

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Frank Klanac)	
)	Case No. 08-949-TP-CSS
vs. Century Tel of Ohio)	

POST HEARING BRIEF OF CENTURYTEL OF OHIO

I. Introduction

Mr. Klanac's complaint is that CenturyTel of Ohio ("CenturyTel") caused him damage because a guy-wire anchor punctured drain tile causing water to back up into the basement of his residence.¹

CenturyTel filed a motion to dismiss shortly after the complaint was filed. That motion was renewed at the start of the hearing.

At the hearing, Mr. Klanac introduced no evidence to show that CenturyTel owned the anchor that Mr. Klanac claims caused his problem. But CenturyTel introduced evidence that proved the anchor was not owned by CenturyTel. Therefore, the complaint should be dismissed, both on jurisdictional and substantive grounds.

II. Argument

A. The complaint should be dismissed because the Commission lacks jurisdiction over it.

¹ Complaint filed August 4, 2008. See, also, Transcript of Proceedings dated August 19, 2009 (hereafter "Tr.") at 7, 8, 9, and 11.

that has to do with holding up the telephone pole line.⁴ His work includes putting anchors in the ground and attaching guy wires to the anchors. He has been doing this type of work for approximately 15 years.⁵ Mr. Bright has personally been to the Klanac residence. The first time he was there he removed an old guy wire that was attached to one of the anchors located there.⁶

Mr. Bright described Century Exhibit 5. That exhibit show four guy wires. Two of the guy wires are attached to an anchor that is visible above the ground. That anchor is white.⁷ Mr. Bright testified that the guy wire farthest to the left belonged to cable TV.⁸ The other guy wire attached to the white anchor belongs to CenturyTel.⁹ Mr. Bright testified that the white anchor appeared to him to be the sort of anchor used by a cable TV company.¹⁰ Later, upon cross-examination, Mr. Bright testified that he had never seen that type of anchor used at CenturyTel, but that it is a common style of anchor that he has seen used by cable TV.¹¹ Furthermore, Mr. Bright testified that a cable TV company had a down-guy attachment at the top of the utility pole in question.¹²

The fact that the problem anchor was owned by a cable TV company is also suggested by other testimony. Mr. Klanac himself testified that a representative of Ohio Edison had told him that the anchor belonged to a cable TV company.¹³ Mr. Klanac was told by the gentleman from Ohio Edison that “the cable company would just go around everywhere and start sticking anchors into the ground even when they don’t have

⁴ Tr. at 41.

⁵ Tr. at 42.

⁶ Tr. at 42, 43.

⁷ Century Exhibit 5.

⁸ Tr. at 51, 52.

⁹ Id.

¹⁰ Tr. at 53.

¹¹ Tr. at 76.

¹² Tr. at 60.

¹³ Tr. at 29.

took the action he did because of safety. When an anchor is not in use, his practice is to remove it so it doesn't get hit by a lawn mower or injure children playing in the area.²²

Simply put, there is no evidence to indicate that CenturyTel owned the problem anchor. And there is abundant evidence that CenturyTel did not own the anchor. Even Mr. Klanac's wife admitted that they do not know whose anchor it is, stating: "We don't know any different whether it is or isn't."²³

III. Conclusion

The complainant here has not met his burden of proof because he has not shown that CenturyTel placed or owned the problem anchor. CenturyTel provided abundant evidence that the problem anchor belongs to a cable TV company. Accordingly, even if the complaint is not dismissed on jurisdictional grounds, it should be dismissed on the merits.

Respectfully submitted,


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²² Id.

²³ Tr. at 37.

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Summary: Brief Post Hearing Brief of CenturyTel of Ohio electronically filed by Sonya I
Summers on behalf of CenturyTel of Ohio