

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Duane Farrant,)	
)	
Complainant,)	
)	
v.)	<u>File No. TC-2012-0394</u>
)	
CenturyLink (Embarq Missouri),)	
)	
Respondent.)	

STAFF’S MOTION TO DISMISS COMPLAINT

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), through the undersigned counsel, and hereby submits this *Staff’s Motion to Dismiss Complaint* (“*Motion to Dismiss*”) to the Missouri Public Service Commission (“the Commission”), respectfully stating as follows:

1. On May 23, 2012, Duane Farrant (“Complainant” or “Mr. Farrant”) filed a formal complaint (“Complaint”) with the Commission against Embarq Missouri, Inc., d/b/a CenturyLink (“CenturyLink” or “Company”), seeking monetary damages and necessary repairs to be made so he can receive reliable telephone service. Mr. Farrant previously complained of crackling, whining, and white noises; service delays and interruptions in service (without even a dial tone); inability to complete or receive calls, dropped calls, and general poor quality of services are so intrusive as to render Complainant’s telephone service inadequate. Mr. Farrant should not be forced to pay charges demanded by CenturyLink for its provision of “un-usable” or inadequate service.

2. That Complaint, if true, meant that CenturyLink was in violation of Section 392.200.1. RSMo:

Every telecommunications company shall furnish and provide with respect to its business such instrumentalities and facilities as shall be adequate and in all respects just and reasonable. All charges made and demanded by any telecommunications company for any service rendered or to be rendered in connection therewith shall be just and reasonable and not more than allowed by law or by order or decision of the commission. Every unjust or unreasonable charge made or demanded for any such service or in connection therewith or in excess of that allowed by law or by order or decision of the commission is prohibited and declared to be unlawful.

3. The Staff conducted tests as part of its investigation of Complainant's service issues and notified CenturyLink of its findings. CenturyLink addressed those identified issues. Subsequent tests indicate that Mr. Farrant's service problems have been remedied and that he is now receiving adequate telephone service.

4. Mr. Farrant continues to seek monetary compensation for his assertions of years of inadequate telephone service from CenturyLink.

5. In File No. EC-2010-0364, the Commission concluded that it could not grant monetary damages to the complainant. The Commission's *Order Dismissing Complaint*, in that case, cited *State ex rel. GS Technologies Operating Co., Inc. v. Public Service Commission*:

While the "Commission does have exclusive jurisdiction of all utility rates," "when a controversy arises over the construction of a contract or of a rate schedule upon which a contract is based, and a claim of an overcharge is made, only the courts can require an accounting or render a judgment for the overcharge." *Wilshire Constr. Co. v. Union Elec. Co.*, 463 S.W.2d 903, 905 (Mo. 1971). This is so because the Commission "cannot 'enforce, construe nor annul' contracts, nor can it enter a money judgment." *Id.* (quoting *May Dep't Stores Co. v. Union Elec. Light & Power Co.*, 107 S.W.2d 41, 49 (Mo. 1937)). Likewise, the Commission does not have the authority to do equity or grant equitable relief. *Am. Petroleum Exch. V. Pub Serv. Comm'n*, 172 S.W.2d 952, 955 (Mo. 1943).¹

6. Thus, the Commission is without jurisdiction and authority to order the award of monetary damages, as prayed by the Complainant Mr. Farrant.

¹ 116 S.W.3d 680, 696 (Mo. App. 2003).

WHEREFORE, Staff prays that the Commission order the Complaint to be dismissed for failure to state a claim upon which this Commission may grant relief.

Respectfully submitted,

/s/ TANYA K. ALM

Tanya K. Alm
Missouri Bar No. 62721

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 526-6036 (Telephone)
(573) 751-9285 (Facsimile)
tanya.alm@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered or transmitted by facsimile or electronic mail to all counsel of record this 18th day of April 2013.

/s/ Tanya Alm

MEMORANDUM

To: Missouri Public Service Commission Official Case File, Case No. TC-2012-0394,
CenturyLink (Embarq Missouri)

From: Myron Couch, Telecommunications Unit - Tariff, Safety, Economic & Engineering
Analysis Department
Scott Glasgow, Telecommunications Unit - Tariff, Safety, Economic &
Engineering Analysis Department

/s/ John Van Eschen 4/18/2013 /s/ Tanya K. Alm 4/18/2013
Telecommunications Unit/Date General Counsel's Office/Date

Subject: Staff's recommendation on CenturyLink (Embarq Missouri) to close the case.

Date: April 18, 2013

The staff of the Missouri Public Service Commission's ("PSC" or "the Commission") Telecommunications Unit ("Staff") recommends this formal consumer complaint ("Complaint") be closed because CenturyLink Telephone Company ("CenturyLink" or "Company") has completed a rehabilitation of the cable plant that serves Mr. Duane Farrant ("Mr. Farrant" or "Complainant") and his concerns have been adequately resolved at this time. Mr. Farrant's complaint concerned a "fairly consistent humming noise" on his telephone line. CenturyLink officials acknowledged that a condition of power influence existed on the cable that served Mr. Farrant. Staff believed the humming problem was due to insufficient bonding and grounding of the cable. Last July 2012, CenturyLink took on the task of reworking the bonding and grounding of the cable and repairing any other problems discovered during this process. After this work was completed, the Company's cable repair expert, Mr. Dean Lounsberry, tested the cable and found it to be in good condition. At the time that CenturyLink completed their work, Staff believed the ground was too dry and that it would be difficult to measure any physical problems with the cable. However, since that time, the area has received adequate moisture and Staff's testing and subsequent test results provide an accurate assessment of the cable facilities.

Since CenturyLink completed the rehabilitation of his service, Mr. Farrant reported on Sunday, March 17, 2013, that his line was dead. Staff called Mr. Farrant the next day and his line was back in service, and his telephone service sounded clear and quiet. At this time, Staff is convinced that, subsequent to the repairs and corrective actions taken by the Company, the cable that serves Mr. Farrant provides adequate service. Staff travelled to Cole Camp, on April 9, 2013, to test Mr. Farrant's service. On that day, Staff measured Mr. Farrant's telephone service and found no physical problems with his service, and the power influence that had been a problem in the past was within Staff's guidelines for adequate service, per 392.200.1. RSMo.

Staff has spoken to Mr. Farrant and he agrees that at this time his service is adequate, and Mr. Farrant is willing to voluntarily close the complaint case. Mr. Farrant still would like to seek reimbursement for the years of inadequate service he has experienced in the past; however, such compensation awards are beyond the Commission's authority. Staff recommends the Commission close the case.

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Duane Farrant,

Complainant

vs.

CenturyLink (Embarq Missouri),

Respondent

Case No. TC-2012-0394

AFFIDAVIT OF MYRON COUCH

STATE OF MISSOURI

COUNTY OF COLE

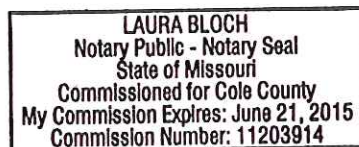
)
) ss
)

Myron Couch, of lawful age, on oath states: that he participated in the preparation of the foregoing Staff Report in memorandum form, to be presented in the above case; that the information in the Staff Report was given by him; that he has knowledge of the matters set forth in such Staff Report; and that such matters are true to the best of his knowledge and belief.



Myron Couch

Subscribed and sworn to before me this 18th day of April, 2013.





Notary Public

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Duane Farrant,

Complainant

vs.

CenturyLink (Embarq Missouri),

Respondent

Case No. TC-2012-0394

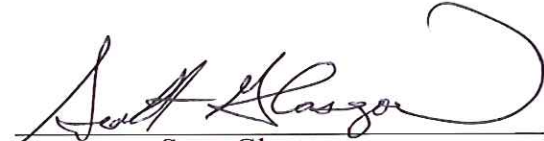
AFFIDAVIT OF SCOTT GLASGOW

STATE OF MISSOURI

COUNTY OF COLE

)
) ss
)

Scott Glasgow, of lawful age, on oath states: that he participated in the preparation of the foregoing Staff Report in memorandum form, to be presented in the above case; that the information in the Staff Report was given by him; that he has knowledge of the matters set forth in such Staff Report; and that such matters are true to the best of his knowledge and belief.


Scott Glasgow

Subscribed and sworn to before me this 18th day of April, 2013.




Notary Public