

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMPLAINT OF
ROBERT AND LISA KING,

COMPLAINANTS,

v.

CASE NO. 17-2011-TP-CSS

CINCINNATI BELL TELEPHONE COMPANY
LLC,

RESPONDENT.

ENTRY

Entered in the Journal on February 28, 2018

I. SUMMARY

{¶ 1} The Commission dismisses this case due to a lack of subject matter jurisdiction, pursuant to *Allstate Ins. Co. v. Cleveland Elec. Illum. Co.*, 119 Ohio St.3d 301, 2008-Ohio-3917, 893 N.E.2d. 824, as Commission expertise is not required to resolve this complaint.

II. DISCUSSION

{¶ 2} Cincinnati Bell Telephone Company LLC (CBT) is a telephone company as defined in R.C. 4927.01, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} Pursuant to R.C. 4927.21, the Commission has authority to consider a complaint filed against a telephone company by any person regarding any rate, practice, or service of the company relating to any service furnished by the telephone company that is unjust, unreasonable, unjustly discriminatory, or in violation of, or noncompliance with any provision of R.C. 4927.01 to 4927.20, or a rule or order adopted or issued under those sections.

{¶ 4} On September 21, 2017, Robert and Lisa King (Complainants) filed a complaint against CBT. Complainants allege that CBT installed fiber optic cable in 2014 and damaged

the root of a pine tree located on their property. Complainants state that the pine tree died due to the alleged damage and they had to eventually cut down the tree. Complainants request that the Commission direct CBT to reimburse them for the cost to cut and remove the dead tree and to also replace the tree. Complainants estimate the cost for tree removal and replacement at \$864.68.

{¶ 5} On October 12, 2017, CBT filed an answer to the complaint. In its answer, CBT indicates that Complainants failed to state reasonable grounds in their complaint and that the Commission has no jurisdiction to award damages. Moreover, CBT states that it completed all work in the vicinity of Complainants' pine tree within its utility easement. CBT states that its utility easement includes the right to cut, trim, or remove trees, undergrowth, or overhanging branches within the easement or immediately adjacent thereto.

{¶ 6} As noted above, the Commission has exclusive jurisdiction to hear complaints against telephone companies regarding any rate, practice, or service of the company relating to any service furnished by the telephone company that is unjust, unreasonable, or unjustly discriminatory. However, the Supreme Court of Ohio has determined that the Commission's jurisdiction over service-related matters does not affect the jurisdiction of the courts of common pleas to decide claims against utilities sounding in tort and contract. *Allstate* at ¶6. The Supreme Court of Ohio has adopted a two-part test to determine whether the issues raised in a complaint are within the exclusive jurisdiction of the Commission. The first part of the test asks whether the Commission's administrative expertise is required to resolve the issue in dispute. The second part of the test asks whether the act complained of constitutes a practice normally authorized by the utility. If the answer to either question is in the negative, then claim is not within the Commission's jurisdiction. *Allstate* at ¶ 12-13.

{¶ 7} In this case, the jurisdictional question is whether the claims made by Complainants are within the Commission's exclusive jurisdiction or, instead, are pure tort

claims that should be adjudicated in a court of law. In making this determination, we must review the substance of the claims to determine if utility service-related issues are involved. *Allstate* at ¶ 7.

{¶ 8} The Commission answers the first question presented under the *Allstate's* two-part test in the negative. We find that the Commission's administrative expertise is not required to resolve the issue in dispute. Complainants allege that CBT damaged the root of a pine tree located on their property while installing fiber optic cable. The facts alleged do not involve CBT's telephone service but whether CBT exercised reasonable care in installing the fiber optic cable. Our administrative expertise is not necessary in order to determine whether CBT had exercised such reasonable care.

{¶ 9} The Commission answers the second question presented under *Allstate* in the affirmative. We find that the installation of fiber optic cable constitutes a practice normally authorized by CBT. However, in order for the Commission to have jurisdiction, both prongs of the *Allstate* test must be affirmatively satisfied. Consequently, this complaint case is not within this Commission's exclusive jurisdiction and, as such, should be dismissed.

{¶ 10} Based on the reasoning above, the Commission lacks subject matter jurisdiction in this case; accordingly, this case is dismissed of record.

III. ORDER

{¶ 11} It is, therefore,

{¶ 12} ORDERED, That, in accordance with the above findings, the complaint in this case should be dismissed for lack of subject matter jurisdiction. It is, further,

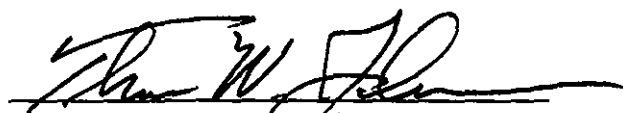
{¶ 13} ORDERED, That a copy of this Entry be served upon all parties and interested persons of record.

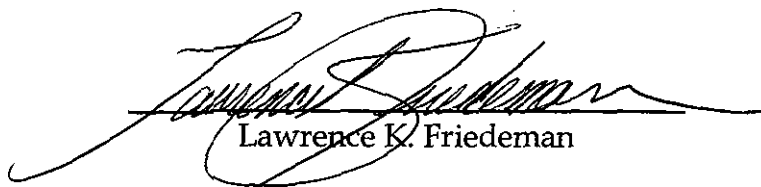
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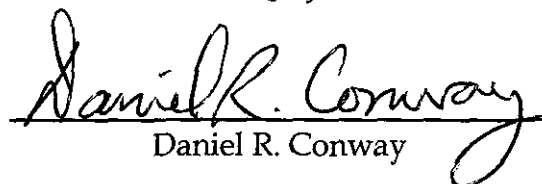
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Asim Z. Haque, Chairman


M. Beth Trombold


Thomas W. Johnson



Lawrence K. Friedeman


Daniel R. Conway

AS/vrm

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FEB 28 2018


Barcy F. McNeal
Secretary