BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Duane Farrant,	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. TC-2012-0394**
	)	
CenturyLink,	)	
	)	
Respondent.	)	

RECOMMENDED ORDER GRANTING MOTION TO DISMISS

Issue Date: May 22, 2013 Effective Date: July 19, 2013

On May 23, 2012, Duane Farrant filed a complaint with the Missouri Public Service Commission ("Commission") against CenturyLink. The Commission appointed a mediator, and the parties conducted discussions and further studies to identify and resolve any pending issues. On April 18, 2013, the Staff of the Commission filed *Staff's Motion to Dismiss Complaint*, which alleged that any service problems Mr. Farrant may have experienced are now adequately resolved, that Mr. Farrant is willing to voluntarily close this complaint case, and that the only remaining issue is Mr. Farrant's request for monetary reimbursement. CenturyLink concurred with Staff's motion. Mr. Farrant filed an email response stating, in part, that "I've not had the problems withe *[sic]* service too much in the past few months…I will agree to close the case…Indeed my efforts were to gain proper phone service, but for now has only been minor problems or an outage of overnight so until that seems to be a problem again I wish to be compensated in its entirety from Century Link".

Appendix A

The complaint alleges facts within the small formal complaint procedure[1], which includes a time limit for issuing a recommendation subject to good cause. Good cause includes a good faith request for reasonable relief.[2] The parties asked for a mediator and to hold the case in abeyance to conduct discussions and further studies to identify and resolve any pending issues. Those facts constitute good cause to extend the time limit. Therefore, the time limits are extended.

Staff argues that the complaint must be dismissed because it fails to state a claim upon which relief may be granted. The standard for review for consideration of a motion to dismiss has been clearly established by Missouri's courts as follows:

> A motion to dismiss for failure to state a cause of action is solely a test of the adequacy of the plaintiff's petition. It assumes that all of plaintiff's averments are true, and liberally grants to plaintiff all reasonable inferences therefrom. No attempt is made to weigh any facts alleged as to whether they are credible or persuasive. Instead, the petition is reviewed in an almost academic manner to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case.[3]

Mr. Farrant alleges in his complaint both that CenturyLink has provided inadequate telephone service and that he should receive monetary compensation. If the Commission were to assume that the facts alleged in the complaint are true for the purposes of considering the motion to dismiss the complaint, CenturyLink would be in violation of Section 392.200.1, RSMo, for providing inadequate service. However, Mr. Farrant's subsequent pleadings filed in this case indicate that his telephone service is now acceptable. Commission Rule 4 CSR 240-2.117(2) permits the Commission on its own motion to make a determination on the pleadings to dispose of all or any part of a case.

[1] 4 CSR 240-2.070(15).
[2] *American Family Ins. Co. v. Hilden,* 936 S.W.2d 207 (Mo. App., W.D. 1996).
[3] *Bosch v. St. Louis Healthcare Network*, 41 S.W.3d 462, 463-464 (Mo. Banc 2001).

Therefore, the Commission will consider all the pleadings filed in this case in determining whether to grant the motion to dismiss.

Mr. Farrant's email filing and Staff's verified recommendation indicate that Mr. Farrant's telephone service is now adequate, so the Commission concludes that CenturyLink is providing adequate service under the law and Commission rules. Mr. Farrant also requests that the Commission grant him monetary compensation for what he has alleged are years of previous inadequate service. It is well-settled law that the Commission cannot grant monetary relief for damages or order a pecuniary reparation or refund.[4] As the court of appeals noted in *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).[5]

The Commission is a body of limited jurisdiction and has only such powers as are expressly conferred upon it by the statutes and powers reasonably incidental thereto.[6] Therefore, the

[4] Although the Public Service Commission has exclusive jurisdiction to establish rates to be charged from and after the time of their promulgation, it does not have authority to hear an action by a public utility customer for an accounting for past overcharges in excess of rates established by it for the purpose of recovering such excess from the public utility. The commission is not a court and cannot enter a money judgment for one party against another. *May Dep't Stores Co. v. Union Elec. Light & Power Co.*, 107 S.W.2d 41, 57-58 (Mo. 1937).
[5] 116 S.W.3d 680, 696 (Mo. App. 2003).
[6] *State ex rel. & to Use of Kansas City Power & Light Co. v. Buzard*, 350 Mo. 763, 766, 168 S.W.2d 1044, 1046 (1943).

Commission does not have the power to grant Mr. Farrant the monetary compensation he requests. For the reasons above, the Commission will grant the motion to dismiss.

Under Commission Rule 4 CSR 240-2.070(15)(H), the parties may file comments with the Commission supporting or opposing this recommended order within ten days after the order is issued. Any comments opposing the recommended order shall contain specific detailed grounds upon which the party claims the order is unlawful, unjust, or unreasonable. If the Commission subsequently approves the recommended order, the order will become final unless a party files a timely application for rehearing under Section 386.500, RSMo 2000.

THE COMMISSION ORDERS THAT:

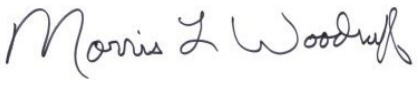
1. Staff's *Motion to Dismiss Complaint* is granted.

2. The complaint filed on May 23, 2012 by Duane Farrant is dismissed without prejudice.

3. This order shall become effective on July 19, 2013.[7]

4. The file may be closed on July 20, 2013.

BY THE COMMISSION



Morris L. Woodruff
Secretary

Michael Bushmann, Regulatory Law
Judge, by delegation of authority
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 22nd day of May, 2013.

[7] The Commission has provided an effective date other than 30 days to allows time for (i) comments under 4 CSR 240-2.070(15)(H); (ii) a Commission decision under 4 CSR 240-2.070(15)(H); and the ordinary 30-day effective date for a Commission decision under Section 386.490.2, RSMo.