

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ed Himmelwright	:	
	:	
v.	:	C-2017-2587110
	:	
The United Telephone Company of Pennsylvania	:	
d/b/a CenturyLink	:	

**INITIAL DECISION**

Before  
Steven K. Haas  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision grants the Complainant's unopposed request to withdraw his Formal Complaint.

**HISTORY OF THE PROCEEDING**

On January 30, 2017, the Complainant, Ed Himmelwright, filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against The United Telephone Company of Pennsylvania d/b/a CenturyLink (CenturyLink). In his complaint, Mr. Himmelwright requested that CenturyLink be ordered to restore the Revert Call capability to his line at no charge to him. He also requested that CenturyLink be ordered to provide its Call Trace (\*57) service to him at no charge.

On February 23, 2017, CenturyLink filed an answer with new matter and preliminary objections (POs). CenturyLink averred in its answer that the Revert Call capability

was never a tariffed service in Pennsylvania but, rather, was merely a function of certain network facilities that the company was never obligated to provide to customers.<sup>1</sup> With respect to its Call Trace feature, CenturyLink averred that this is a tariffed service for which a monthly fee is charged. CenturyLink averred that it may not legally provide this service to a customer free of charge.

In its new matter, CenturyLink averred that the Revert Call issue was already raised by the Complainant and addressed in a prior complaint proceeding initiated by him at Docket No. C-2011-2251755. In that proceeding, the company's preliminary objections were sustained on the basis that, since Revert Call is not a tariffed service, the company cannot be ordered to provide the function to its customers, particularly at no charge as the Complainant sought in that proceeding, as he does here. The company argues in the instant proceeding that this allegation should be dismissed on the basis of *res judicata*. It further averred that the Call Trace feature is a tariffed service for which there is a monthly fee that must be charged to all customers who subscribe to the service.

In its POs, CenturyLink restated the arguments it made in its answer and new matter and requested that the Revert Call issue be dismissed on the basis of *res judicata* and the Call Trace issue be dismissed as being legally insufficient.

By letter to the Commission dated March 10, 2017, the Complainant discussed the issues in his complaint and stated, at the bottom of the letter, "this case is closed." Subsequently, by Motion Judge Assignment Notice dated June 9, 2017, the parties were notified that I had been assigned to preside over this proceeding and to resolve any issues that may arise during the preliminary phase of the case. The Complainant returned a copy of the Motion Judge Assignment Notice to the Commission with an attached letter in which he indicated that he no longer wanted to pursue his complaint against CenturyLink. He stated in his letter, "I sent you a

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<sup>1</sup> Revert Call was a functionality of certain telephone facilities that enabled certain landline telephone users to call the phone number from the same location from which the number was dialed.

letter back in April 2017<sup>2</sup> telling to cancel this 5 year complaint.” He further stated at the bottom of this letter, “I do not want to hear any more on this 5 year matter.”

I will treat Mr. Himmelwright’s letters as a request for leave to withdraw his complaint. Upon receiving the second letter from the Complainant, I contacted counsel to CenturyLink concerning Mr. Himmelwright’s request. I was informed that CenturyLink did not object to the request. The request is ready for decision.

### FINDINGS OF FACT

1. Complainant is Ed Himmelwright.
2. Respondent is United Telephone Company of Pennsylvania, d/b/a CenturyLink, a jurisdictional public utility providing telephone service in the Commonwealth of Pennsylvania.
3. On January 30, 2017, Complainant filed a formal complaint against CenturyLink in which he sought the restoration of certain functions and services at his residence at no charge.
4. On February 23, 2017, CenturyLink filed an answer with new matter and preliminary objections.
5. In a letter to the Commission dated March 10, 2017, Mr. Himmelwright stated that he has no time for CenturyLink and that “this case is closed.”
6. Subsequently, Mr. Himmelwright returned a copy of the Commission’s June 9, 2017 Motion Judge Assignment Notice with notations stating, “I sent you a letter back in April 2017 telling to cancel this 5 year complaint” and “I do not want to hear any more on this 5 year complaint.”

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<sup>2</sup> The letter was actually dated March 10, 2017.

7. Counsel to CenturyLink stated the company does not object to Mr. Himmelwright's request to withdraw his complaint.

### DISCUSSION

The Commission's Rules of Practice and Procedure at 52 Pa.Code § 5.94 permit parties to withdraw pleadings in contested proceedings. The provision at 52 Pa.Code § 5.94(a) allows withdrawal of a pleading by a petition for leave to withdraw the pleading. The petition is granted only by permission of the Presiding Officer or the Commission. The Presiding Officer or Commission must consider the petition, any objections thereto and the public interest in determining whether to permit withdrawal of the pleading. 52 Pa.Code § 5.94(a).

As noted above, Mr. Himmelwright stated in two letters to the Commission that he no longer wanted to pursue his complaint and that the case should be closed. The Respondent does not object to Mr. Himmelwright's request.

Mr. Himmelwright's complaint involved his desire to have certain functions and services restored at his residence at no charge to him. He subsequently decided and notified the Commission that he wants to close his complaint case. Since this is an individual complaint case, there will be no adverse impact on the public interest in granting Mr. Himmelwright's request to withdraw his complaint.

Having reviewed the request to withdraw, any objections to the request and the public interest, I conclude that the request to withdraw should be granted. Granting the request to withdraw will terminate the litigation, saving the parties the costs in time and money they would otherwise incur litigating the proceeding. Granting the request to withdraw will not adversely impact the public interest and will conserve administrative hearing resources.

The Commission may dismiss any complaint without a hearing if a hearing is not necessary in the public interest. 66 Pa.C.S. § 703(b). A hearing now would serve no purpose. Therefore, the Complainant's request will be granted and this docket will be closed.

CONCLUSIONS OF LAW

1. Withdrawal of a pleading in a contested proceeding is permitted under Commission regulations. 52 Pa.Code § 5.94.

2. The Commission may dismiss any complaint without a hearing if a hearing is not necessary in the public interest. 66 Pa.C.S. § 703(b).

3. Further proceedings or a hearing in this matter are not necessary in the public interest.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the request of Ed Himmelwright to withdraw his formal complaint against United Telephone Company of Pennsylvania, d/b/a CenturyLink, at Docket No. C-2017-2587110 is granted.

2. That the Secretary mark this docket closed.

Dated: August 11, 2017

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/s/  
Steven K. Haas  
Administrative Law Judge