

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

Duane Farrant,)	
)	
Complainant,)	
v.)	<u>File No. TC-2014-0103</u>
)	
CenturyLink (Embarq Missouri),)	
)	
Respondent)	

STAFF’S MOTION TO DISMISS COMPLAINT

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

1. On October 21, 2013, Duane Farrant filed a formal complaint against Embarq Missouri, Inc. d/b/a CenturyLink (“CenturyLink” or “Company”) seeking reliable telephone service, a written promise that outages will not occur in the future, and monetary damages.

2. This complaint stems from telephone service outages in August and September of 2013. Mr. Farrant has previously experienced service issues, complaining of service interruptions and static on the line. Subsequent to his previous complaint, TC-2012-0394, CenturyLink performed work on the cable that serves him in order to make the cable more dependable.

3. Mr. Farrant lives approximately 20 miles from Cole Camp, Missouri, in an area where he is many miles from the nearest cabinet. When there is a service outage, Mr. Farrant will directly contact the Missouri Public Service Commission Staff, usually

via e-mail. Staff has then contacted CenturyLink about resolving the outage. Despite being offered the technician's phone number and other contacts within CenturyLink, Mr. Farrant has communicated to Staff that he will not directly contact the Company.

4. The service that Mr. Farrant receives is adequate and free from any detectable defects. On November 1, 2013 Missouri Public Service Commission Staff Myron Couch and Scott Glasgow traveled to Cole Camp to inspect and perform tests on Mr. Farrant's telephone service. While there, Staff also asked the CenturyLink employees to test Mr. Farrant's service from his residence back to the remote terminal. Based on the results of these tests, Staff concluded that Mr. Farrant's telephone service is adequate and free from any detectable defects.

5. A written promise to never have any service outages is unreasonable. Taking into account the remote location of Mr. Farrant's residence, it would be unreasonable to expect CenturyLink to never have any service issues. Further, any service problems are unnecessarily compounded by Mr. Farrant's unwillingness to communicate with the Company.

6. In the *Recommended Order Granting Motion to Dismiss* in TC-2012-0394, Mr. Farrant's previous complaint case, he was unequivocally informed: "It is well-settled law that the Commission cannot grant monetary relief or damages or order a pecuniary reparation or refund." In support of this, the Commission 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.*, 341 Mo. 299, 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

Therefore, the Commission does not have the power to grant Mr. Farrant the monetary compensation he requests.

7. Staff has conducted its investigation pursuant to the October 22, 2013 *Notice of Complaint and Order Directing Staff Recommendation*. The Memorandum and Affidavits of Myron Couch and Scott Glasgow are attached and incorporated by reference.

WHEREFORE, Staff requests that the Commission dismiss the Complaint for failure to state a claim on which relief may be granted, pursuant to 4 CSR 240.070(7).

Respectfully submitted,

/s/ Tim Opitz

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¹ 116 S.W. 3d 680, 69 (Mo. App. 2003).


CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 20th day of November, 2013.

/s/ Tim Opitz

MEMORANDUM

To: Official Case File
Case No. TC-2014-0103
Embarq Missouri, Inc. d/b/a CenturyLink

From:  
Myron Couch and Scott Glasgow
Telecommunications Unit

Subject: Staff's recommendation to dismiss the case

Date: November 18, 2013

On November 1, 2013 Missouri Public Service Commission Staff (Staff) Myron Couch and Scott Glasgow, travelled to the Cole Camp exchange to perform tests on Mr. Farrant's telephone service. Staff met with Michael Drew, CenturyLink's Area Supervisor for the Cole Camp exchange and two cable pair technicians, Jim Francis and Junior Nations. Staff discussed Mr. Farrant's complaint with the CenturyLink employees. Mr. Farrant had filed a previous formal complaint under TC-2012-0394. His previous complaint and his present complaint state that his telephone service is not dependable. The previous complaint also stated there was a fairly consistent humming and a white noise. Subsequent to his previous complaint, CenturyLink had performed work on the cable that serves him. The Company had its technicians bond and ground the cable and make all repairs necessary to make the cable more dependable. On April 9, 2013, Staff tested the cable following those repairs and found the cable to be free of defects at that time. Mr. Farrant states in this present complaint that "some issues are better" but the service is not working as it should.

Mr. Farrant resides in a remote rural portion of the Cole Camp exchange. Mr. Farrant's service is provided by a Seiscor carrier system installed in 1994. Mr. Farrant is served by a twenty five pair copper cable from the Seiscor remote terminal to Mr. Farrant's house. The cable that connects to Mr. Farrant's house is 16,000 feet long, which is fairly short and serves three other customers. According to Mr. Drew the other customers have not complained about the service they are receiving.

Staff performed various tests at the remote terminal location and at Mr. Farrant's residence. Staff connected the Commission's 77S Micro-computer Cable analyzer at the remote terminal and tested Mr. Farrant's cable pair. The analyzer detected no cable pair faults. The analyzer is a computer that measures one pair at a time. It makes measurements by transmitting a signal out on the pair and reads that signal when it returns. The return signal will indicate whether or not there is noise, power influence, electrical currents, a ground or, a short. When we tested Mr. Farrant's cable pair, the analyzer indicated a Noise metallic reading of -999 DBrnC, a power influence reading of 40 DBrnC and

readings of zero for grounds, shorts and voltage. All of these measurements are within the ranges permitted by the Commission's rules in 4 CSR 240-32.060(12).

When we arrived at Mr. Farrant's residence, Staff reviewed the installation of his service and found that it was grounded and bonded at the house. Staff measured the ground at the Network Interface Device (NID) and found it measured 3 ohms to ground, which staff judged to be an excellent ground. Staff inspected the install at the house and the cable pedestal that served that house and found every item, inspected, to be correctly installed and in good condition. The only unusual item was that the NID was installed under the house and behind the skirting of the house. Mr. Francis stated that this was done to satisfy Mr. Farrant's specific request.

Staff asked the CenturyLink employees to test Mr. Farrant's service from his residence back to the remote terminal. Mr. Francis performed standard cable pair test from the cable pedestal that served that residence back to the Seiscor remote terminal. Staff reviewed the cable pair tests that Mr. Francis completed using his Subscriber Loop Transmission Test Set and found that all the tests indicated a cable pair with no detectable faults.

According to Mr. Drew and Mr. Francis, Mr. Farrant has been unwilling to report complaints about his service directly to the Company or its representatives and is only reporting problems to the Commission Staff. In the past, the technicians and management of the Company have offered their own cell phone numbers to Mr. Farrant so that he could contact them directly. He has refused to do that. In our contacts with Mr. Farrant, he has stated that he did not want to talk to the technicians or management of CenturyLink and that he preferred to report outages directly to the Commission Staff.

Staff concludes based on the inspection and tests we performed as well as the tests that CenturyLink's technicians performed in our presence, that Mr. Farrant's telephone service is adequate and free from any detectable defects. Staff recommends that the Commission instruct Mr. Farrant to report any subsequent telephone problems with his service directly to CenturyLink using the 800 number the Company provides for its customers so that the Company can address his complaints in a timely manner. Staff recommends, based on our investigation, the Commission dismiss Mr. Farrant's complaint in this matter.

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CenturyLink (Embarq Missouri),)	
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Respondent)	

AFFIDAVIT OF SCOTT GLASGOW

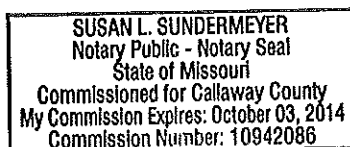
STATE OF MISSOURI)
) ss
COUNTY OF COLE)

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 20th day of November, 2013.





Notary Public

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AFFIDAVIT OF MYRON COUCH

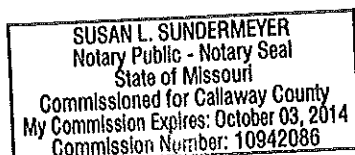
STATE OF MISSOURI)
) ss
COUNTY OF COLE)

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 20th day of November, 2013.





Notary Public