

Kira M. Slawson (7081)
BLACKBURN & STOLL, L.C.
257 East 200 South, Suite 800
Salt Lake City, Utah 84111
Telephone: (801) 521-7900
Fax: (801) 578-3568
kslawson@blackburn-stoll.com

Attorneys for South Central Utah Telephone Association, Inc.

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH	
IN THE MATTER OF THE FORMAL COMPLAINT OF RICHARD AND COLLEEN FLINSPACH AGAINST SOUTH CENTRAL UTAH TELEPHONE ASSOCIATION, INC. dba SOUTH CENTRAL COMMUNICATIONS	DOCKET NO. 17-052-01 SOUTH CENTRAL UTAH TELEPHONE ASSOCIATION, INC.'S MOTION TO DISMISS OR IN THE ALTERNATIVE RESPONSE TO COMPLAINT

On February 28, 2017, Richard and Colleen Flinspach (collectively the “Flinspachs”) filed a formal complaint against South Central Utah Telephone Association, Inc. (“South Central” or “Company”). On March 1, 2017, the Commission issued a Notice of Filing and Comment Period (the “Notice”). The Notice provides South Central the opportunity to submit a response by March 30, 2017. Pursuant to Utah Code Ann. §§63G-4-204(1) and Utah Admin. Code R746-100-3 and -4, South Central moves that Flinspachs’ Complaint be dismissed in its entirety, with prejudice. The Flinspachs have not alleged that South Central has violated any provision of law, Commission order or rule, or Company tariff. Therefore, the Flinspachs have failed to state any claim upon which the Commission may grant relief.

BACKGROUND

1. The Flinspachs reside at 8598 North Modena Canyon Road, Beryl, Utah.

2. The Flinspachs' residence is located inside South Central's Beryl Exchange Boundary, but 5.2 miles from South Central's existing facilities in the Beryl Exchange.

3. As the Flinspachs indicated in Attachment "A" to their Formal Complaint, in the late 1970's the Flinspachs constructed a telephone line from Modena to their ranch using the existing power poles of Dixie-Escalante REA, and the scrap line that was given by South Central to the Flinspach in the late 1970's.

4. The point of demarcation between the Flinspachs' private telephone line and the South Central facilities is, and has always been in Modena, Utah where South Central's facilities end in the Beryl Exchange. It is approximately 5.2 miles from the point of demarcation to the Flinspachs' home.

5. South Central did not install, and does not own the facilities from the point of demarcation in Modena, Utah to the Flinspach's home. In fact, as indicated in Attachment "A" of the Flinspachs' Complaint, South Central has never put one single piece of hardware on the line. The Flinspachs have always been responsible for the facilities from the point of demarcation to their home.

6. From time to time, South Central has assisted the Flinspachs with minor issues associated with the facilities on the Flinspachs' side of the point of demarcation. However, this assistance has been provided gratuitously, one neighbor to another, over the years, when convenient for South Central.

7. When the Flinspachs report a trouble in their service, South Central checks the demark, and if the trouble is on the Flinspachs' side of the line, Mr. Flinspach fixes the line himself.

8. Most recently, the Flinspachs contacted South Central the week of January 6, 2017, regarding a service outage. South Central dispatched a service technician to the point of demarcation in Modena, Utah who established that there was dial tone to the demark, indicating the trouble with the service was on the Flinspachs' facilities from the demark to their home.

9. This information was passed on to Mr. Flinspach.

10. As a courtesy, one of South Central's employees, Duncan Reed, told the Flinspachs that if the South Central technicians had extra time, and could fit it in their schedule, he would ask them to look at the Flinspachs line from the demark to the residence. Mr. Flinspach indicated that when the South Central technicians had extra time would be fine.

11. On January 24, 2016, the Flinspachs stopped in at South Central's office in Beryl, Utah to inquire about their bad line. Mr. Flinspach was again told that if the technicians had extra time during the week, they would look at the Flinspach line as a courtesy. South Central did not have time to provide this courtesy service on January 24, 2016.

12. On January 25, 2016, Mr. Flinspach again came to the South Central office and began demanding to know why no one had been to look at his line. Mr. Flinspach became aggressive and verbally abusive with the South Central technicians, including using threats and profanity.

13. Pursuant to South Central's Tariff, "Customer Provided Equipment (CPE)" is defined as "devices, apparatus and their associated wiring provided by a subscriber for use with facilities furnished by the Company." South Central Utah Telephone Association, Inc., PSC Utah No. 5 ("Tariff"), Sheet No. 7.

14. Pursuant to South Central's tariff, "The Company shall not be responsible for the installation, operation maintenance of any CPE . . . The Company shall not be responsible for the

through transmission of signals generated by the CPE or, for the quality of, or defects in, such transmission, or the reception of signals by CPE. Tariff, Sheet No. 50.

MOTION TO DISMISS

South Central moves under the Utah Rules of Civil Procedure, Rule 12(b)(6) for an Order dismissing the Complaint. In support of this motion, South Central states that the Complaint fails to establish that South Central violated any Commission rules, Company tariffs, or that its actions are unjust.

The Complaint alleges that South Central failed to repair the Flinspachs' privately owned facilities. The Flinspach have failed to set forth any facts that would demonstrate that South Central is responsible for maintenance and repair on the Flinspachs' privately constructed, installed, and owned facilities. On the contrary, pursuant to South Central's tariff, the Flinspachs' privately owned facilities are Customer Provided Equipment, and South Central does not have any obligation to provide maintenance or repair services on customer provided equipment or facilities.

CONCLUSION

The Flinspachs have failed to state a claim upon which the Commission can grant relief. South Central has properly serviced and maintained the Flinspachs' service to the point of demarcation. Pursuant to tariff, South Central is not obligated to repair or maintain customer provided equipment or facilities. South Central has complied with all statutes, Commission rules, and its Tariff. For these reasons, South Central respectfully requests that the Commission dismiss the Flinspachs' Complaint against South Central in its entirety.

RESPECTUFLY SUBMITTED this 20th day of March, 2017.

BLACKBURN & STOLL, LC



Kira M. Slawson
Attorneys for South Central Utah Telephone
Association, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2017, I caused a true and correct copy of the foregoing South Central Utah Telephone Association, Inc.'s Response and Motion to Dismiss was served upon the following as indicated below:

By U.S. Mail:

Richard and Colleen Flinspach
8598 North Modena Canyon Road
Beryl, UT 84714

By Electronic Mail:

Utah Division of Public Utilities:

Justin Jetter - jjetter@utah.gov
Erika Tedder - etedder@utah.gov

Office of Consumer Services:

Michele Beck - mbeck@utah.gov



Kira M. Slawson