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February 23, 2017

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

Re: Ed Himmelwright v. The United Telephone Company of Pennsylvania  
d/b/a CenturyLink  
**Docket No. C-2017-2587110 – PRELIMINARY OBJECTIONS**

Dear Secretary Chiavetta:

On behalf of The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink (“CenturyLink”)<sup>1</sup> enclosed for filing please find CenturyLink’s Preliminary Objections to the Formal Complaint in the above-captioned matter. A verification is also enclosed.

If you have any questions, please do not hesitate to contact me. Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Sue Benedek".

Sue Benedek

ZEB/jh

cc: All Parties on the Attached Certificate of Service (*via first-class and overnight mail*)

<sup>1</sup> The caption incorrectly states “d/b/a CenturyLink Communications.” The caption should read: “The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink.” CenturyLink’s pleadings shall reflect the correct fictitious name for the company.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**ED HIMMELWRIGHT**  
**Complainant**

v.

**THE UNITED TELEPHONE COMPANY OF  
PENNSYLVANIA LLC D/B/A CENTURYLINK**  
**Respondent**

**Docket No. C-2017-2587110**

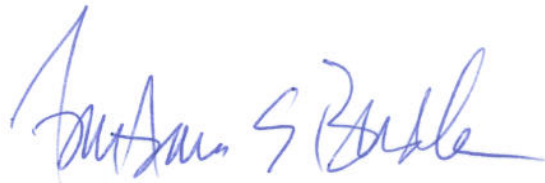
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**CERTIFICATE OF SERVICE**

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I hereby certify that I have this 23<sup>rd</sup> day of February 2017, served a true and correct copy of CenturyLink's Preliminary Objections, via first-class and overnight mail, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code §1.54:

Ed Himmelwright  
1166 Fishing Creek Road  
Mill Hall, PA 17751



---

Zsuzsanna E. Benedek, Esquire  
Attorney ID No. 60451  
Attorney for Respondent  
The United Telephone Company of  
Pennsylvania LLC d/b/a CenturyLink  
240 North Third Street, Suite 300  
Harrisburg, PA 17101  
Phone: (717) 245-6346  
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E-mail: [sue.benedek@centurylink.com](mailto:sue.benedek@centurylink.com)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**ED HIMMELWRIGHT**  
**Complainant**

v.

**THE UNITED TELEPHONE COMPANY OF**  
**PENNSYLVANIA LLC D/B/A CENTURYLINK**  
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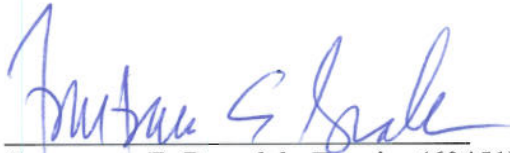
**NOTICE TO PLEAD**

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TO:

Ed Himmelwright 1166 Fishing Creek Road Mill Hall, PA 17751	
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You are hereby notified that The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink ("CenturyLink") has filed Preliminary Objections to the Formal Complaint filed in the above-captioned matter. Pursuant to 52 Pa. Code § 5.101(b), you may submit a written answer to Preliminary Objections **within ten (10) days from the service of this notice.** 52 Pa. Code §§ 5.101(b), (f)(1). If you do not file a written answer to the Preliminary Objections, the facts set forth by CenturyLink in the attached Preliminary Objections may be deemed to be true, thereby requiring no other proof and allowing the Administrative Law Judge to rule upon the Preliminary Objections. **All pleadings, such as a written answer to the enclosed Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on the undersigned counsel for CenturyLink.**



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Pennsylvania LLC d/b/a CenturyLink  
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Phone: (717) 245-6346 / Facsimile: (717) 236-1389  
E-mail: [sue.benedek@centurylink.com](mailto:sue.benedek@centurylink.com)



2. The Formal Complaint requests that the Commission “make” CenturyLink provide “revert call” which Complainant asserts is a “service.” Complaint at paragraphs 4 and 5.

3. As to the “revert call” function, Complainant had previously filed a complaint regarding CenturyLink’s revert call capability. Specifically, Complainant filed a Formal Complaint at docket number C-2011-2251755 (“2011 Formal Complaint”). A copy of that Formal Complaint is appended to CenturyLink’s Preliminary Objections at Attachment A.

4. Revert call capability was the subject matter of the 2011 Formal Complaint.

5. On or about August 4, 2011, CenturyLink filed preliminary objections to the 2011 Formal Complaint.

6. CenturyLink’s preliminary objections to the 2011 Formal Complaint were based on 52 Pa. Code § 5.101(a)(1), lack of jurisdiction, and based on 52 Pa. Code § 5.101(a)(4), legal insufficiency.

7. On September 8, 2011, Dennis J. Buckley issued an Initial Decision granting CenturyLink’s Preliminary Objections to the 2011 Formal Complaint and dismissing the Formal Complaint at docket number C-2011-2251755. A copy of that Initial Decision is appended to CenturyLink’s Preliminary Objections at Attachment B.

8. By Secretarial Letter dated September 27, 2011, exceptions were due 20 days after issuance of the Secretarial Letter.

9. Complainant did not file exceptions at docket number C-2011-2251755.

10. By final order entered November 2, 1011, the preliminary objections of CenturyLink were granted. A copy of the order is appended to CenturyLink's Preliminary Objections at Attachment C.

11. In addition to claims regarding revert call, the underlying 2017 Formal Complaint also requests that the Commission require a certain optional, custom calling feature service to be provided by CenturyLink at "no charge" or for "free."

12. Complainant refers to that optional feature service as "Star 57" or "\*57." Complaint at paragraphs 4 and 5. CenturyLink believes that Complainant's reference is to "Call Trace" which is listed in CenturyLink's Pennsylvania tariff.

13. Based upon a review of the pleadings in the 2011 Formal Complaint and the Complainant's 2017 Formal Complaint, it appears claims related to Call Trace or Star 57 were not previously raised by Complainant.<sup>2</sup>

#### **B. Standard for Preliminary Objections and CenturyLink's Request**

14. Preliminary Objections seeking dismissal may be filed in response to a pleading except motions and prior preliminary objections. 52 Pa. Code § 5.101(a). *See also, Fiengold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (Pa. 1977).

15. Preliminary Objections allowed by 52 Pa. Code §5.101 are comparable to a demurrer in a civil case, which are authorized by Rule 107(b) of the Pennsylvania Rules of Civil Procedure.<sup>3</sup>

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<sup>2</sup> On April 29, 2013, Complainant had filed a formal complaint with the Commission, which was docketed at C-2013-2360033. That formal complaint, which did raise claims regarding nuisance calls, did not specifically address the Call Trace optional calling feature.

<sup>3</sup> A *demurrer* is an assertion that the complaint does not set forth a cause of action upon which relief can be granted, and it admits, for purposes of testing the sufficiency of the complaint, all properly pleaded facts, but not conclusions of law. *Estate of Cletus J. Hollywood v. First National Bank of Palmerton*, 859 A.2d 472 (Pa. Super. 2004), *reargument denied*, 86 A.2d. 396 (Pa. 2005); *Walter Balsbaugh v. James H. Rowland*, 290 A.2d 85 (Pa. 1972).

16. CenturyLink hereby files preliminary objections to both claims and requests that the Commission dismiss the Formal Complaint in its entirety.

**C. Revert Call” Function**

17. Complainant requests that the Commission “make” CenturyLink provide “Revert Call” which Complainant calls a “service” which has been “grandfathered.” Complaint at paragraphs 4 and 5.

18. In the 2011 Formal Complaint, Complainant raised the same claims regarding revert call and raised the same request for relief that the Commission order CenturyLink to “put back” revert call capability. Attachment A, p. 8, para. 5 (Relief).

19. As noted above, on September 8, 2011, Dennis J. Buckley had issued an Initial Decision granting CenturyLink’s Preliminary Objections to the 2011 Formal Complaint and dismissing the Formal Complaint at docket number C-2011-2251755. *See*, Attachment B. *See also*, Attachment C, Commission Order.

20. The underlying 2017 Formal Complaint improperly attempts to re-litigate the same claims regarding “Revert Call” as raised by Complainant in a 2011 Formal Complaint.

21. This 2017 Formal Complaint is barred by the doctrine of *res judicata*. The doctrine of *res judicata* is designed to promote certainty, finality and judicial economy.<sup>4</sup> It reflects the refusal of the law to tolerate the re-litigation of a matter decided by a court or agency of competent jurisdiction so as to curtail waste of the resources of the agency and the Respondent regarding issues that already have been adjudicated.

22. The “revert call” claim in the 2011 Formal Complaint is the same claim,

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<sup>4</sup> *Albert Buoncristiano; v. Philadelphia Gas Works*, Docket No. C-2015-2466853, 2016 Pa. PUC LEXIS 115, \*1 (Pa. P.U.C. Mar. 9, 2016), *citing*, *Canon v. Verizon Pennsylvania Inc.*, Docket No. C-2013-2353818 (Opinion and Order entered March 6, 2014).

the same cause of action, and involves the same parties and same legal status of the parties as raised in the 2017 Formal Complaint. Complainant's claims and request for relief regarding revert call are barred from being re-litigated. The Formal Complaint in this regard should be dismissed under the doctrine of *res judicata*.

23. In addition to the doctrine of *res judicata*, the instant 2017 Formal Complaint may be barred by Section 316 of the Public Utility Code, 66 Pa.C.S. § 316, which states in part:

Whenever the commission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review.

24. The Commission in the 2011 Formal Complaint entered a final order on November 2, 1011 granting CenturyLink's preliminary objections and dismissing the 2011 Formal Complaint. See, Attachment C.

25. Moreover, CenturyLink submits that the Commission lacks jurisdiction over the "Revert Call" claims raised and the relief requested by Complainant. 52 Pa. Code § 5.101(a)(1). CenturyLink also submits that the Formal Complaint as to revert call fails to state a claim upon which relief may be granted and thereby is legally insufficient. 52 Pa. Code § 5.101(a)(4). Both grounds were raised by CenturyLink in its preliminary objections in the 2011 Formal Complaint.

26. Revert call is not a utility service which CenturyLink grandfathered.

27. Revert call was a capability of the local network.

28. Revert call had been a functionality of certain telephone facilities that enabled a landline telephone user to call the phone number from the same location or

premise at which the number was dialed. Once the number was dialed, the phone rang at the same telephone user's premises.

29. The revert call function had been used by technicians when testing a telephone line.

30. CenturyLink stopped enabling the function because, among other reasons, revert calling capability interfered with some voice mail services to which customers had subscribed.

31. Revert call was not a tariffed "service" provided by CenturyLink in Pennsylvania.

32. The Commission does not regulate "revert call" as it is not a utility service.

33. The Pennsylvania Public Utility Code in relevant part defines "public utility" as the "conveying or transmitting [of] messages or communications...by telephone or telegraph...for the public for compensation." 66 Pa.C.S. §102 ("Public Utility" definition).

34. The Complainant's ability to dial a landline telephone number from the same premise was a by-product or function of telephone switching facilities service. The existence of such a function of the certain part of the network does not render revert call as a public utility service.

35. The Commission does not have jurisdiction to "make" CenturyLink provide a revert call function as if revert call is a utility service. 52 Pa. Code §

5.101(a)(1). As Judge Buckley found:

While it is not clear how or why "revert call" was available on the Complainant's phone for years, that fact is irrelevant

because the “revert call” feature was not and is not a tariffed service or product made available to the public by CenturyLink for compensation. [Footnote omitted.] CenturyLink is correct that public utility tariffs have the force and effect of law and are binding on the customer as well as on the utility. [Citations omitted.] CenturyLink cannot be compelled by the Commission to provide a service not included in CenturyLink’s lawfully filed tariff. Even if the Commission *could* order CenturyLink to provide the “revert call” feature to the Complainant (which it cannot), the Commission has absolutely no authority to compel CenturyLink to do so “at no charge,” as the Complainant “demands.”<sup>5</sup>

36. Accordingly, the Commission cannot require CenturyLink to give “back” (Complaint para. 5) the revert call function.

37. As done in the 2011 Formal Complaint, CenturyLink likewise maintains that the Commission lacks jurisdiction over the revert call function (52 Pa. Code § 5.101(a)(1)) and that this 2017 Formal Complaint is legally insufficient (52 Pa. Code § 5.101(a)(4)).

**D. Star 57 or Call Trace**

38. The Formal Complaint also requests CenturyLink to provide “\*57” or “Star 57” for “free” and at “no charge.” Formal Complaint at paragraphs 4 and 5.

39. CenturyLink’s Pennsylvania tariff contains various optional custom calling feature services and packages. A copy of portions of CenturyLink’s tariff containing custom calling features is attached hereto as Attachment D.

40. Call Trace requires that a customer dial \*57 (star and then the numbers 5 and 7). The tariff rate for this optional feature is \$5.00 per use. Attachment D, Supplement No. 354, Section 22, Eleventh Revised Sheet 1.7.

41. No public utility shall directly or indirectly demand or receive from any

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<sup>5</sup> See, Attachment B, Initial Decision at pages 4-5 at *Ed Himmelwright v. The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink*, Docket No. C-2011-2251755).

person a greater or less rate for any service rendered by a public utility than that specified in the tariff of the public utility. 66 Pa.C.S. § 1303.

42. Section 1303 of the Public Utility Code has been interpreted to mean that public utility tariffs have the force and effect of law and are binding on the customer as well as the utility. *See, Philadelphia Suburban Water Company v. Pennsylvania Public Utility Commission*, 808 A.2d 1044 (Pa. Cmwlth. 2002) (“Free public utility service has been examined by our appellate courts and found to be anathema to a system of regulation and publication of a utility's tariffs.”).

43. Complainant’s request to provide Call Trace at “no charge” or “free” violates Section 1303 of the Pennsylvania Public Utility Code.

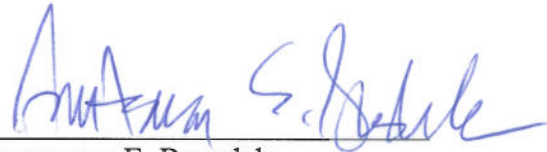
44. As a tariffed optional feature service, CenturyLink is required to apply and adhere to its tariff rates for Call Trace.

45. The Commission cannot require CenturyLink to provide Call Trace for free as Complainant has requested.

46. As to the Formal Complaint’s claims regarding Call Trace or Star 57, therefore, CenturyLink submits that the Formal Complaint fails to state a claim upon which relief may be granted and that the Formal Complaint is legally insufficient. 52 Pa. Code §§ 5.101(a)(1) and (4).

**WHEREFORE**, for all the reasons set forth above, The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink respectfully requests that the Formal Complaint filed at Docket No. C-2017-2587110 be dismissed in its entirety.

Respectfully submitted,



Zsuzsanna E. Benedek  
Attorney ID No. 60451  
Attorney for Respondent  
The United Telephone Company of  
Pennsylvania LLC d/b/a CenturyLink  
240 North Third Street, Suite 300  
Harrisburg, PA 17101  
Phone: (717) 245-6346  
Fax: (717) 236-1389  
e-mail: [sue.benedek@centurylink.com](mailto:sue.benedek@centurylink.com)

DATED: February 23, 2017

313200

PENNSYLVANIA PUBLIC UTILITY COMMISSION

COPY

Formal Complaint Form

Please print in ink or type.

1. CUSTOMER (COMPLAINANT) INFORMATION

Your name, mailing address, county, telephone number, utility account number and service address:

Name Ed Himmelwright

Street/P.O. Box 1166 Fishing Ck. Rd Apt #

City MILL HALL State PA Zip 17751

County Clinton

Daytime Telephone Number Where We Can Contact You: (570) 726-6695

E-mail Address (optional): None

Utility Account Number (from your bill) 570-726-6695-337

If your complaint involves utility service provided to a different address than your mailing address, please list this information below.

Name

Street/P.O. Box

City State Zip

2. FULL NAME OF UTILITY COMPANY (RESPONDENT):

Century Link

3. TYPE OF UTILITY (check one)

ELECTRIC

STEAM HEAT

GAS

WASTE WATER

WATER

MOTOR CARRIER

TELEPHONE (local, long distance)

(e.g., taxi, moving company, limousine)

2512

4. COMPLAINT (check one)

A. In general, what is your complaint?

- I want to oppose the company's proposed rate increase.
- There are incorrect charges on my bill.
- There is a reliability, safety or quality problem with my utility service.
- I received a notice that my utility service is being terminated.
- I would like a payment agreement.
- Other (explain).

B. State the facts of your complaint.

Include any specific dates, times or places that may be important. If the complaint is about a bill, tell us about any charges that you believe are not correct. Use additional paper if you need more space. Provide copies of all relevant documents you believe will support your complaint.

This problem ALL started back on  
01/08/04 when Sprint removed my  
Revert CALL when they changed the  
Digital talk. Switch for 726-MILLHALL C.O.  
When Embargo took over Sprint. Everything  
stayed the same. No problem. When Sprint  
removed my Revert CALL they never called  
me nor sent me any notified by MAIL.  
I called Sprint in Cheshire, PA and  
they were going to charge me \$2.00 A Month  
For Revert CALL over

I notified the P.U.C And A John Putric  
CALLED A Dottie Rie on 01/20/04  
in CAROLINA, PA And the reinstated my  
Recent CALL No <sup>2</sup>2.00 monthly charge because  
Sprint did not notify me by mail  
or phone. Now this Country Link  
did the same thing to my service  
in March 2011. There is no

Reason what so ever why Recent  
CALL HAS to be removed From MISC  
726-Switch <sup>period</sup> •

P.S. Inclosed is COPY<sup>s</sup> OF 2004  
Sprint Complaint.

5. RELIEF

How do you want your complaint to be resolved? Use additional paper if you need more space.

I want <sup>DAM AND</sup> MY REVERT CALL  
PUT BACK ON MY 570-726-6695  
AT ONCE. I NEED THIS  
REVERT CALL DUE TO MY  
HANDYCAP WIFE AT NO

CHARGE PERIOD. I WORKED FOR  
THE TELEPHONE CO'S 42 YEARS  
AND NEVER HAD SO DAM  
MUCH TROUBLE WITH THE TELEPHONE  
CO'S SINCE DEREGULATION I WORKED  
FOR UNITED TEL. CO 12 1/2 YEARS  
OUT OF PENN & N.J.

*J. H. H. H. H.*

6. PROTECTION FROM ABUSE

Answer the following question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a billing problem, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection from Abuse" order for your personal safety or welfare?

YES

NO

7. PRIOR UTILITY CONTACT

Answer the following question only if you are a residential customer and your complaint is against an electric distribution utility, natural gas distribution utility or a water distribution utility.

Have you spoken to a utility company representative about this complaint?

YES (includes appeals of BCS determinations)

NO

If you tried to, but could not speak to a utility company representative about your complaint, please explain why.

*Country Link will not cooperate. They should not be in the telephone Buss.*

8. LEGAL REPRESENTATION (IF ANY)

If you are represented by a lawyer in this matter you must provide your lawyer's name, address, telephone number, and e-mail address, if known.

Lawyer's Name \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Area Code/Phone Number \_\_\_\_\_

E-mail Address (If Known) \_\_\_\_\_

9. VERIFICATION AND SIGNATURE

You must print or type your name below on the line provided for the verification paragraph, and you must sign and date (in ink) this form on the lines provided.

Verification: I Ed Himmelwright, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Ed Himmelwright (Signature)      06/10/11 (Date)

\_\_\_\_\_  
Title of authorized employee or officer

**10. FILING**

Please return the completed form to one of the addresses listed below:

If using U.S. Postal Service:

If using overnight delivery service:

Secretary Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105-3265	Secretary Pennsylvania Public Utility Commission 400 North Street Commonwealth Keystone Building, 2 <sup>nd</sup> Floor Harrisburg, Pennsylvania 17120
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Facsimiles and/or electronic filings of the complaint will not be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

**Keep a copy of your complaint for your records.**

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Ed Himmelwright	:	
	:	
v.	:	C-2011-2251755
	:	
The United Telephone Company of Pennsylvania	:	
LLC d/b/a CenturyLink	:	

**INITIAL DECISION GRANTING PRELIMINARY OBJECTIONS  
AND DISMISSING COMPLAINT**

Before  
Dennis J. Buckley  
Administrative Law Judge

On June 24, 2011, Ed Himmelwright (Complainant) filed a formal Complaint with the Pennsylvania Public Utility Commission against The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink. (CenturyLink or Respondent). The Complainant alleges that CenturyLink improperly removed the “revert call” feature from his telephone service, and he wants “revert call” restored at no charge. The Complainant references his handicapped wife in the Complaint but does not explain how “revert call” is related to her care.<sup>1</sup>

On August 4, 2011, CenturyLink filed an Answer and New Matter to the formal Complaint. The New Matter included the requisite Notice to Plead. Also on August 4, 2011, CenturyLink filed Preliminary Objections to the formal Complaint. The Preliminary Objections also included the requisite Notice to Plead. In its Answer, CenturyLink denied any violation of the Pennsylvania Public Utility Code (Code) or of the rules and regulations of the Commission. In its New Matter and Preliminary Objections, CenturyLink asserted that the Complaint should

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<sup>1</sup> Even if the Complainant’s wife uses “revert call” as a sort of intercom system to summon the Complainant from another part of the house, as will be discussed in this Decision, “revert call” is still not a tariffed utility service that the Commission has the jurisdiction to compel CenturyLink to provide, let alone to provide at no charge.

be dismissed because (1) “revert call” is not a tariffed service within the jurisdiction of the Commission to order, and (2) the formal Complaint is legally insufficient and beyond the scope of the Code at 66 Pa. C.S. §1303.

The Complainant has never replied to the Respondent’s New Matter or Preliminary Objections.

This case was assigned to me as Motion Judge on August 25, 2011.

### FINDINGS OF FACT

1. The Complainant is Ed Himmelwright, a resident at 1166 Fishing Creek Road, Mill Hall, PA 17751.

2. The Respondent is The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink, a certificated public utility subject to the jurisdiction of the Commission.

3. The Respondent provides telephone service to the Complainant at the Complainant’s residence.

4. “Revert call,” is a functionality of certain telephone facilities that enables a landline telephone user to call the phone number from the same location at which the number was dialed. Once the number is dialed, the phone(s) ring at the same telephone user’s premises. The functionality was used by technicians when testing a telephone line. Preliminary Objections at 2; ¶¶ 4-7.

5. “Revert call,” was not and is not a tariffed service or product made available to the public by CenturyLink for compensation. Preliminary Objections at 2; ¶ 8.

6. A hearing in the instant case is not necessary in the public interest and would be a waste of resources. 66 Pa. C.S. § 703(b).

## DISCUSSION

The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections. 52 Pa. Code § 5.101:

### **§ 5.101. Preliminary objections.**

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.

Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transportation Interveners v. Equitable Gas Company*, Docket No. C-00935435 (Order entered July 18, 1994).

A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources*, 406 A.2d 1020 (Pa. 1979); *Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa. Super. 1991). The

Commission has adopted this standard. *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988).

In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the complainant, recovery or relief is possible. *Dep't of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa.Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa.Cmwlth. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002). All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Bd.*, 690 A.2d 1312 (Pa.Cmwlth. 1997).

Therefore, the primary focus is on the Complainants' pleadings.

Further, the Commission is granted discretion to dismiss a complaint without a hearing if a hearing is not necessary in the public interest. 66 Pa. C.S. § 703(b); 52 Pa. Code § 5.21(d). A hearing is necessary only to resolve disputed questions of fact, and is not required to resolve questions of law, policy or discretion. *Dee-Dee Cab, Inc. v. Pa. Public Utility Comm.*, 817 A.2d 593, petition for allowance of appeal denied, 836 A.2d 123 (Pa. Commw. 2003); *Lehigh Valley Power Committee v. Pa. Public Utility Comm.*, 563 A.2d 548 (Pa. Commw. 1989); *Edan Transportation Corp. v. Pa. Public Utility Comm.*, 623 A.2d 6 (Pa. Commw. 1993).

In this case, CenturyLink's Preliminary Objections based on 52 Pa. Code § 5.101(a)(1), lack of jurisdiction, and based on 52 Pa. Code § 5.101(a)(4), legal insufficiency, are well taken. While it is not clear how or why "revert call" was available on the Complainant's phone for years, that fact is irrelevant because the "revert call" feature was not and is not a tariffed service or product made available to the public by CenturyLink for compensation.<sup>2</sup> CenturyLink is correct that public utility tariffs have the force and effect of law and are binding

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<sup>2</sup> I note that the Complainant states that he worked for telephone companies for forty two years. Even if "revert call" was left on his phone by a previous employer as an informal accommodation to a former employee, that is not a basis for the Commission to assert jurisdiction to order CenturyLink to restore the feature.

on the customer as well as on the utility. *Philadelphia Suburban Water Company v. Pennsylvania Public Utility Commission*, 808 A.2d 1044 (Pa. Cmwlth. 2002). CenturyLink cannot be compelled by the Commission to provide a service not included in CenturyLink's lawfully filed tariff. Even if the Commission *could* order CenturyLink to provide the "revert call" feature to the Complainant (which it cannot), the Commission has absolutely no authority to compel CenturyLink to do so "at no charge," as the Complainant "demands."

There is no basis for a hearing in this matter given that the Commission does not have the jurisdiction to order CenturyLink to restore the "revert call" feature. 66 Pa. C.S. § 703(b).

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa. C.S. § 701; 52 Pa. Code § 5.101(g).
2. Commission regulations permit the filing of preliminary objections. 52 Pa.Code § 5.101(a).
3. Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections.
4. In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the complainant, recovery or relief is possible. *Dep't of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa.Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa.Cmwlth. 1996).
5. Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002).

6. All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Bd.*, 690 A.2d 1312 (Pa.Cmwlth. 1997).

7. A utility's Commission-approved tariff (list of services, rules for service, frequency of billing and rates for service) has the force of law and is binding on the utility and its customers. *Stiteler v. Bell Tel. Co. of Pa.*, 379 A.2d 339 (Pa.Cmwlth. 1977); *Brockway Glass Co. v. Pa. Public Util. Comm'n*, 437 A.2d 1067 (Pa.Cmwlth. 1981); *Pa. Electric Co. v Pa. Public Util. Comm'n*, 663 A.2d 281 (Pa.Cmwlth. 1995).

8. The due process rights of Complainant have been fully protected in this proceeding. *Sentner v. Bell Telephone Company of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993).

9. The Commission may dismiss a complaint without a hearing if a hearing is not necessary in the public interest. 66 Pa. C.S. § 703(b); 52 Pa. Code § 5.21(d).

#### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections filed by The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink, on August 4, 2011, at this docket are granted.

2. That the Complaint of Ed Himmelwright filed against The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink, at Docket No. C-2011-2251755 is hereby dismissed.

Date: September 8, 2011

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Dennis J. Buckley  
Administrative Law Judge

**ATTACHMENT C**

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

Ed Himmelwright :  
 :  
 v. : C-2011-2251755  
 :  
 The United Telephone Company of :  
 Pennsylvania LLC d/b/a CenturyLink :

**FINAL ORDER**

In accordance with the provisions of Section 332(h) of the Public Utility Code, 66 Pa. C.S. §332(h), the decision of Administrative Law Judge Dennis J. Buckley dated September 8, 2011, has become final without further Commission action;

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections filed by The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink, on August 4, 2011, at this docket are granted.
2. That the Complaint of Ed Himmelwright filed against The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink, at Docket No. C-2011-2251755 is hereby dismissed.

BY THE COMMISSION,

  
Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ENTERED: November 2, 2011

The United Telephone  
Company of Pennsylvania

Supplement No. 183  
Section 22  
Fourteenth Revised Sheet 1  
Cancels Thirteenth Revised Sheet 1

### CENTRAL OFFICE AND OTHER SERVICES

#### 1. CUSTOM CALLING SERVICE

##### a. General

Custom Calling Service consists of optional features which are intended to provide for greater efficiency in connection with customers' use of their telephone service.

Customers who subscribe to Custom Calling Service Features will be connected at no additional charge. Monthly recurring rates will be charged for Custom Calling Services with the exception of those Custom Calling Services available on a usage sensitive basis.

##### b. Regulation

###### (1) Provision of Service

Custom Calling Service consists of optional service features available to residence and business customers who subscribe to individual line service. **Custom Calling Service is not available with Pay Telephone Line Service, PBX Trunks, ISDN-BRI, or ISDN-PRI.** Custom Calling Service Features are available with either dial or touch-tone service. Customers who subscribe to these features must specify each line to be equipped with the specific Custom Calling Feature(s) desired. Rotary Access customers may subscribe to those Custom Calling Services designed exclusively for Rotary Access Service as listed in this section of the tariff.

(C)

###### (2) Availability of Service

Custom Calling Service Features require special facilities and will be provided only where such facilities are available. These service features may not be compatible with all types of customer-provided telephone equipment. The Telephone Company is not responsible for the compatibility of products and services of outside vendors.

###### (3) Liability

The Telephone Company is NOT liable to the customer or any third party for any claim, damage, judgment, suit, liability, loss, or expense for bodily injury, illness, death or property damage, occasioned by the Telephone Company's provision of any/all Custom Calling Service(s). This limitation of liability is in addition to the General Regulations regarding the liability of the Telephone Company, which regulations supplement the

(C) Indicates Change

The United Telephone  
Company of Pennsylvania

## CENTRAL OFFICE AND OTHER SERVICES (Continued)

6. **EXPRESSTOUCH**

(C)

## a. Description

## (3) Call Trace

Enables a customer to initiate a trace of the last call received, regardless of the time lapse since the last call. The customer enters a special code to initiate the trace. Before the trace is completed, the customer will hear a prompt with instructions on how to cancel the trace or complete the trace.

If the customer receives another call after hanging up from the traced call, or if the Enhanced Call Waiting feature (described in this section of this tariff) is activated prior to activating the trace, Call Trace will not record the correct number.

This feature requires no additional equipment on the customer's premises. Call Trace will trace only those calls, which originate from a location equipped with enabling technologies. In order to activate Call Trace the customer must dial an activation code. Upon activation by the customer, the network automatically sends a message to the Telephone Company indicating the calling number, the time the call was received and the time the trace was activated. The customer using this feature is required to contact the local telephone company Annoyance Call Bureau for further action. The customer is not provided the traced telephone number.

(C)

In situations where the Call Trace functionality is activated by a subscriber, information pertaining to non-published telephone numbers will be provided to the authorized law enforcement agency upon request of the agency.

(C) Indicates Change

The United Telephone  
Company of Pennsylvania

CENTRAL OFFICE AND OTHER SERVICES

6. EXPRESSTOUCH (Continued)

a. Description (Continued)

(C)

(4) Call Waiting ID

Enables the subscriber to view on an Analog Display Services Integration (ADSI) compatible CPE display device the calling party's name and telephone number associated with an incoming call waiting call, unless the name and telephone number of the calling party is suppressed, either via Per Call or Per Line Blocking. This gives customers the opportunity to identify incoming callers without interrupting their current call, which helps the customer decide whether or not to answer the new call. This feature is available in packages as specified in tariff Pa. P.U.C. No. 500. Customers subscribing to Caller ID with Name and Enhanced Call Waiting individually will receive, at no additional charge, Call Waiting ID.

Material previously found on this sheet now appears in Section 24, Second Revised Sheet 16.

(C) Indicates Change

## CENTRAL OFFICE AND OTHER SERVICES (Continued)

## 6. EXPRESSTOUCH (Continued)

## a. Description (Continued)

## (5) Caller ID with Name

(C)

Caller ID with Name is an optional service, which allows the customer to view the telephone number and name of an incoming call before answering. The name and number are displayed on a Customer Premises Equipment (CPE) display device attached to the subscribing customer's telephone line.

The name displayed shall be the name associated with the calling telephone number as shown on the Telephone Company's records. The Telephone Company, at its discretion, may abbreviate or limit that name for display purposes. The Telephone Company does not assure the name accuracy, and shall not be liable to any party for errors, omissions, or mistakes. The Telephone Company's sole obligation shall be to correct errors in names when notified of such errors.

Anonymous Call Rejection will be provided to Caller ID with Name subscribers at no charge where facilities permit. **Anonymous Call Rejection (ACR) allows subscribers to reject receipt of calls from callers who utilize Caller ID Blocking. The calling party who has chosen to block delivery of his name and number will hear a recorded announcement stating that the called party will not accept anonymous calls. The announcement will also state that the caller should hang up and call back with caller identification unblocked to complete the call.**

(C)

**Subscribers may deactivate Anonymous Call Rejection by dialing the deactivation code (\*87 or 1187) and may receive calls from callers utilizing Caller ID Blocking. Subscribers must dial the reactivation code (\*77 or 1177) to reactivate Anonymous Call Rejection. Confirmation announcements will confirm activation and deactivation of the feature.**

If a customer calls a Caller ID with Name subscriber who has activated the Anonymous Call Rejection (ACR) feature and is blocking his/her telephone number and name, he/she will hear an announcement that blocked calls are not being accepted by the Caller ID with Name subscriber.

Material previously found on this sheet now appears on Original Sheet 15.4.1.

(C) Indicates Change

## CENTRAL OFFICE AND OTHER SERVICES (Continued)

## 6. EXPRESSTOUCH (Continued)

## a. Description (Continued)

## (6) Per-Call Blocking

A calling party may block the passage of his/her telephone number and name on outgoing calls. This can be done on a per-call basis by dialing a special code prior to placing each call. When a customer blocks the passage of his/her telephone number and name, the number and name will not show on the Caller ID subscriber's display unit. The Caller ID subscriber will receive an indicator that the calling party has blocked his/her telephone number and name.

## (7) Per-Line Blocking

A calling party may block the passage of his/her telephone number and name on outgoing calls on a per-line basis. Per-line blocking prevents the passage of the telephone number and name on all outgoing calls automatically, unless the feature has been deactivated by the customer. If a customer who has per-line blocking chooses to deactivate blocking, the telephone number and name will pass for that call only. Upon completion of the unblocked call, per-line blocking will resume. Deactivation is accomplished by dialing a special code prior to placing the call.

As facilities permit, a per-line blocking customer will be provided with a separate code to deactivate blocking, which is different from the per-call blocking code.

Each rotary access line of a rotary access group must be equipped with Per-Line Blocking.

Material now appearing on this sheet was previously found on Third Revised Sheet 15.4.

## CENTRAL OFFICE AND OTHER SERVICES (Continued)

## 6. EXPRESSTOUCH (Continued)

## a. Description (Continued)

(C)

## (8) Selective Call Acceptance

(C)

Selective Call Acceptance screens incoming calls against a list of subscriber-specified directory numbers and accepts only those calls from numbers on the list. Calls from telephone numbers that do not match one of the numbers on the Selective Call Acceptance list will be routed to an announcement stating that the called party is not accepting calls at this time. Calls from outside the Custom Calling service area will ring normally.

(C)

The feature also controls access to computer lines for security reasons by restricting directory numbers that can terminate to computer lines.

Subscribers can include up to 12 numbers from within the Custom Calling service area on their Selective Call Acceptance list. Subscribers dial an access code to activate or deactivate the feature, determine status of the feature, review the Selective Call Acceptance list, and add or delete a number(s) from the list.

## (9) Selective Call Forward

(C)

Enables a customer to transfer selected calls to another telephone number. The Selective Call Forward list of up to 12 numbers is created by the customer and placed in the network memory via an interactive dialing sequence. Only calls from those telephone numbers in the list may be forwarded to the designated telephone number. Calls from multi-line subscribers' lines will be forwarded only where the main listed number has been included in the Selective Call Forward list.

Material previously found on this sheet now appears in Section 24, Second Revised Sheet 16.

(C) Indicates Change

## CENTRAL OFFICE AND OTHER SERVICES (Continued)

## 6. EXPRESSTOUCH (Continued)

## a. Description (Continued)

## (10) Selective Call Rejection

(C)

Provides a customer the ability to prevent the receipt of incoming calls from up to twelve different telephone numbers. With Selective Call Rejection the calling party receives an announcement indicating that the call cannot be completed to the called party at this time. The Selective Call Rejection list is created by the customer through an interactive dialing sequence. Calls from multi-line subscribers' lines will be blocked only where the main listed number has been included in the Selective Call Rejection list.

## (11) Selective Call Ring

(C)

Provides a customer with a distinctive ringing pattern for up to 12 specific telephone numbers. The customer creates a list of up to 12 telephone numbers through an interactive dialing sequence. When a call is received from one of these predetermined telephone numbers, the customer is alerted with a distinctive ringing pattern. Normal ringing will be produced on calls from numbers not included on the list. Calls from multi-line subscribers' lines will have a distinctive ringing pattern only if those lines have been included on the Selective Call Ring list.

(C) Indicates Change

CENTRAL OFFICE AND OTHER SERVICES (Continued)

6. EXPRESSTOUCH (Continued)

b. Rates

	<u>Monthly Charge</u>	
1. Call Trace <sup>1</sup>		
Residence	\$5.00	
Business	5.00	
2. Caller ID with Name		
Residence	9.50	(I)
Business	9.50	(I)
3. Per-Call Blocking		
Residence	None	
Business	None	
4. Per-Line Blocking <sup>2</sup>		
Residence	None	
Business	None	

NOTE: There are no Non-Recurring Charges associated with establishing ExpressTouch features.

NOTE<sup>1</sup>: Monthly rates do not apply to Call Trace which is billed on a per successful attempt basis.

NOTE<sup>2</sup>: A Record Charge shall not apply to customers who order per-line blocking within 60 days of its introduction or within 60 days of any request for new telephone service or transfer of existing service.

(C) Indicates Change

(I) Indicates Increase

The United Telephone  
Company of Pennsylvania  
d/b/a CenturyLink

Supplement No. 354  
Section 22  
Eleventh Revised Sheet 15.8  
Cancels Tenth Revised Sheet 15.8

(C)

## CENTRAL OFFICE AND OTHER SERVICES (Continued)

## 6. EXPRESSTOUCH (Continued)

## b. Rates (Continued)

	<u>Monthly Rate</u>	
5. Selective Call Acceptance		
Residence	5.00	
Business	5.00	
6. Selective Call Forward		
Residence	5.00	
Business	5.00	
7. Selective Call Rejection		
Residence	<b>5.25</b>	(I)
Business	<b>5.25</b>	(I)
8. Selective Call Ring		
Residence	5.00	
Business	5.00	
9. Call Waiting ID		
Residence	\$5.00	
Business	None	

NOTE: There are no Non-Recurring Charges associated with establishing ExpressTouch features.

(C) Indicates Change  
(I) Indicates Increase

**AFFIDAVIT**

COMMONWEALTH OF PENNSYLVANIA :  
COUNTY OF DAUPHIN :  
: SS.

I, James P. Roberts being duly sworn according to law, deposes that I am State Regulatory and Legislative Affairs Director for The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink that I am authorized to and do make this affidavit for it, and that the facts set forth in the attached Preliminary Objections are true and correct to the best of my knowledge, information and belief.

*James P. Roberts*  
\_\_\_\_\_

Sworn and subscribed before me  
this 23<sup>rd</sup> day of FEB 2017

*Jana Rebek Hurst*  
\_\_\_\_\_  
Notary

COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
Jana Rebek Hurst, Notary Public  
City of Harrisburg, Dauphin County  
My commission expires April 25, 2017