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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 REPLY MEMORANDUM ON 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 moved that Flinspachs’ Complaint be dismissed in its entirety, with prejudice because the Flinspachs did not allege that South Central has violated any provision of law, Commission order or rule, or Company tariff. It is undisputed that the Flinspachs own, and have always owned, the facilities which they claim are not working. South Central does not have a maintenance obligation for the facilities located on the customer side of the point of demarcation (“D-Mark”) in Modena, Utah. Therefore, the Flinspachs have failed to state any claim upon which the Commission may grant relief.

REPLY

The Complaint and the responses filed by the Flinspachs in this matter paint a sympathetic picture. The Flinspachs live on a remote farm that is approximately 5.2 miles from the edge of South Central's existing facilities in the Beryl Exchange. Their telephone service was taken out by a storm on December 24, 2016, and has remained out of service since. The Flinspachs are in their seventies and no longer able to work on the telephone line. South Central, the company that the Flinspachs have paid for telephone service for forty years has refused to assist the Flinspachs in restoring the telephone service. Unfortunately, that sympathetic story is not the complete story.

South Central does provide service to the Beryl Exchange but its facilities and plant in the Beryl Exchange extend only to Modena, Utah, which is approximately 5.2 miles from the Flinspachs' home. In order to provide service to the Flinspachs' home on South Central facilities, South Central would have been required to extend its facilities 5.2 miles beyond its existing leads. This line extension would have resulted in substantial construction costs to the Flinspachs. Pursuant to South Central's tariff, if a customer requests a line extension, the customer is responsible for certain construction charges. Pursuant to South Central's tariff, South Central is required to provide only the first 300 feet of line extension free of charge. Extension to plant and drop wire construction exceeding the free footage allowance is charged to the customer at actual cost. *South Central Utah Telephone Assn., Inc., PSC Utah No. 5 Tariff, Sheet 46.*

When the Flinspachs determined they wanted telephone service in the late 1970's, the Flinspachs did not contact South Central and make arrangements to pay for a line extension from South Central. Rather, the Flinspachs personally 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 to them by South Central in the late 1970's. South Central did not construct the line, and the line from its existing facilities in Modena to the Flinspachs' ranch has never been owned by South Central. As a result, the 5.2 mile line extension is considered customer provided equipment.

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.* "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. Therefore, pursuant to South Central's tariff, South Central is not responsible for the maintenance and repair of the 5.2 mile line of CPE.¹

In this instance, the Flinspachs stated that a storm of ice and snow on December 24, 2016 broke their telephone line coming up the canyon from Modena. South Central first received notice of the line damage the week of January 6, 2017. Upon receipt of the out-of-service report, Mr. Flinspach was informed by South Central that if the trouble was on his side of the D-Mark he would be responsible for paying a service charge. South Central informed him that they would check his service at the D-Mark in Modena. South Central confirmed that the service to the D-Mark was functional and the problem was on the customer's side of the D-Mark. South

¹ Another concern is that as indicated by the Flinspachs, the line is attached to the Dixie-Escalante REA poles, and South Central does not have a pole attachment agreement with Dixie-Escalante REA that would permit South Central to attach to, or maintain facilities on, the Dixie-Escalante REA power poles.

Central explained to Mr. Flinspach that if the Company scheduled someone to work on his customer owned line, there would be a service charge. Mr. Flinspach was not interested in paying for the work and requested that South Central fix the line for free. Initially, South Central was willing to try to accommodate Mr. Flinspach's request, but informed Mr. Flinspach that the repair would be unscheduled and performed when South Central's schedule permitted. Mr. Flinspach lost his temper when the repair was not completed in what he felt was a timely manner, and he became threatening to the South Central employees. Mr. Flinspach claimed he had been a sniper on a boat in Lebanon, and said "You don't want to f--- with me, I'll f--- ya up." At that point, South Central decided it would not perform any additional favors for Mr. Flinspach. Rather, if Mr. Flinspach wanted to pay the tariffed rates for the service call and repair to the CPE, and such repairs could be made by South Central without trespassing², South Central would complete the repairs. Mr. Flinspach filed his complaint with the Division instead.

While it is true that from time to time over the years South Central has assisted the Flinspachs with line repair on the customer side of the D-Mark, any such assistance has been a courtesy, not a responsibility, and South Central's past assistance is not dispositive of this matter. On the contrary, there is no dispute that the line from Modena to the Flinspachs' home was installed and is owned by the Flinspachs, and pursuant to South Central's tariff, South Central does not have any legal responsibility for maintaining or repairing the line beyond the D-Mark.

The Division of Public Utilities filed a Memorandum dated March 30, 2017 in which the Division states "the Company appears to have violated rule R746-200-8 Informal Review, which in part states, "In no circumstances shall the utility fail to respond to the informal complaint

² To the extent the repairs will require access to the Dixie-Escalante REA power poles, South Central does not have a pole attachment agreement with Dixie-Escalante, or any legal right to access such poles.

within five business days.” Additionally, the Division states “based on the Division’s review of the information provided by both parties, there is a factual dispute concerning whether the Company violated rule R746-340-5 (A) Maintenance of Plant and Equipment and (B) Customer Trouble Reports.” The Division recommends that the Commission schedule a hearing to determine the factual dispute concerning responsibility for the line, and the non-compliance with the complaint response rule stated above.

South Central maintains that there is no factual dispute that requires a hearing in this matter. The issue with regard to the Flinspachs’ complaint is whether South Central has an obligation or responsibility to repair the 5.2 mile line from Modena to the Flinspachs’ home. The undisputed facts demonstrate that the line was constructed and installed by the Flinspachs, and has been owned by them ever since. Pursuant to South Central’s tariff, the 5.2 mile line is customer provided equipment and South Central is not responsible for its maintenance or repair. As a result, R746-340-5 (A) is inapplicable in this instance. R746-340-5 (A) provides:

1. Each telecommunications corporation shall adopt and pursue a maintenance program aimed at achieving efficient operation of its system to permit the rendering of safe, adequate and continuous service at all times.
2. Maintenance shall include keeping all plant and equipment in a good state of repair consistent with safety and the adequate service performance of the plant affected.

Rule 746-340-5 (A) requires that South Central maintain *its system* to permit the rendering of safe, adequate and continuous service at all times. As indicated in the Flinspachs’ complaint and responses, and the Company’s informal response and Motion to Dismiss, South Central has maintained its facilities to the D-Mark in a manner that permits the rendering of safe, adequate and continuous service. South Central does not have a legal obligation to provide maintenance and repair on the facilities that undisputedly are owned by the Flinspachs. Thus, as a matter of

law, South Central has not violated R746-340-5(A) in its refusal to provide free repair service to the Flinspachs' CPE.

Further, R746-340-5(B) provides that "each telecommunications corporation shall provide for the receipt of customer trouble reports at all hours, and shall make a full and prompt investigation of and response to each complaint." According to R746-340-1(A)

(9) Customer trouble reports include:

(a) "Trouble Report"—A customer report attributable to the malfunction of a telecommunications corporation's facilities and included repeat trouble reports.

(b) "Out of Service Trouble Report"—A report used when a customer reports there is neither incoming nor outgoing telecommunications capability.

(c) "Repeat Trouble Report"—A report received on a customer access line within 30 days of a closed trouble report.

South Central took Mr. Flinspach's complaint and informed Mr. Flinspach that if the trouble was on the customer provided equipment, there would be a tariffed service charge for the service call. Mr. Flinspach, as indicated above, did not want to pay a service charge, so South Central went to the D-Mark and determined that the trouble was on the customer side of the D-Mark. Because South Central does not own the facilities on the Flinspachs' side of the D-Mark, South Central had no further obligation to clear the out-of-service trouble on the CPE. Therefore, South Central has not violated R746-340-5(B).

The Flinspachs are members of the South Central cooperative. As members of South Central, they receive, and have received, telecommunications service (dial tone) to the D-Mark since the late 1970's. The service they receive is governed by the terms of South Central's tariff on file with the Commission. Pursuant to the terms of South Central's tariff, South Central is not responsible for the installation, maintenance, or repair of customer provided equipment and

facilities on the customer side of the D-Mark. The Flinspachs 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.

Further, the Company's alleged non-compliance with R746-200-8 is irrelevant to the Flinspachs' particular complaint. As set forth herein, from their initial informal complaint, through their formal complaint and response to South Central's Motion to Dismiss, the Flinspachs have admitted that the 5.2 mile line from Modena to their home was installed, constructed, and is owned by the Flinspachs. South Central does not have a maintenance or repair obligation for those facilities, regardless of when South Central may have responded to the informal complaint. However, to the extent a hearing is needed on the response issue, the hearing should be limited to that issue only.

CONCLUSION

South Central has properly serviced and maintained the Flinspachs' service as required to the D-Mark. Pursuant to tariff, South Central is not obligated to repair or maintain customer provided equipment or facilities. For these reasons, South Central respectfully requests that the Commission dismiss the Flinspachs' Complaint against South Central in its entirety.

RESPECTUFLY SUBMITTED this 25th day of April, 2017.

BLACKBURN & STOLL, LC



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

CERTIFICATE OF SERVICE

I hereby certify that on April 25, 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

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