/97 08:40:00	\$0.00				
Grantee:	FARMINGTON AREA PRESSURIZED IRRIGATION DIST, FARMINGTON AREA PRESSURIZED IRRIGATION DIST, FARMINGTON AREA PRESSURIZED IRRIGATION DIST,										
Grantor:	SECURITY TITLE COMPANY, TR,	RECONVEYANCE	965096	1483-27	03/10/1992	3/31/92 09:59:00	\$0.00			764054	1129-802
Grantee:	SCHULTHIES, VAL										
Grantee:	SCHULTHIES, SUSAN H SCHULTHIES, VAL SCHULTHIES, VAL										
Grantor:	SCHULTHIES, VAL	TRUST DEED	764054	1129-802	08/13/1986	12/11/86 10:08:00	\$19,000.00			965096	1483-27
Grantor:	SCHULTHIES, SUSAN H										
Grantee:	EMPLOYMENT SECURITY EMP CR UNION,										

Grantor:	SECURITY TITLE COMPANY, SECURITY TITLE COMPANY, BLACKS TITLE, INC, TR,	RECONVEYANCE	751795	1111-187	08/27/1986	9/11/86 02:31:00	\$0.00		735288	1086-856
Grantee:	SCHULTHIES, VAL									
Grantee:	SCHULTHIES, SUSAN H									
Grantor:	BLACKS TITLE, INC, BLACKS TITLE, INC,	TRUST DEED	735288	1086-856	04/30/1986	5/2/86 12:16:00	\$9,888.33		751795	1111-187
Grantor:	SCHULTHIES, SUSAN H									
Grantee:	SCHULTHIES, MAXINE BROWN									
Grantor:	BLACKS TITLE, INC, BLACKS TITLE, INC,	WARRANTY DEED	735287	1086-855	04/30/1986	5/2/86 12:13:00	\$10.00	Yes		
Grantor:	FIFE, HELEN FAE									
Grantor:	BROWN, GLEN LOWELL									
Grantor:	SCHULTHIES, MAXINE BROWN									
Grantee:	SCHULTHIES, VAL									
Grantee:	SCHULTHIES, SUSAN H									
Grantor:	BLACKS TITLE, INC, SCHULTHIES, VAL	TRUSTEES DEED	724916	1071-138	01/22/1985	1/22/86 02:24:00	\$41,892.41	Yes	578473	846-102
Grantor:	KENNARD, ROYAL C									
Grantor:	KENNARD, SUZANNE									
Grantee:	FIFE, HELEN FAE									
Grantee:	BROWN, GLEN LOWELL									
Grantee:	SCHULTHIES, MAXINE BROWN									
Grantor:	SECURITY TITLE COMPANY, SCHULTHIES, MAXINE B	NOTICE OF DEFAULT	713249	1052-854	09/16/1985	9/16/85 04:10:00	\$0.00		578473	846-102
Grantor:	SECURITY TITLE COMPANY, TR,									
Grantee:	KENNARD, ROYAL C									
Grantee:	KENNARD, SUZANNE									
Grantor:	SECURITY TITLE COMPANY, SECURITY TITLE COMPANY,	TRUST DEED	682842	1005-1181	08/31/1984	9/17/84 09:45:00	\$70,000.00			
Grantor:	MEHRCORP,									
Grantor:	MEHR, DANIEL S									
Grantee:	PEARSON, DON M									
Grantee:	CRAMER, LEW W									
Grantee:	WELCH, JOHN W									

Grantee:	WELCH, JOHN W MEHRCORP, WELCH, JOHN W						
Grantor:	KENNARD, ROYAL	QUIT CLAIM DEED	680797	1002-1339	06/26/1984	8/21/84 11:20:00	\$10.00 Yes
Grantor:	KENNARD, SUZANNE						
Grantee:	MEHRCORP, AMERICAN TITLE COMPANY-SLC, AMERICAN TITLE COMPANY.						
							\$0.00
				1-457,458,459			
				1-Q-418,539,540			
				1-V-289			
				120-373			
				466-498			
				833-463			
				846-99.101			

RECEIPT

07/31/2017 01:40:12 PM

User: mountltd

Client/Vendor: MOUNTAIN LTD

IP Address: 155.70.39.45

PDF 1 x \$1.00

Printer
Item: Friendly
Format
Request

Detail: Parcel, Abstract Screen (Printer
Friendly), Serial Number
070280033

Total: \$1.00

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CERTIFICATE OF SERVICE
VIA EMAIL TRANSMISSION
Docket No. 17-049-09

I hereby certify that on the 8th day of August, 2017, I caused a true and correct copy of the foregoing CENTURYLINK'S MOTION TO DISMISS OR IN THE ALTERNATIVE RESPONSE TO COMPLAINT to be served upon the following persons via electronic mail at the e-mail addresses shown below.

Public Service Commission:

psc@utah.gov

Stephen D. and Tamara Thomas

sthamas@ic-group.net

Utah Division of Public Utilities:

Justin Jetter – jjetter@utah.gov

Erika Tedder – etedder@utah.gov

Office of Consumer Service:

Michele Beck – mbeck@utah.gov

Cheryl Murray – cmurray@utah.gov

CENTURYLINK



By: James B. Farr, Regulatory Affairs Director
250 Bell Plaza, Room 1015A
Salt Lake City, Utah 84111
Telephone: 801-238-0240
Facsimile: 801-237-6542
e-mail: james.farr@centurylink.com