THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMPLAINT OF MARSHALL G. HILES,

COMPLAINANT,

V. **CASE NO. 20-84-TP-CSS**

UNITED TELEPHONE COMPANY OF OHIO D/B/A CENTURYLINK,

RESPONDENT.

SECOND ENTRY ON REHEARING

Entered in the Journal on September 23, 2021

I. SUMMARY

{¶ 1} The Commission denies the application for rehearing of the March 24, 2021 Finding and Order filed by Marshall G. Hiles.

II. DISCUSSION

A. Procedural Background

{¶ 2} On January 13, 2020, Marshall Hiles (Mr. Hiles or Complainant) filed a complaint against United Telephone Company dba CenturyLink (CenturyLink or Company). Complainant alleges that he maintains his residence, from which he also conducts business, at 208 Bruce Street in Eaton, Ohio and was, during the time complained of, a subscriber of telephone and internet services at this location through CenturyLink. Complainant avers that beginning as early as mid-2018, he began having issues with his telephone service, but he reported the issues to CenturyLink in March 2019, with problems escalating in April 2019. Complainant claims that during the time his service was not functioning properly, he was unable to conduct business or personal affairs requiring telephone service. Specifically, Complainant states that between April and October of 2019, he experienced poor telephone service, including routinely fading and dropped telephone calls. Complainant believes that he was unable to obtain a satisfactory resolution from

CenturyLink stating that speaking to various CenturyLink representatives did not result in repairs to his service. Complainant alleges that an employee of CenturyLink stated that the issue did not originate from Complainant's home, but from the Company's connection.

{¶ 3} Complainant represents that, despite extending a settlement offer to the Company, the parties were unable to reach a satisfactory agreement to resolve the issues at hand. Complainant believes that the CenturyLink personnel who were assigned to responding to this complaint failed to bring the case to a resolution and were not honest when dealing with him.

{¶ 4} Mr. Hiles specifically argued that CenturyLink's actions violate R.C. 1345.01, 1321.25, 4722.01, and 4905.03 through 5725.01. As a result of issues stemming from the Company's alleged consistent failure to provide Mr. Hiles with telephone services, Mr. Hiles indicates that he has been damaged in an amount yet to be determined and includes claims that his service has caused him to fail to receive calls from attorneys, ill friends and family, and government officials. Stemming from these claims, Complainant requests relief, including monetary damages in the amount of $15,000.

{¶ 5} In its answer, CenturyLink asserts that it had record of six "trouble tickets" in response to Mr. Hiles' requests for service. CenturyLink explained that those "trouble tickets" indicated that the Company found no trouble on its end with Mr. Hiles' service, but in one ticket, the telephone was plugged into an incorrect port on his end. Finally, CenturyLink asserts that following a service call on August 23, 2019, Mr. Hiles' issue was referred to the Company's long-distance group for monitoring; that ticket was subsequently closed on September 9, 2019, after it was shown that the CenturyLink network was not dropping the calls, rather, the calls were being dropped on Mr. Hiles' side of the line. In its motion to dismiss, CenturyLink explains that Mr. Hiles was not a basic local exchange service (BLES) customer. Further, CenturyLink states that, while it provides internet service to Complainant, Ohio law does not authorize the Commission to exercise jurisdiction over internet and Voice Over Internet Protocol (VoIP) services.

{¶ 6} A settlement conference was conducted on March 24, 2020. The parties met for the conference but were unable to resolve the matter.

{¶ 7} CenturyLink filed a motion to dismiss on February 3, 2020. Mr. Hiles filed a response to the motion to dismiss on April 2, 2020, and CenturyLink filed a reply to Mr. Hiles' response on April 8, 2020.

{¶ 8} On March 24, 2021, the Commission issued its Finding and Order in this proceeding (*Order*), granting, in part, CenturyLink's motion to dismiss the case with prejudice. The Commission concluded the case should be dismissed owing to the Commission's lack of subject matter jurisdiction and Complainant's failure to state reasonable grounds upon which relief could be granted.

{¶ 9} R.C. 4903.10 states that any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days after the Commission's order is journalized.

{¶ 10} On April 9, 2021, Mr. Hiles filed an application for rehearing. Mr. Hiles alleges two assignments of error in which the Commission acted inconsistent in applying "***its own law and [Supreme Court of Ohio] rulings. ***."

{¶ 11} On April 15, 2021, CenturyLink filed a memorandum contra the application for rehearing, in which it denied all of Complainant's allegations including a statement that Complainant raises no new arguments for the Commission's consideration and, therefore, rehearing should be denied.

{¶ 12} On May 5, 2021, the Commission issued an Entry on Rehearing granting Mr. Hiles' application for rehearing for the limited purpose of further consideration of the matters specified on rehearing.

{¶ 13} The Commission has reviewed and considered all of the arguments raised in Mr. Hiles' application for rehearing. Any argument raised on rehearing that is not

specifically discussed herein has been thoroughly and adequately considered by the Commission and should be denied.

B. Summary of the Application for Rehearing and Memorandum Contra

{¶ 14} In his first assignment of error, Mr. Hiles contends that the Commission erred in its determination that the Commission lacked subject matter jurisdiction over the complaint.

{¶ 15} Complainant generally restates the allegations, facts, and arguments of the Complaint in the Application for Rehearing (App. for Rehearing at 1-5). Complainant argues that the Commission is incorrect as a matter of law, because (a) the Supreme Court of Ohio conferred jurisdiction in tort matters in *Allstate Ins. Co. v. Cleveland Elec. Illuminating Co.*, Supreme Court of Ohio, 2008-Ohio-3917 at ¶9, and (b) the Commission has subject matter jurisdiction under R.C. 1345.01 to 1345.13, R.C. 4905.03, R.C. 5725.01, R.C. 1321.35 to 1321.48, and R.C. 4722.01.

{¶ 16} Complainant contends that the Supreme Court of Ohio conferred jurisdiction on the Commission over a complaint sounding in tort in *Allstate Ins. Co. v. Cleveland Elec. Illuminating Co.* (App. for Rehearing at 5-6.) Mr. Hiles argues that in *Allstate,* the Court held that the Commission has jurisdiction over matters sounding in tort where it wrote

> "[i]n *Henson,* the complaint alleged that Columbia Gas had tortiously interfered with a business relationship . . . [t]he substance of the claim involved 'Columbia Gas's termination and restoration of natural-gas service.' We determined that the claim was service-related and therefore within the exclusive jurisdiction of the PUCO. In *Kazmaier,* despite the nature of the allegation, the substance of the claim involved a dispute over the rate charged, a matter patently within the jurisdiction of the PUCO. Most claims are not so close to one end of the continuum between rate- or service-related and common-law tort." (App. For Rehearing at 5-6).

{¶ 17} Finally, Mr. Hiles argues that various provisions of the Ohio Revised Code, including R.C. 1345.01 to 1345.13, R.C. 4905.03, R.C. 5725.01, R.C. 1321.35 to 1321.48, and R.C. 4722.01 confer jurisdiction on the Commission over his complaint.

{¶ 18} With respect to his second assignment of error, Mr. Hiles argues that the Commission erred in its determination that the Complainant failed to state reasonable grounds for which relief can be granted (App. for Rehearing at 1). Similarly, Mr. Hiles generally restates the grounds, facts, and allegations found in the complaint concerning the reasonableness of the grounds upon which the complaint is stated and does not proffer any new arguments (App. for Rehearing at 1-4, 7-8). Mr. Hiles argues that the complaint states reasonable grounds of which R.C. 4905.26 confers jurisdiction on the Commission to consider complaints concerning unjust or unreasonable service (App. for Rehearing at 5).

{¶ 19} On reply, CenturyLink contends that the Commission, in its *Order*, fully considered the applicable law related to subject matter jurisdiction and correctly determined that it lacked jurisdiction over the complaint. In CenturyLink's opinion, the *Order* fully considered the facts and allegations in the Complainant's complaint and the arguments in his response to CenturyLink's motion to dismiss. (Memorandum Contra at 1.)

C. Commission Conclusion

{¶ 20} Upon review, the Commission finds that Mr. Hiles' application for rehearing should be denied in its entirety. Initially, we find that Mr. Hiles' application for rehearing has not brought forth any new arguments for the Commission's review and merely restates arguments made in prior pleadings.

{¶ 21} In its *Order*, the Commission adequately addressed the issue of subject matter jurisdiction and determined that it did not have subject matter jurisdiction over Mr. Hiles' complaint. We came to this conclusion because Mr. Hiles' complaint stemmed from a bundle of services over which the Commission has no subject matter jurisdiction under R.C. Chapter 4927. In pertinent part, R.C. 4927.03 states that, "[t]he Commission has no authority

over the quality of service and the service rates, terms, and conditions of telecommunications service provided to end users by a telephone company" except as "specifically authorized" in R.C. Chapter 4927. Mr. Hiles paid CenturyLink for a bundle of services that is specifically exempted from BLES regulation under R.C. 4927.01(A)(1) and (2).

{¶ 22} As to Complainant's argument that Supreme Court of Ohio precedent confers jurisdiction over his complaint to the Commission, we disagree. In *Allstate,* citing its opinion in *State ex rel. Columbia Gas of Ohio, Inc. v. Henson,* 2004-Ohio-3208, the Ohio Supreme Court found the Commission had jurisdiction over a gas service provider's termination and restoration of natural gas service, governed by statutes unrelated to those which confer jurisdiction on the Commission over telephone service.

{¶ 23} Based on the foregoing reasons, the Commission determined then, as it does now, that it did not have jurisdiction over Mr. Hiles' quality-of-service complaint regarding his bundle of services provided by CenturyLink. *Order* at ¶¶12 and 17.

{¶ 24} Additionally, the Commission considered the question as to Mr. Hiles request for relief in the form of monetary damages. Upon examination of applicable law, the Commission determined that it does not have authority to award monetary damages, which may only be done by a court of competent jurisdiction. We cited to *Skotynsky v. Ohio Bell,* Case No. 17-2554-TP-CSS, Entry (June 6, 2018) at 6 (citing to *Allstate Ins. Co. v. Cleveland Elec. Illum. Co.,* 2008-Ohio-3917, ¶6) where the Supreme Court stated 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. Further, in *Allstate,* the Supreme Court stated that "PUCO is not a court and has no power to judicially ascertain and determine legal rights and liabilities." *Id.* Accordingly, where the Commission has no authority to award monetary damages or to adjudicate claims sounding in tort, the assignment of error should be denied. Our conclusion in this case is consistent with prior Commission precedent. *See Skotynsky v. Ohio Bell,* Case No. 17-2554-TP-CSS,

Glendening v. Cincinnati Bell, Case No. 12-1968-TP-CSS, *Sample v. Ohio Edison,* Case No. 20-1583-EL-CSS, and *Brian Tomlin v. Columbus Southern Power Company,* Case No. 02-46-EL-CSS. We therefore affirm our findings and determine that the Commission did not act unreasonably, unlawfully, and unjustly when it refused to consider Complainant's request for a monetary damages award.

{¶ 25} As Mr. Hiles has not brought forth new arguments as to the issue of subject matter jurisdiction, the Commission finds no merit in his application for rehearing. Accordingly, the assignments of error should be denied in their entirety, and Mr. Hiles' application for rehearing should be dismissed, and this case be closed of record.

III. ORDER

{¶ 26} It is, therefore,

{¶ 27} ORDERED, That the application for rehearing filed by Mr. Marshall G. Hiles on April 9, 2021 be denied. It is, further,

{¶ 28} ORDERED, That a copy of this Second Entry on Rehearing be served upon each party of record.

COMMISSIONERS:
Approving:
Jenifer French, Chair
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

JMD/kck

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

9/23/2021 2:25:04 PM

in

Case No(s). 20-0084-TP-CSS

Summary: Entry denying the application for rehearing of the March 24, 2021 Finding and Order filed by Marshall G. Hiles electronically filed by Heather A. Chilcote on behalf of Public Utilities Commission of Ohio