

- 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
ORDER ON MOTION TO DISMISS

ISSUED: April 28, 2017

I. Procedural history and parties' positions.

On February 28, 2017, Richard and Colleen Flinspach (the Flinspachs) filed a formal complaint against South Central Utah Telephone Association, Inc., dba South Central Communications (SCUTA), a public utility. The Flinspachs alleged that, following severe weather, SCUTA failed to repair their landline, leaving them without telephone service.

On March 20, 2017, SCUTA filed a motion to dismiss the complaint, arguing that the broken line was owned by the Flinspachs. In support of this argument, SCUTA stated that the Flinspachs installed the 5.2-mile landline in the late 1970s, using line given to them by SCUTA. Therefore, SCUTA urges that the landline must be considered customer-provided equipment (CPE). Under its current tariff, SCUTA has no obligation to maintain CPE.

On April 6, 2017, the Flinspachs responded to SCUTA's motion to dismiss, stating, in relevant part:

- "We asked for clarification of when [SCUTA] implemented their 'tariff' which precluded any assistance with the landline[.]"
- "It is puzzling how [SCUTA] state[s] that their responsibility ends at the pole in Modena and picks up at the pole at the ranch with the wire bringing service to the house."

- "We believe initially when we became members [of SCUTA] that we were promised assistance, which we received for about Twenty (20) years."
- "Most of the individuals involved in [SCUTA] when we became members have died and with new personnel there is no one to help verify our claim that [SCUTA] considered us as regular members with [the] promise of line maintenance. That is the primary reason we wanted verification of when the new rules became effective to limit service on our landline and why there was no notification given."

On April 25, 2017, SCUTA filed a final reply in support of its motion to dismiss. In the reply, SCUTA stated that the Flinspachs have failed to dispute that they own the landline at issue. Therefore, SCUTA considers that there are no factual issues requiring adjudication; that its tariff controls this matter; and that the terms of the tariff require dismissal.

II. Analysis.

We find that the Flinspachs, who are acting pro se, have made statements in their response that adequately raise a legal dispute as to ownership of the landline. Specifically, the Flinspachs have raised the question of when SCUTA created and defined the concept of customer-provided equipment, indicating that there was no such concept at the time the landline was initially constructed. The Flinspachs have also questioned whether it is legally possible for a public utility to claim ownership of both ends of a landline, while disclaiming ownership of the middle. Finally, the Flinspachs have stated that, at the time the landline was built, SCUTA agreed that it was obligated to provide maintenance, which would indicate that SCUTA considered the landline to be its property.

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ORDER

Given the foregoing, we find that the parties have a factual dispute as to ownership of the landline at issue. Therefore, we deny SCUTA's motion to dismiss and set this matter for hearing.

DATED at Salt Lake City, Utah, April 28, 2017.

/s/ Jennie T. Jonsson
Administrative Law Judge

Approved and confirmed April 28, 2017 as the Order of the Public Service Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#293649

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NOTICE OF HEARING

ISSUED: April 28, 2017

The hearing in this matter will take place on **Friday, May 12, 2017**, beginning at 9:00 A.M. in the Fourth Floor Hearing Room 451, Heber M. Wells Bldg., 160 East 300 South, Salt Lake City, Utah.

At hearing, the presiding officer will expect to take documentary evidence and sworn testimony as to legal ownership of the 5.2-mile landline running from the Beryl Exchange to the Flinspach's residence. Evidence may include, but is not limited to:

- records demonstrating that the Flinspachs purchased from SCUTA the materials used to complete the landline;
- records demonstrating that SCUTA removed from its rate base the materials used to complete the landline;
- correspondence from SCUTA to the Flinspachs designating the landline as "customer-provided equipment" for purposes of applying the tariff that first introduced that term; and
- sworn testimony from SCUTA employees, current or former, who had personal dealings with the Flinspachs, both at the time the landline was constructed and at the time the utility adopted tariff provisions governing customer-provided equipment.

Individuals wishing to participate in the hearing by telephone should contact the PSC two days in advance by calling (801) 530-6716 or (toll-free) 1-866-PSC-UTAH (1-866-772-8824) to receive a bridge number and participant passcode. Participants attending by telephone should

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then call the bridge number five minutes before the hearing, entering the passcode followed by the # sign to ensure participation.

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during the hearing should notify the Commission at 160 East 300 South, Salt Lake City, Utah, 84114, (801) 530-6716, at least three working days prior to the hearing.

DATED at Salt Lake City, Utah, April 28, 2017.

/s/ Jennie T. Jonsson
Administrative Law Judge

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#293649

CERTIFICATE OF SERVICE

I CERTIFY that on April 28, 2017, a true and correct copy of the foregoing 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:

Kira Slawson (kiram@blackburn-stoll.com)
Blackburn & Stoll, L.C.

Alan Torgersen (alant@socen.com)
South Central Utah Telephone Association

Brett N. Anderson (bretta@blackburn-stoll.com)

Vicki Baldwin (vbaldwin@parsonsbehle.com)

Sharon Bertelsen (bertelsens@ballardspahr.com)

Larry Bowman (larry.bowman@charter.com)

Brian W. Burnett (bburnett@kmclaw.com)

(cflregulatory@chartercom.com)

Eddie L. Cox (ecox@cut.net)

William J. Evans (bevans@parsonsbehle.com)

James Farr (james.farr@centurylink.com)

Amy Gross (agross@tminc.com)

Alan Haslem (ahaslem@mleainc.com)

Ray Hendershot (ray.hendershot@beehive.net)

William Huber (william.huber@questar.com)

Bill Hunt (williamp.hunt@dish.com)

David R. Irvine (drirvine@aol.com)

Kristin L. Jacobson (Kristin.l.jacobson@sprint.com)

Brock Johansen (bjohansen@emerytelcom.com)

Dawn Kubota (kubotad@ballardspahr.com)

Jasen Lee (jlee@desnews.com)

Kirk Lee (kirk.lee@ftr.com)

Shirley Malouf (srmalouf@stoel.com)

Jennifer H. Martin (jhmartin@stoel.com)

Steve Mecham (sfmecham@gmail.com)

Roger Moffitt (roger.moffitt@att.com)

Gregory Monson (gbmonson@stoel.com)

Sharon Mullin (slmullin@att.com)

Thorvald Nelson (tnelson@hollandhart.com)

Janice Ono (Janice.ono@att.com)

Sheila Page (spage@utah.gov)

Mike Peterson (mpeterson@utahcooperatives.org)

Pam Pittenger (pam.pittenger@ftr.com)

Jenny Prescott (jenny.prescott@allwest.com)

Bruce Rigby (bruce@ucmc-usa.com)

Gary Sackett (gsackett@joneswaldo.com)

Alan L. Smith (alanakaed@aol.com)

Ted D. Smith (tsmithlaw@earthlink.net)

Kendra Thomas (kthomas@kfrservices.com)

Bruce H. Todd (btodd@stratanetworks.com)

Jake Warner (jakew@beehive.net)

James H. Woody (jwoody@union-tel.com)

John Woody (jwoody@union-tel.com)

Union Telephone Company

Patricia Schmid (pschmid@utah.gov)

Justin Jetter (jjetter@utah.gov)

Steven Snarr (ssnarr@utah.gov)

Robert Moore (rmoore@utah.gov)

Assistant Utah Attorneys General

Erika Tedder (etedder@utah.gov)

Division of Public Utilities

By Hand-Delivery:

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

Administrative Assistant