

Dish Pays \$13.9M To End CenturyLink Incentive Fee Dust Up

By **Stewart Bishop**

Law360, New York (January 6, 2015, 3:32 PM ET) -- Dish Network LLC has reached a deal worth \$13.9 million with phone and Internet services provider CenturyLink Inc. to end a lawsuit accusing the satellite TV company of withholding fees after CenturyLink decided to package services with its rival DirecTV, according to court documents filed Monday.

U.S. District Judge Colleen McMahon signed off on an agreement to dismiss the case, just days before a jury trial was set to begin. That order was preceded by a notice saying Dish had paid CenturyLink \$13.9 million, the exact amount of a judgment CenturyLink had previously secured from the court before the Second Circuit deemed the case to be fit for a trial.

Dish had been accused of refusing to pay more than \$75,000 in monthly incentive fees to CenturyLink for certain customers, violating a 2007 agreement between the two parties that has since been terminated.

The companies had entered into a sales agency agreement to bundle CenturyLink's phone and Internet services with Dish's TV services in order to offer customers all three services in one package, according to court documents.

That agreement was terminated in July 2010, and while CenturyLink was no longer obligated to promote Dish TV services to potential customers, it claimed other obligations for both parties remained in effect beyond termination under an express wind-down provision.

Monroe, Louisiana-based CenturyLink further contended that Dish had reneged on the deal to punish CenturyLink for its decision to bundle its phone and Internet services with Dish's main competitor, DirecTV.

The district court had previously granted judgment on the pleadings in favor of CenturyLink, but the Second Circuit demurred, finding the contract between Dish and CenturyLink could be reasonably interpreted to mean that Dish could stop paying fees to CenturyLink after their deal ended, counter to CenturyLink's claims. The district court had ruled that Dish would have to continue paying fees because it was still collecting revenue from clients referred to it by CenturyLink.

The section of the contract in question, as interpreted by the Second Circuit, allowed first for the deal to be modified to match Dish's deals with other retailers and second for CenturyLink to terminate its deal with Dish if the satellite TV company's terms were counter to CenturyLink's business.

The appeals court ruled that while the first restraint appeared to apply after termination of the contract, the second caveat was inapplicable once the deal was terminated, and found the contract to be ambiguous enough to warrant a trial.

A Dish spokesman, John Hall, declined to comment. A spokesman for CenturyLink, Mark Molzen, also declined to comment.

CenturyLink is represented by Douglas P. Lobel and Jason Koral of Cooley LLP.

Dish is represented by John M. Agnello, Melissa E. Flax and Michael Cross of Carella Byrne Cecchi Olstein Brody & Agnello PC.

The case is CenturyLink Inc. v. Dish Network LLC, case number 1:11-cv-05528, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Kat Greene. Editing by Emily Kokoll.