

**FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau
Market Disputes Resolution Division
45 L Street NE
Washington, D.C. 20554**

May 24, 2021

Copies sent by E-mail

NOTICE OF FORMAL COMPLAINT

CenturyLink Communications, LLC,)	
WilTel Communications, LLC and Global)	
Crossing Telecommunications, Inc.,)	
)	
Complainants,)	
)	
v.)	Proceeding Number 21-194
)	Bureau ID Number EB-21-MD-001
)	
Teliax Colorado, LLC,)	
)	
Defendant.)	

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Dear Counsel:

On May 21, 2021, CenturyLink Communications, LLC, WilTel Communications, LLC and Global Crossing Telecommunications, Inc. (collectively, Lumen) filed with this Commission a formal complaint against Teliix Colorado, LLC (Teliix) under section 208 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 208.¹ Teliix should have a copy of the Complaint as served by hand delivery by Lumen. See 47 CFR § 1.734(c). If that is not the case, Teliix immediately should contact Commission counsel.

Sonja Rifken, Adam Suppes, and I are Commission counsel for this proceeding. My phone number is (202) 418-7335, and my e-mail address is Lisa.Saks@fcc.gov. Sonja Rifken's phone number is (202) 418-1730, and her e-mail address is Sonja.Rifken@fcc.gov. Adam Suppes' phone number is (202) 418-0324, and his e-mail address is Adam.Suppes@fcc.gov.

This letter outlines the procedural rules relevant to this case and establishes a schedule for the proceeding. We will conduct this proceeding generally in accordance with the Commission's rules governing section 208 formal complaint proceedings, which are found at 47 CFR §§ 1.720-1.740.² **Please note the modified and streamlined procedures for the meeting and joint statement required by 47 CFR § 1.733(b).**

Schedule for this Proceeding

The schedule for this proceeding is set forth below. All filings must comply with the Commission's formal complaint rules and with this Notice.³

1) By June 10, 2021 Teliix must file and serve an answer to the Complaint that complies with 47 CFR § 1.726. Any interrogatories posed by Teliix must be filed and served concurrently with the answer. 47 CFR § 1.730(a). Responses to any motions filed with the Complaint should also be submitted with the answer.⁴ We find that a determination of damages would best be made in a proceeding that is separate

¹ *CenturyLink Communications, LLC, et al. v. Teliix Colorado, LLC*, Proceeding Number 21-194, Bureau ID Number EB-21-MD-001 (May 21, 2021) (Complaint).

² See also *Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enforcement Bureau*, Report and Order, 33 FCC Rcd 7178 (2018) (*Rule Consolidation Order*); *Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to Be Followed when Formal Complaints Are Filed Against Common Carriers*, Report and Order, 12 FCC Rcd 22497 (1997) (*Formal Complaints Order*), Order on Reconsideration, 16 FCC Rcd 5681 (2001) (*Formal Complaints Recon Order*); *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure Relating to the Filing of Formal Complaints Under Section 208 of the Communications Act and Pole Attachment Complaints Under Section 224 of the Communications Act*, Order, 29 FCC Rcd 14078 (2014) (*Formal Complaints Amendment Order*). The rules governing this proceeding differ significantly from the Federal Rules of Civil Procedure. For example, the Commission requires parties to file fact-based pleadings. See *Formal Complaints Order*, 12 FCC Rcd at 54, para. 120, 47 CFR §§ 1.721(b)-(d), (r), 1.726(b). Further, section 208 proceedings "are generally resolved on a written record consisting of a complaint, answer, reply, and joint statement of stipulated facts, disputed facts and key legal issues, along with all associated evidence in the record." 47 CFR § 1.721.

³ Staff has authority under sections 0.111 and 0.311 of the Commission's rules, 47 CFR §§ 0.111, 0.311, to modify the filing deadlines and other requirements contained in the formal complaint rules as the circumstances of individual cases warrant and to the extent consistent with section 1.740 of the rules, 47 CFR § 1.740. In addition, if a filing contains a citation to material that appears on the Internet, the filing must attach a hard copy of that material. See 47 CFR § 1.721(g), (k).

⁴ Although motions to dismiss are permitted, they should be filed only in rare circumstances. 47 CFR § 1.729(d); *Rule Consolidation Order*, 33 FCC Rcd at 7182-83, paras. 13-14 ("[M]otions to dismiss are rarely warranted. The formal complaint rules "are designed so that a defendant's answer is a comprehensive pleading containing complete factual and legal analysis, including a thorough explanation of every ground for dismissing or denying the complaint." (quoting

from and subsequent to the proceeding in which the determinations of liability and prospective relief are made. We therefore bifurcate this case pursuant to 47 CFR § 1.723(d) and order that the initial proceeding will determine only liability and prospective relief, and that a separate, subsequent proceeding initiated in accordance with 47 CFR § 1.723(d) will determine damages. Accordingly, Teliix's answer in this initial proceeding need not respond to paragraphs 30-35, 134-35, 142-43, 161-62, and 170-71, and the specific numbers alleged in paragraphs 36, 103, 148, 156, and 182 of the Complaint.

2) By June 17, 2021 Lumen must file and serve a reply to the answer that complies with 47 CFR § 1.728. Any second request for interrogatories posed by Lumen must be filed and served concurrently with its reply. 47 CFR § 1.730(a).

3) A party must file and serve any opposition and objections to the opposing party's interrogatories within seven calendar days after service of the interrogatories. Any interrogatories to which no opposition or objection is raised must be answered within 20 days of service. 47 CFR § 1.730(c).

4) The parties must meet to discuss the resolution or narrowing of as many issues as possible. Such discussions should address factual stipulations, settlement prospects, discovery, and a schedule for the remainder of the case. Based on these discussions, the parties should prepare a joint statement (a) listing the facts to which they stipulate; (b) describing the status of their settlement discussions, if any, and indicating whether they believe staff-supervised mediation is appropriate;⁵ (c) detailing their positions on any outstanding discovery disputes and the basis for those positions; and (d) identifying all other proposals agreed to during their meeting, including any proposed case schedule. *See generally* 47 CFR § 1.733(b)(1), (2).⁶ The joint statement must be filed by June 28, 2021. **We strongly encourage the parties to devote substantial effort to developing a comprehensive and detailed joint statement.** *See Formal Complaints Recon Order*, 16 FCC Rcd at 5696-97, para. 35.

5) An initial status conference in this proceeding has been scheduled for July 1, 2021 at 2:00 PM EDT. *See* 47 CFR § 1.733. The conference will be conducted electronically, and access credentials will be provided to the parties at least three (3) days beforehand. We require each party to include in the conference a client representative with knowledge of the central facts and authority to settle the dispute. **The parties should be prepared to spend at least three hours in conference.**

6) For purposes of managing the development of the record, we will assume that the five-month deadline set forth in section 208(b) of the Act, 47 U.S.C. § 208(b), applies in this proceeding. *See Formal Complaints Order*, 12 FCC Rcd at 22511-14, paras. 32-37. Thus, absent extraordinary circumstances, we are unlikely to grant any extensions of the above deadlines, and we intend to establish and enforce tight deadlines for any discovery and briefing. Moreover, to the extent permitted at all, discovery and briefing will likely conclude by August 9, 2021. The parties and their counsel should plan their schedules accordingly.

A party requesting confidential treatment of any material in a filing must comply with the requirements of 47 CFR §§ 0.457, 0.459, and 1.731. Filings containing confidential material must clearly identify and mark each page, or portion thereof, that includes confidential designations, e.g., with the notation "[Begin Confidential]/[End Confidential]." *See* 47 CFR § 1.731(a)(1). A party seeking confidential treatment for material in filings should restrict its designations to only the specific information that it asserts is

Formal Complaints Recon Order, 16 FCC Rcd at 5696, para. 34); *Rule Consolidation Order*, 33 FCC Rcd at 7183, para. 14 ("[W]e consider there to be few circumstances justifying the filing of a separate motion to dismiss . . .").

⁵ *See* 47 CFR § 1.737.

⁶ We waive the portions of rule 1.733(b)(1) and (2) that require the parties to discuss and include in a joint statement disputed facts and legal issues. *See* 47 CFR § 1.733(b)(1), (2).

confidential. The filing must be accompanied by a request for confidential treatment that states the reasons for withholding specific materials from inspection and the particular facts upon which those requests are based, including those specified in rule 0.459(b). **A blanket request for confidential treatment will not suffice.** See 47 CFR § 0.459(c).

The parties must file a public version of all written submissions in this proceeding using the Commission's Electronic Comment Filing System (ECFS). All written submissions should (a) prominently contain the Proceeding Number and Bureau ID Number referenced above, and (b) be addressed to the Commission Secretary. A party that seeks to file both a public version and a confidential version of a submission must file the public (redacted) version on ECFS and file the confidential (unredacted) version in hard copy form with the Office of the Commission Secretary. In addition to filing the unredacted version with the Office of the Secretary, please leave three additional unredacted hard copies marked as "Courtesy Staff Copies. EB-MDRD, 202-418-7330," at that office, unless staff requests an alternative destination(s) for those copies. See 47 U.S.C. § 154(i); 47 CFR § 1.734(e). The parties must serve all filings via e-mail, hand-delivery, or overnight delivery, together with proof of service. See 47 CFR § 1.734(f). Also, please email to Commission counsel for this proceeding courtesy copies of all filings (both public versions and confidential versions) in a format that permits full text searching, if possible. See 47 U.S.C. § 154(i); 47 CFR § 1.734(e). See *Formal Complaints Amendment Order*, 29 FCC Rcd at 14081, para. 11 (requiring parties to provide hard copies of submissions to Commission staff upon request). Please also email copies of all filings to Sandra Gray-Fields at Sandra.Gray-Fields@fcc.gov.

This proceeding is restricted for *ex parte* purposes. See 47 CFR Part 1, Subpart H. Further, the parties are required to retain all records that may be relevant to the Complaint, including electronic records, until the Commission's decision in this proceeding is final and no longer subject to judicial review. See 47 U.S.C. §§ 154(i), 208(a); 47 CFR § 42.7.

We issue this letter ruling under sections 4(i), 4(j), and 208 of the Act, 47 U.S.C. §§ 154(i), 154(j), 208, sections 1.3 and 1.720-1.740 of the Commission's rules, 47 CFR §§ 1.3, 1.720-1.740, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 CFR §§ 0.111, 0.311.

FEDERAL COMMUNICATIONS COMMISSION

Lisa Saks

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Assistant Division Chief
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