

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

NTS Services, Inc.)	
-vs-)	
Gallatin River Communications, L.L.C.)	
d/b/a CenturyLink)	
)	Docket No. 10-0637
Formal Complaint and Request for)	
Declaratory Ruling pursuant to Sections)	
13-515 and 10-108 of the Illinois Public)	
Utilities Act.)	

STAFF OF THE ILLINOIS COMMERCE COMMISSION'S
MOTION TO DISMISS PROCEEDING

NOW COMES the Staff of the Illinois Commerce Commission (hereafter "Staff") by and through its undersigned counsel, and moves pursuant to Section 200.190 of the Rules of Practice before this Commission, 83 Ill. Adm. Code 200.190, to dismiss this proceeding, and in support thereof, states as follows:

1. Complainant NTS Services, Inc. (hereafter "NTS") filed its Complaint on November 8, 2010. *See, generally, Complaint.*
2. In its Complaint, NTS alleges numerous violations of Section 13-514 of the Illinois Public Utilities Act, 220 ILCS 5/13-514. *Complaint, ¶¶11, 46-56.*
3. NTS seeks relief under Section 13-515 of the Illinois Public Utilities Act, 220 ILCS 5/13-515, which provides the procedural vehicle for redress of alleged violations of Section 13-514, and cites a substantial portion of it. *Complaint, ¶13.*
4. Section 13-515(d) of the Public Utilities Act provides that: "[a] telecommunications carrier may file a complaint with the Commission alleging a violation of Section 13-514 in accordance with this subsection." *Id.* Subsection (d)(1) provides in relevant part that: "[t]he complaint shall be ... served in hand upon ... the

executive director, and the general counsel of the Commission at the time of filing." 220 ILCS 5/13-515(d)(1) (emphasis added).

5. Notwithstanding this clear statutory requirement, NTS failed to serve the executive director or the general counsel of the Commission, in hand or in any other manner, at the time of filing, or at any other time.

6. Service of the Complaint upon the executive director, and upon the general counsel of the Commission is mandatory under the terms of the statute, and is a jurisdictional predicate to the complaint. Further, the requirement that complainants seeking relief under Section 13-514 serve the executive director and the general counsel is plainly and unambiguously set forth in the statute that NTS relies upon for relief.

7. In addition, Section 13-515(c) of the Act provides in relevant part that: "[n]o complaint may be filed under this Section until the complainant has first notified the respondent of the alleged violation and offered the respondent 48 hours to correct the situation." 220 ILCS 5/13-515(c). Although NTS alleges that it has given notice pursuant to this subsection, its basis for this claim is correspondence that it directed to Respondent CenturyTel dated June 16, 2009. Complaint, ¶4; Ex. A.

8. While this correspondence recites the alleged acts and omissions by CenturyTel that appear to have given rise to the Complaint, the correspondence nowhere suggests that, unless CenturyTel corrected the violations alleged in the correspondence by some date certain, NTS would file a complaint. *See, generally,*

Complaint, Ex. A. Indeed, the correspondence nowhere states that NTS intended to take legal action under Sections 13-514 and 13-515, or any other authority.¹ Id.

9. The 48-hour notice to cure requirement embodied in Section 13-515(c) is clearly intended to give explicit and unmistakable notice to a potential respondent that, unless the violation alleged in the notice are corrected immediately, a complaint will issue shortly thereafter. The 48-hour notice to cure requirement should not be read to allow a complainant to issue correspondence outlining its grievances, without suggesting that it will take legal action if redress is not forthcoming, and then file a complaint nearly a year and a half later, without further notice. This, however, is precisely what NTS has done here.

10. The provision requiring 48 hours notice to cure is not opaque or ambiguous, and NTS could easily and readily have complied with it. Again, however, it failed to observe this statutory requirement. As Section 13-515(c) is also a jurisdictional predicate to the action, NTS's Complaint must be dismissed for this reason as well.

11. Accordingly the Complaint should be dismissed without prejudice. Further, Section 13-515(g) provides in relevant part that:

The Commission shall assess the parties under this subsection for all of the Commission's costs of investigation and conduct of the proceedings brought under this Section including, but not limited to, the prorated salaries of staff, attorneys, hearing examiners, and support personnel and including any travel and per diem, directly attributable to the complaint brought pursuant to this Section, ... dividing the costs according to the resolution of the complaint brought under this Section.

¹ The June 16, 2009 correspondence indicated that copies of further correspondence should be directed to NTS's counsel, as well as to its officers. This, however, does not compel the conclusion that NTS intended to file a legal action.

220 ILCS 5/13-515(g)

12. Staff brings this motion as a result of NTS's failure to observe clear and explicit requirements of the selfsame statute pursuant to which it seeks relief. Accordingly, NTS should be charged with the Staff's and Commission's costs in resolving this matter.

13. Staff notes that is has formed no opinion regarding the merits of the claims enunciated by NTS in its Complaint. Staff brings this motion exclusively to vindicate the jurisdictional and procedural requirements of the statute, so that no claim of error can attach.

WHEREFORE, Staff respectfully requests that its recommendations as set forth herein be adopted.

Staff of the Illinois
Commerce Commission

Matthew L. Harvey
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street
Suite C-800
Chicago, Illinois 60601
(312) 814-2877

November 19, 2010