

**BEFORE THE
OREGON PUBLIC UTILITY COMMISSION**

MATTHEW STEVEN,
DBA GENIUSWEB.COM,

Complainant, *pro se*,

v.,

CENTURYLINK,

Defendant.

AMENDED COMPLAINT

Docket UCB 69

HEARING REQUESTED

AMENDMENT AS A MATTER OF COURSE

Under authority of ORCP 23(A), Complainant pleads the Court to docket this amended addendum in support of the formal complaint as a matter of course. At the time of this filing, Defendant's responsive pleading has not yet been served on Complainant.

This addendum incorporates and reiterates all claims alleged in the formal complaint and addendum in support of the formal complaint.

SUMMARY OF FACTS

This is a case about who should bear the burden of a billing misstatement by a large telecommunications provider and its repeated failures to correct that mistake.

Complainant GeniusWeb.com is a very small web development business, founded in 1997. It has numerous web sites which are hosted and managed by Matthew Steven, the owner. The business provides Matthew's family of four some income while he attends law school.

On about April 6th, 2016, in response to a flyer stating that CenturyLink has full fiber internet connectivity in the neighborhood where GeniusWeb operates, Matthew called CenturyLink in order to determine whether it might be more efficient to host the sites on fiber in the long run compared with his prior solution of renting cabinet space at a local datacenter at approximately \$250 a month.

In the phone conversation, the sales agent quoted a price of \$275 per month for a one-gigabit fiber connection. Matthew concluded that the price was too high to be worth it, and asked whether there was a lower cost option, and was quoted a price of \$175 per month for a 100-megabit connection. The agent said that to reach that price point, she would have to bundle; the price of internet service was cheaper with an included phone line than without. Matthew stated that as long as the price is close to the quoted amount, it did not matter if she included a phone line with the agreement. The phone line was never put in use, in particular because the installer technician said the line could not be used to call 911 if the power was out.

After numerous issues, the service was eventually installed.¹ The modem was configured at one-gigabit speed but running the CenturyLink speed test showed that the service was in fact capped at 100 megabit. With numerous other difficulties, Matthew obtained the IP addresses and began hosting the web sites on the connection.

The first bill to arrive demanded \$592.47. Matthew contacted CenturyLink to make sure there was no misunderstanding about the pricing, asking the company to investigate and correct, and each time the agent agreed that the monthly price should be \$175 plus taxes and fees; no more than \$220, and agreed to put in an order to fix the problem, which led to no relief.²

1 *See* Ex. A (timeline)

2 *Ibid*; *see also* Ex. C (billing records).

On June 6, 2016, CenturyLink disconnected all service (including the phone line) within 60 seconds of emailing Matthew a notification. The reason was purported presence of malware on one of the hosting accounts. Matthew had already removed the complained about files before the disconnection. Customers noticed the outage, and some sales may have been lost.

On September 17, 2016, Matthew filed an informal complaint which was closed for lack of resolution by Senior Compliance Specialist Charla Muntz on November 11, 2016. The formal complaint was subsequently filed. This amended complaint was filed prior to service of responsive pleading by Defendant on December 9, 2016.

DISCUSSION OF COMPLAINT

Claim 1: Failure to Provide Mandatory Notifications

All allegations in the formal complaint form and the Addendum to the Formal Complaint are re-alleged and incorporated herein and in all claims re-alleging this claim.

OAR 860-021-0015 provides, “[w]hen a dispute occurs between a customer or applicant and a utility about any charge or service, the utility must,” among other things, thoroughly investigate the complaint, prepare a written record of the dispute, the disposition of the matter, and retain records for 36 months. If the dispute cannot be resolved, the utility must provide the contact information of the PUC to the customer. *Id.* If informal dispute resolution fails, the complainant may file a formal complaint as outlined in ORS 756.500. *Id.*

Here, complainant repeatedly disputed the charges involved, *see* Ex. A, and though Defendant’s phone agents agreed with Complainant each time that the billing was incorrect, there were other agents involved in the implementation of their orders who either failed to correctly enter the pricing codes or disputed the conclusions of the phone agents.

Defendant at no time pertinent to the telephone complaints notified Complainant as required under OAR 860-021-0015. Complainant discovered the contact information after repeated failures to obtain a remedy directly from Defendant on his own.

Claim 2: Illegal Disconnection of Complainant’s Telephone Service

The allegations of Claim 1 are realleged and incorporated herein.

With two exceptions not relevant here, a “large telecommunications utility must provide written notice to the customer at least five business days before disconnecting service.” OAR 860-021-0505(2)(a).

On June 7th, 2016, Defendant disconnected service within approximately sixty seconds of providing written (emailed) notice to Complainant. *See Ex. C* (email excerpt). Because Complainant’s telephone service relies on the internet connection, and because telephone service is regulated by PUC, Defendant violated OAR 860-021-0505 and possibly other laws.

Claim 3: Violation of Oregon Trade Practices

The allegations in Claim 1 and Claim 2 are re-alleged and incorporated herein.

ORS 646.608 forbids a “person” from making “false or misleading representations of fact concerning the offering price of. . . services.” ORS 646.608(1)(s). Defendant is a “person” for the purposes of this statute. ORS 646.605(4). The statute provides for civil damages of up to \$25,000 for willful violations. ORS 646.642. Oregon Courts may act to “restore to any person in interest any moneys or property, real or personal, of which the person was deprived by means of any practice declared to be unlawful in. . . ORS 646.608.”ORS 646.636.

Here, Defendant CenturyLink made a false or misleading representation of fact when it quoted \$175 a month plus taxes and fees for 100 megabit internet service, and then proceeded to

repeatedly charge Complainant for 1 gigabit internet service despite Complainant's protestation. The moneys of which Complainant were deprived of by means of that practice are the difference in what Complainant was told he would pay and what Complainant was billed for under threat of disconnection. The proposed amount is in the following section labeled "REMEDIES."

Further, CenturyLink has distinguished itself as a habitual offender in this practice, as even a cursory internet search reveals.³

Claim 4: Breach of Contract

The allegations in Claim 1, Claim 2, and Claim 3 are re-alleged and incorporated herein.

In the April 6th, 2016 phone call, an oral contract for service was formed when Defendant offered 100 megabit fiber optic internet service to Complainant for \$175 a month plus taxes and fees, and Complainant orally accepted. Defendant breached the contract on or about April 19th when the first bill arrived for \$592.47. Complainant attempted to notify Defendant of the breach but was unable to reach an appropriate agent to notify. The agents answering could not offer any coherent solution to the problem or had no authority to fix the mistake. Subsequently, Complainant contacted Defendant several times, who acknowledged the problem each time, and ultimately failed to cure the breach, causing ongoing financial damage.

3 E.g. Consumer Affairs, "Centurylink," https://www.consumeraffairs.com/cell_phones/centurylink.html; Ripoff Report, Centurylink complaints, http://www.ripoffreport.com/reports/specific_search/Centurylink (listing numerous allegations of billing misconduct); Complaints Board, Centurylink Complaint Search, <http://www.complaintsboard.com/?search=centurylink> (same).

Claim Five: Violation of ORS 757.020 (Failure to furnish. . . service at reasonable rates)

The allegations in Claim 1, Claim 2, Claim 3, and Claim 4 are re-alleged and incorporated herein.

ORS 757.020 provides that “every unjust or unreasonable charge” for service provided by a regulated utility “is prohibited” and remedies, including treble damages where Defendant’s conduct constituted “gross negligence or willful misconduct,” are provided by ORS 756.185 (“Any public utility which does, or causes or permits to be done, any matter, act or thing prohibited by ORS chapter 756, 757 or 758 or omits to do any act, matter or thing required to be done by such statutes, is liable to the person injured thereby in the amount of damages sustained in consequence of such violation.”).

Defendant acted with conscious indifference to or reckless disregard of the rights of others by repeatedly depriving Complainant of Complainant’s funds billed in excess of the contractual agreement on pain of disconnection which would result in extensive disruption and damage to Complainant's business. Defendant’s disconnection notices were mailed such that they would arrive on the very same day that the disconnection was to occur, requiring immediate compliance with the unlawful billing, and all of this while being fully aware of Complainant’s complete dependence on the services of Defendant for its continued business existence because of Complainant’s numerous complaints to Defendant. *See Olson v. Pac. Nw. Bell Tel. Co.*, 65 Or. App. 422, 428, 671 (1983) (holding that a claim for gross negligence against a telephone utility withstood a motion to dismiss where it alleged that “defendant failed to provide adequate service after numerous complaints and notices”).

REMEDIES SOUGHT

The allegations in Claim 1, Claim 2, Claim 3, Claim 4, and Claim 5 are re-alleged and incorporated herein. The *pro se* Complainant recognizes the limited scope of available damages from the PUC, but also anticipates potential litigation in State Courts, and thus alleges all relevant damages here in an effort to avoid waiving these claims later.

1. Refund

A. Full Refund

On the grounds that Defendant's conduct was extraordinary and outrageous, and because Defendant has a pattern or practice of routinely engaging in deceptive billing practices to its cumulative profit, Complainant seeks a refund of of all moneys paid to Defendant in this matter between the initiation of business service on April 6th, 2016 and the final disconnection, when that occurs. Complainant also seeks an order denying Defendant the early termination fee and any other fees which Defendant claims in this matter. *See Cobalt Realty Grp. LLC, Complainant*, Order No. 12-100, n.9 (Mar. 27, 2012) ("There is much precedent supporting waiver of early termination fees as a appropriate prospective remedy for various reasons") (internal citations omitted).

B. Differential Refund

In the alternative, Complainant seeks a refund amounting to the difference between the rates promised and the rates actually billed at the time of the settlement of this matter, which Complainant anticipates will amount to at least \$700. Complainant also seeks an order denying Defendant the early termination fee and any other fees which Defendant claims in this matter.

2. Attorney fees

Complainant seeks reasonable attorney fees as authorized by statute, regulation or other laws in connection with the litigation of this matter. E.g. ORS 756.185.

3. Actual, Consequential and Punitive Damages

Complainant seeks treble damages under ORS 756.185(1) for all damages stemming from Defendant's conduct to the extent that such conduct is found to be gross negligence or willful misconduct as alleged herein. *See Olson*, 65 Or. App. at 425 (“[T]he legislature might well conclude that a deterrent purpose will be served by requiring a utility to pay enhanced damages for injuries caused by negligent as well as willful violations of the regulatory laws.”).

Complainant has made significant investments in equipment and engineering efforts in reliance on Defendant's offered terms. Complainant seeks actual, consequential, and punitive damages, where authorized by law to compensate him for the losses resulting from the breach of contract and other violations herein alleged, to be determined at trial.

SIGNATURE

/s/ Matthew J. Steven

Matthew J. Steven

December 8, 2016 (Filed December 9, 2016)

EXHIBITS

The Exhibits provided in the Addendum to the Formal Complaint are incorporated here by reference to that document.