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SECRETARY OF STATE
STATE OF IDAHO

VIA ELECTRONIC MAIL

March 5, 2015

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Re: *Demand for Payment/Notice of Claims*

Dear Steve:

As you are aware, the State of Idaho has stopped making payments to ENA related to the Idaho Education Network ("IEN"). This has caused ENA to cease making payments to CenturyLink for the services it has continued to provide to schools using the IEN. The State has also stopped paying CenturyLink for state agency network services that the State has been using for critical State functions. Meanwhile, CenturyLink has continued to provide services to the State and to pay its subcontractors – including Syringa Networks, LLC, which has falsely claimed to the Legislature and the media that it was cut out of the IEN project while being paid millions of dollars as a sub-contractor.

This letter provides formal notice of CenturyLink's intent to file a lawsuit against the State of Idaho to recover damages sustained as a result of the State's failure to pay for telecommunications and network services that CenturyLink has provided to the State.

Specifically, as the State began failing to timely pay for services provided, State officials repeatedly and expressly promised CenturyLink that it would be fully compensated, regardless of the outcome of pending litigation, if CenturyLink continued to provide services to state agencies and the IEN. In direct reliance on these continued promises, CenturyLink continued to provide services to the State without interruption. Moreover, the State was aware at the time of making these promises that CenturyLink had made and was continuing to make costly investments to serve the State in reliance on its promises. However, the State stopped making payments for the services it received from CenturyLink.

By virtue of the State's repeated promises to pay and CenturyLink's reasonable reliance on such promises, the State is estopped from refusing to pay CenturyLink for the services rendered to date. See *Gillespie v. Mountain Park Estates, L.L.C.*, 56 P.3d 1277, 1279 (Idaho 2002) (party entitled to recover for promissory estoppel where:

“(1) the detriment suffered in reliance was substantial in an economic sense; (2) substantial loss to the promisee acting in reliance was or should have been foreseeable by the promisor; and (3) the promisee must have acted reasonably in justifiable reliance on the promise as made.”). In addition, the State’s wrongful use of services without payment constitutes an unjust enrichment and a breach of implied contract. *See Barry v. Pac. W. Const., Inc.*, 103 P.3d 440, 446 (Idaho 2004) (party entitled to recover under the theory of unjust enrichment where the express contract was invalidated). The State’s acceptance of services without payment further violates due process and constitutes an illegal taking without just compensation under state and federal law.

In addition, the State’s recent rescission of previously-approved appropriations for the IEN violates express statutory obligations and constitutes tortious interference with CenturyLink’s contract with ENA. Chapter 229 of the 2014 Idaho Session Laws “appropriated to the Department of Administration for the Idaho Education Network Program \$4,800,000 from the General Fund to be expended for the period July 1, 2014, through February 28, 2015.” (Sec. 1). Under this appropriation, the Department of Administration “shall make a request each month . . . for an allotment of spending authority that is limited to the monthly amount payable for services that support the Idaho Education Network, as appropriated in Section 1 of this act.” (Sec. 2). The specific intent of this appropriation was to pay funds due in fiscal year 2015 to [ENA] . . . for services to be rendered to the [IEN]” if the Universal Service Administrative Company failed to pay ENA for IEN services. (Sec. 3).

This appropriation constitutes an express endorsement of the current IEN contract through the end of fiscal year 2015. *Cf.* Sec. 4 (noting that the appropriation does not endorse the current IEN contract “beyond the provisions of this appropriation”). Nevertheless, the Department of Administration has apparently been directed not to request the mandated allotment or to pay ENA for IEN services, which has in turn caused ENA not to pay CenturyLink for the IEN services CenturyLink has provided to the State through CenturyLink’s contract with ENA.

Finally, it has been suggested in the media that CenturyLink is not being paid for its services because it was in some way complicit in a violation of procurement law with respect to the IEN. We continue to believe that the contract awards to ENA and CenturyLink complied with Idaho law. Regardless, however, there has never been *any* evidence of *any* violation of *any* law by CenturyLink.

To the contrary, in dismissing all of the claims Syringa asserted against CenturyLink (then known as Qwest), the trial court concluded that:

*. . . Syringa has failed to demonstrate that there was any improper or wrongful conduct on the part of Qwest. . . . The decision to make a multiple awards to ENA and Qwest was a unilateral decision on the part of the State, Syringa has not pointed to any actions by Qwest demonstrating any improper motive to harm Syringa or actions giving rise to inferences of bribery, deceit, threats or any other type of wrongful conduct. The evidence demonstrates that Qwest and the IEN Alliance both competed fairly and, ultimately unsuccessfully, to get the entire project. **The decision to make the multiple awards, and the decision dividing the work between ENA and Qwest were made by DOA, without tortious interference by Qwest.***

Steven F. Schossberger
March 5, 2015
Page 3

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(Order dated February 9, 2011, at 38). The Idaho Supreme Court agreed that “Syringa cannot point to anything that Qwest did” wrong in this matter, stating that “[s]uspicion is not a substitute for facts.” *Syringa Networks, LLC v. Idaho Dep’t of Admin.*, 305 P.3d 499, 509-10 (Idaho 2013). CenturyLink is a completely innocent party in this entire matter, and the myriad false statements swirling around are causing great harm to its reputation.

CenturyLink has authorized us to prepare a lawsuit to assert these claims against the State. To the limited extent that it may be necessary under Idaho Law, this Notice of Claim is provided in accordance with Idaho Code § 6-901 *et seq.* to inform you of CenturyLink’s intent to file claims against the State of Idaho. In addition to full payment for all services rendered, CenturyLink will be entitled to recover statutory interest on its charges at the rate of 12% per year from the time payment became due through the date it receives a judgment. Idaho Code § 28-22-104.

Please do not hesitate to contact me to discuss this matter further.

Thank you,


Steven J. Perrement

cc:

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Robert S. Patterson, counsel for ENA