



CARLA M. BUTLER

November 14, 2018

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. 18-049-12

Dear Mr. Widerburg:

Attached for filing please find CenturyLink's Response and Motion to Dismiss, along with a Certificate of Service.

If you have any questions, please call me.

Sincerely,

A handwritten signature in black ink that reads "Carla M. Butler".

Carla M. Butler
Paralegal

Attachment
cc: Service List

310 SW Park Ave., 11th Flr.
Portland, OR 97205
Tel. 503.242.5420
Fax. 503.242.8589
carla.butler@centurylink.com

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

Attorney for Qwest Corporation d/b/a CenturyLink QC

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Formal Complaint of Arroyo de Plata, LLC
dba Domino's Pizza against Qwest Corporation
dba CenturyLink QC

DOCKET NO. 18-049-12
**CENTURYLINK'S RESPONSE &
MOTION TO DISMISS**

On October 15, 2018, Arroyo de Plata, LLC dba Domino's Pizza ("ADP") filed a formal complaint ("Complaint") against Qwest Corporation d/b/a CenturyLink QC ("CenturyLink"), for allegedly improperly porting its number to Comcast. CenturyLink provides its Response and Motion to Dismiss the Complaint. The Public Service Commission of Utah (the "Commission") should dismiss the Complaint since ADP fails to set forth any claim upon which relief can be granted. The Complaint is based upon ADP's phone number being wrongly ported by Comcast. CenturyLink fully appreciates ADP's frustration that its business phone number was out of service for a few days, however, the porting error was solely the result of Comcast. ADP should seek redress from Comcast, not CenturyLink.¹ In fact, on November 6, 2018, ADP filed an informal complaint with the Commission against Comcast.² Given that CenturyLink did all it was lawfully permitted to do upon receiving the port request from Comcast, and the Commission cannot grant the damages requested by ADP, the Complaint should be dismissed.

¹ CenturyLink advised ADP that the porting error was the result of Comcast's actions. Further, ADP was advised that federal law prohibits CenturyLink from doing the verification requested by ADP in its Complaint. Even with this understanding ADP was not willing to dismiss the Complaint against CenturyLink.

² See, Informal Complaint filed by ADP against Comcast attached hereto as Exhibit 1.

I. ARROYO DE PLATA FAILS TO STATE A CLAIM FOR RELIEF AGAINST CENTURYLINK

The Commission cannot grant the relief requested by ADP. Specifically, ADP requests the following relief:

- Proof of verification that CenturyLink performed before sending ADP's phone number to Comcast;
- Refund of service charge for the period ADP did not have phone service;
- Proof of process that CenturyLink has in place to ensure porting errors will not occur in the future; and
- Compensation of sales loss.

Federal law and the Commission's jurisdictional limitations prevent ADP from getting the requested relief. Further, ADP was provided a credit for the 5 days its phone was not in service.

1. FEDERAL LAW PROHIBITS CENTURYLINK FROM DOING THE VERIFICATION REQUESTED BY ADP

The crux of ADP's complaint is that CenturyLink should have done more to verify the accuracy of the port request prior to initiating the port. On June 28, 2018, CenturyLink received an automated request from Comcast to port telephone number (435) 649-7788 to Comcast with a requested due date of July 7, 2018.³ As set forth in the Complaint, ADP never wanted its number ported. The requirement to verify a port request and ensure its accuracy rests with the "submitting carrier", Comcast in this case. Federal law prohibits CenturyLink (the "executing carrier" in this case) the ability to verify the accuracy of a port request. Despite Comcast's error, ADP's phone number was restored to CenturyLink within 5 days.

³ The port request is identified by Comcast Purchase Order Number (PON) 200680187.

ADP believes CenturyLink should have done more to verify the accuracy of the port request, but the reality is that CenturyLink did all it is lawfully permitted to do with respect to the port request. Permanent number portability is governed by federal law⁴, and CenturyLink is not permitted to do the verification requested by ADP. A carrier that is requested to port a number (the “executing carrier”), CenturyLink in this case, cannot require proof of authorization prior to processing a port request. Federal regulations specifically indicate that “[a]n executing carrier shall not verify the submission of a change in a subscriber’s selection of a provider of telecommunications service received from a submitting carrier.”⁵ The Federal Communications Commission (“FCC”) concluded that re-verification by executing carriers could serve to “take away control from the consumer” and constrain consumer choice.⁶ The FCC said that re-verification by its very nature imposes additional burdens on consumers and diminishes consumer choice.⁷ It is the submitting carrier, Comcast in this case, that has the obligation to obtain the appropriate verification.⁸ Based on federal law CenturyLink is not permitted to do the additional verification as requested by ADP, and the Complaint should be dismissed for failure to state a claim upon which relief can be granted.

⁴ See, Utah Admin. Code R746-365-4(b), stating in relevant part that “[p]ermanent number portability shall be provided pursuant to Federal Communications Commission requirements.”

⁵ See, 47 CFR Sec. 64.1120(a)(2).

⁶ See, *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, 18 FCC Rcd 5099, 2003 FCC LEXIS 1423, 28 Comm. Reg. (P & F) 1048, par. 8. (“Subscriber Carrier Selection Order”).

⁷ *Id.* at par. 19

⁸ See, 47 CFR, Sec. 64.1120(a)(1). See also, *Subscriber Carrier Selection Order*, par. 6, and *In re Implementation of the Subscriber Carrier Selection*, 23 FCC Rcd 486, 2008 FCC LEXIS 54, 43 Comm. Reg. (P & F) 810 (F.C.C. December 18, 2007), par. 2.

2. ADP IS NOT ENTITLED TO DAMAGES FROM CENTURYLINK

Further, ADP seeks damages for lost sales while its phone number was out of service as a result of Comcast's porting error. Since as a matter of law CenturyLink was not permitted to do any additional verification of the port request, it cannot be liable for any damages to ADP. Moreover, the Commission does not even have jurisdiction to award ADP damages, and its claims should be dismissed. The Commission's powers are conferred by statute enacted by the legislature.⁹ There is no statutory provision allowing the Commission to award monetary damages as requested by ADP. The Commission has authority to require a utility to provide refunds for amounts collected for service "in excess of the schedules, rates and tariffs on file with the Commission",¹⁰ but that is not what ADP is requesting. ADP is specifically requesting damages for lost revenue, something outside of the Commission's authority, and therefore the Complaint should be dismissed. ADP requests a refund for the service charge for the period it did not have phone service. CenturyLink has issued a credit to ADP in the amount of \$265.68, this covers the service charge for the time the phone was out of service, and a courtesy refund for ADP having to spend time to determine the cause of the number being out of service.

Lastly, even if the Commission could award damages, which it can't, CenturyLink's price list limits its liability. Specifically, CenturyLink's price list on file with the Commission indicates, in part, it has no liability for errors, mistakes, omissions, interruptions or delays in the course of furnishing or changing service.¹¹

II. CONCLUSION

CenturyLink has advised its customer, ADP, that it should talk to Comcast about resolving its claim for lost revenue, and is encouraged that ADP has now filed an informal

⁹ See, *Basin Flying Service vs. Public Service Commission*, 531 P.2d 1303 (Utah 1975).

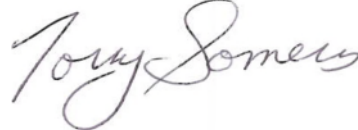
¹⁰ See, Utah Code 54-7-20.

¹¹ See, Qwest Corporation Price List, Sec. 2.4.1(A), attached hereto as Exhibit 2.

complaint that will hopefully address its concerns. While CenturyLink appreciates ADP's situation, it hopes that ADP understands that federal law prevents CenturyLink from doing any further verification as requested by ADP in its Complaint. For the above stated reasons, CenturyLink respectfully requests that the Commission dismiss the Complaint in its entirety.

RESPECTFULLY SUBMITTED this 14th day of November 2018.

CENTURYLINK



Torry R. Somers
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Las Vegas, NV 89119
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torry.r.somers@centurylink.com

Attorney for CenturyLink

Informal Complaint Report

Index Number: 1541528460 **Company Name:** Comcast

CUSTOMER INFORMATION

Customer Name: Arroyo de Plata LLC **Account Number:** N/A
Other Contact Info: Mei **Phone Number:** (435) 649-7788
Customer Address: POBox 684168 Park City, UT 84068 **Other Phone:**
Customer Address: 750 Kearns Blvd **Email Address:** iavelar00@yahoo.com
City: Park City **State:** UT **Zip Code:** 84060

COMPLAINT INFORMATION

Type of Call: Complaint **Complaint Type:** Slamming In-State
Date Received: 11/6 /2018 **Date Resolved:**
Complaint Received By: Cynthia Dumas **DPU Analyst Assigned:** 0
Utility Company Analyst:
Company at Fault: **Actual Slamming Case:** **Actual Cramming Case:**

Complaint Description:

The following complaint was received via e-mail and has been copied and sent exactly as received. Also, this complaint has been sent to CenturyLink as well. Torry with CenturyLink has been in contact with Comcast's attorney so Comcast is aware of the complaint. Please contact the customer.

On Sun, Aug 19, 2018 at 11:44 PM, DPU Web Server <utilcomp@utah.gov> wrote:

DPU ONLINE COMPLAINT

UTILITY CUSTOMER
FROM: Arroyo de Plata LLC
PHONE: 435-649-7788
EMAIL: iavelar00@yahoo.com
SERVICE ADDRESS:
750 Kearns Blvd Park City, UT 84060
MAILING ADDRESS:
POBox 684168 Park City, UT 84068

INCIDENT DETAILS
UTILITY: Century Link
ACCOUNT NUMBER: 4356497788
COMPLAINT TYPE: Slamming

COMPLAINT:

Century Link switched our MAIN BUSINESS phone number 435-649-7788 to Comcast on 7/7/2018 without our authorization. We could not receive any calls for 4+ days starting 7/7 morning. We only got the number back on 7/11. We lost majority of business during this period, since phone call is the main way our customer placed order. After that, I only received one call from Century Link saying they had to release my number because there was an order from Comcast, I made numerous calls trying to reach Century Link and there is no response. How can they release our phone number without proper verification? What kind of process Century Link have in place to protect against slamming?

SUGGESTED RESOLUTION: proper explanation of how this happened, process in place to protect customer against slamming, compensation of lost business

Complaint Response:

Informal Complaint Report

Additional Information:

Qwest Corporation
PRICE LIST

**EXCHANGE AND NETWORK
SERVICES
UTAH**

SECTION 2
Page 42
Release 1

Issued: 5-2-2005
(A.L. 2005-T09)

Effective: 5-9-2005

2. GENERAL REGULATIONS - CONDITIONS OF OFFERING

2.4 LIABILITY OF THE COMPANY

2.4.1 SERVICE LIABILITIES

In view of the fact that the customer has exclusive control of their communications over the facilities furnished them by the Company, and of the other uses for which facilities may be furnished them by the Company, and because of unavailability of errors incident to the services and to the use of such facilities of the Company, the services and facilities furnished by the Company are subject to the following terms, conditions and limitations.

A. Limitations

NO LIABILITY SHALL ATTACH TO THE COMPANY FOR DAMAGES ARISING FROM ERRORS, MISTAKES, OMISSIONS, INTERRUPTIONS, OR DELAYS OF THE COMPANY, ITS AGENTS, SERVANTS OR EMPLOYEES, IN THE COURSE OF ESTABLISHING, FURNISHING, REARRANGING, MOVING, TERMINATING, OR CHANGING THE SERVICE OR FACILITIES (INCLUDING THE OBTAINING OR FURNISHING OF INFORMATION IN RESPECT THEREOF OR WITH RESPECT TO THE CUSTOMERS OR USERS OF THE SERVICE OR FACILITIES) IN THE ABSENCE OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

B. Transmission

1. The Company does not transmit messages but offers the use of its facilities when available, for communications between parties, each of whom is present at a telephone.
2. The customer indemnifies and saves the Company harmless against claims for libel, slander, or infringement of copyright from the material transmitted over its facilities; against claims for infringement of patents arising from combining with, or using in connection with, facilities of the Company, apparatus and systems of the customer; and against all other claims arising out of any act or omission of the customer in connection with facilities provided by the Company.

C. Connections With Other Telephone Companies

When the lines of other companies are used in establishing connection to points not reached by the Company's lines, the Company is not liable for any act or omission of the other company or companies and their agents, servants, or employees.

CERTIFICATE OF SERVICE

Docket No. 18-049-12

I hereby certify that on the 14th day of November, 2018, I caused a true and correct copy of the foregoing CENTURYLINK'S RESPONSE AND MOTION TO DISMISS to be served upon the following persons via electronic mail at the e-mail addresses shown below, and via U.S. Mail to Arroyo de Plata LLC.

Public Service Commission:

psc@utah.gov

Arroyo de Plata LLC dba Domino's Pizza

750 Kearns Blvd., # 140

Park City, Utah 84060

lavelar00@yahoo.com

Utah Division of Public Utilities:

Justin Jetter – jjetter@utah.gov

Erika Tedder – etedder@utah.gov

CENTURYLINK



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