

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Cathy Donovan

vs.

AT&T

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Case No. 18-0103-TP-CSS

AT&T OHIO’S MOTION TO DISMISS

The Ohio Bell Telephone Company d/b/a AT&T Ohio (“AT&T Ohio”) respectfully moves to dismiss the Complaint filed by Cathy Donovan (“Complainant”) on January 16, 2018. The grounds for the Motion to Dismiss are set forth in the attached Memorandum in Support.

Dated: February 5, 2018

Respectfully Submitted,

AT&T Ohio

/s/ Mark R. Ortlieb

Mark R. Ortlieb (0094118)

AT&T Ohio

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Cathy Donovan)	
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vs.)	Case No. 18-0103-TP-CSS
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AT&T)	

MEMORANDUM IN SUPPORT OF AT&T OHIO’S MOTION TO DISMISS

I. FACTUAL BACKGROUND

This case involves Ms. Donovan’s (“Complainant”) request for damages or an order requiring AT& Ohio to repair both the interior and exterior of her garage, located at 174 E. 208th Street, Euclid, Ohio 44123. Complainant alleges that her garage was damaged as a result of a utility pole leaning against the roof of the garage.

II. THIS COMPLAINT IS OUTSIDE THE COMMISSION’S JURISDICTION

As an initial matter, Complainant brings a claim that is outside of the jurisdiction of the Commission. The Ohio General Assembly enacted Title 49 of the Revised Code to regulate public utilities and established the Public Utilities Commission of Ohio (PUCO or Commission) to interpret and enforce these regulations. R.C. 4927.21 provides, that the Commission will preside over complaints filed against a telephone company alleging:

“that any rate, practice, or service of the company is unjust, unreasonable, unjustly discriminatory, or in violation of or noncompliance with any provision of [sections 4927.01 to 4927.20 of the Revised Code](#) or a rule or order adopted or issued under those sections.

Thus, the Commission may only hear complaints involving telephone company rates, practices or services alleged to be unjust, unreasonable or discriminatory, or any alleged violation of R.C. 4927.01 to 4927.20

Complainant seeks to recover for alleged property damage to her garage located at 174 E. 208th Street, Euclid, Ohio 44123, which she claims was caused when the utility pole came into contact with the roof on her garage. This allegation, even if accepted as true, does not relate to AT&T Ohio's rates, practices or services, nor does it violate any provisions of R.C. 4927.01-4927.20. *In the Matter of the Complaint of John Campolieti, Complainant, v. The Cleveland Electric Illuminating Company*, (August 15, 2012), PUCO Case No. 12-1184-EL-CSS, Entry ¶13. In *Campolieti*, the PUCO dismissed a complaint that a building was damaged by encroachment of a utility-owned pole, because the claim did not involve inadequacy of service or unjust, unreasonable rates and did not allege violation of any statute or rule. The complaint in this case should be dismissed for the same reasons.

Moreover, to the extent that Complainant is requesting that the Commission award her damages for AT&T Ohio's alleged damage to her garage, she seeks a form of relief beyond the jurisdiction of the Commission. See, *In the Matter of the Complaint of Bart's Cleaners, Inc. v. Cinergy Communications Co.* (July 22, 2004), PUCO Case No. 04-127-TP-CSS, Entry ¶9 (holding that "a request for damages...is beyond the jurisdiction of this Commission"). This Complaint sounds at best in negligence. Negligence is a common-law tort for which jurisdiction lies with the common pleas court. *Allstate Ins. Co. v. Cleveland Elec. Illuminating Co.*, 119 Ohio St.3d 301, 2008-Ohio-3917, ¶16. The Commission does not have the statutory authority to

adjudicate this tort claim or to award the damages the Complainant seeks and this Complaint should be dismissed.

III. THERE ARE NO REASONABLE GROUNDS FOR THE COMPLAINT.

Under R.C. 4927.21, a complaint that fails to set forth reasonable grounds must be dismissed. The mere act of filing a complaint does not automatically trigger a hearing before the Commission. Rather, “[r]easonable grounds for the complaint must exist before the Public Utilities Commission, either upon its own initiative or upon the complaint of another party, can order a hearing, pursuant to R.C. 4905.26 . . .” *Ohio Util. v. Pub. Util. Com’n* (1979), 58 Ohio St.2d, 153, paragraph 2 of the syllabus.¹ In this case, Complainant merely alleges that a utility pole somehow came into contact with the roof of her garage. Complainant does not contend that this act resulted from any unjust, unreasonable or discriminatory rates, practices or service of the Company, nor that AT&T Ohio violated any provision of R.C. 4927.01 to 4927.20 or Commission order. Therefore, based on R.C. 4927.21(B), there are no reasonable grounds for this Complaint to be heard before the Commission and it should be dismissed.

IV. THE POLE ON CLAIMANT’S PROPERTY HAS BEEN SECURED

In her Complaint, Complainant requests that the “pole be fixed so that this won’t happen again”. On August 3, 2017, AT&T Ohio Construction Specialist, Tony Osredkar and employees from AT&T Ohio contractor South Shore Cable Construction placed a guy wire on the pole located at 174 E. 208th Street, Euclid, OH, 44123, pulling it away from the Complainant’s garage by at least 4 inches. A guy wire is a tensioned cable, securely anchored to an adjacent brace pole

¹ This reasonable grounds standard, based in R.C. 4905.26, would equally apply to a complaint against a telephone company filed under R.C. 4927.21 as it contains the same “reasonable grounds” standard.

or in the ground, to add stability to the pole and return it a straight upright position. This is a common industry practice to guard against or correct utility poles that may begin to lean as a result of the weight of their load, surrounding construction or natural ground settling. AT&T Ohio has already fixed the pole and the Complaint should be dismissed.

For all the reasons set forth above, AT&T Ohio respectfully requests that the Complaint be dismissed with prejudice.

Dated: February 5, 2018

Respectfully submitted,

AT&T Ohio

/s/ Mark R. Ortlieb

Mark R. Ortlieb

AT&T Ohio

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served this 5th day of February, 2018, by U.S. Mail or electronic mail on the party shown below.

_____/s/ Mark R. Ortlieb

Mark R. Ortlieb

Cathy Donovan
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Case No(s). 18-0103-TP-CSS

Summary: Motion AT&T Ohio's Motion to Dismiss and Memorandum in Support electronically filed by Mr. Mark R Ortlieb on behalf of AT&T Entities and AT&T Ohio and Ohio Bell Telephone Company