

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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PUCO

Craig A. Panetti,

Complainant,

v.

AT&T Ohio,

Respondent.

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Case No. 07-445-TP-CSS

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AT&T OHIO'S MOTION TO DISMISS

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AT&T Ohio, Respondent herein, pursuant to Ohio Admin. Code §4901-1-12, moves to dismiss the Complaint because it is a matter over which the Commission lacks subject matter jurisdiction. A memorandum in support is attached.

By: Mary Ryan Fenlon

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MEMORANDUM IN SUPPORT

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By this Complaint, Complainant seeks to have the Commission exercise jurisdiction over an historically unregulated activity of telephone companies, the pursuit of monetary damages for personal property subject to third-party impact. In this case, AT&T Ohio's overhanging telephone lines were impacted by the Complainant. AT&T Ohio asserts that the Commission lacks jurisdiction over this personal property tort action. This complaint has nothing to do with the service provided by the Company or its rules, regulation or rates.

Pursuant to Section 4905.26, the Commission has jurisdiction over complaints against public utilities under its jurisdiction which involve rates for utility service or regulations, measurements, or practices affecting or relating to such service. The question of whether the Complainant is monetarily liable for the replacement of the Company's personal property is not included within the concept of "telephone service" subject to the Commission's oversight as contemplated by the Ohio Revised Code.

Further, the Commission is without authority to settle disputes relating to tort liability. Ohio Power Co. v. Harnishfeger, 64 Ohio St. 2d 9 (1980); Milligan v. Ohio Bell Telephone Co., 56 Ohio St. 2d 191 (1978); Mickey v. Columbia Gas of Ohio, Inc., P.U.C.O. Case No. 85-107-GA-CSS (Entry dated March 19, 1985).

This type of negligence action has been routinely dealt with under the general jurisdiction of the local courts. AT&T Ohio, the party that has experienced the property damage, has a potential cause of action to seek compensation for the replacement of its property. Just because the Complainant initiated this complaint at the Commission prior to the Company exercising its right by filing in a local court, it does not mean that the Commission has exclusive jurisdiction over this personal property issue or that the Company's rights to pursue its claim should in any way be prejudiced. If the Commission heard this complaint, the Company's rights would be compromised.

Therefore, the Commission should find that this is a private matter between only these two parties and that it should be heard in the local common pleas court. Even if the Commission should find that it does have jurisdiction, it should exercise its discretion and find that it would be more appropriately heard in the local court. For these reasons, the Commission should dismiss the Complaint.

Respectfully submitted,

AT&T OHIO

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