

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of United)	
Telephone Company of Ohio d/b/a)	
CenturyLink,)	
)	
Complainant,)	
)	Case No. 13-836-TP-CSS
v.)	
)	
The Village of Kirkersville, Ohio,)	
)	
Respondent.)	

ENTRY

The attorney examiner finds:

- (1) Section 4939.06(A), Revised Code, provides that, if a public utility does not accept a public way fee levied against it pursuant to the enactment of an ordinance by a municipal corporation, the public utility may appeal the public way fee to the Commission. The appeal shall be made by filing a complaint that the amount of a public way fee, any related classification of public way occupants or users, or the assignment or allocation of costs to the public way fee is unreasonable, unjust, unjustly discriminatory, or unlawful. The complaint must be filed not later than 30 days after the date the public utility first becomes subject to the ordinance.
- (2) On April 5, 2013, United Telephone Company of Ohio d/b/a CenturyLink (CenturyLink) filed a complaint pursuant to Sections 4939.06 and 4905.26, Revised Code, stating that it does not accept Ordinance No. 03 2013, which was adopted by the Village of Kirkersville, Ohio (Kirkersville) with respect to rights of way, and that the ordinance is unreasonable, unjust, unjustly discriminatory, and/or unlawful. According to the complaint, the ordinance was passed and signed on March 6, 2013.
- (3) On April 5, 2013, a motion for admission *pro hac vice* was filed by Thomas Dethlefs on behalf of CenturyLink. No

memorandum contra was filed. The attorney examiner finds that the motion for admission *pro hac vice* is reasonable and should be granted.

- (4) On April 25, 2013, Kirkersville filed an answer, which denied the material aspects of the complaint. Additionally, Kirkersville asserts that CenturyLink failed to state a claim upon which relief may be granted; failed to set forth reasonable grounds for complaint; and failed to file the complaint within 30 days after the date that CenturyLink first became subject to Ordinance No. 03 2013, as required by Section 4939.06(A), Revised Code. Kirkersville further asserts that it is not a proper party to a Commission proceeding pursuant to Rule 4901-1-10, Ohio Administrative Code (O.A.C.). Kirkersville adds that the Commission lacks jurisdiction over Kirkersville and the subject matter of the complaint. Finally, according to Kirkersville, CenturyLink lacks standing because it has not yet applied for a right-of-way permit from Kirkersville. As a result, Kirkersville requests that the complaint be dismissed with prejudice.
- (5) By entry issued on May 15, 2013, the Commission determined that CenturyLink had provided reasonable grounds for complaint and suspended the public way ordinance for the duration of the Commission's consideration of the complaint.
- (6) Section 4939.06(A), Revised Code, requires that the Commission act to resolve the complaint by issuance of a final order within 120 days after the filing of the complaint. Therefore, in order to proceed with the instant case on a timely basis, the attorney examiner finds that a hearing in this matter should be scheduled for June 10, 2013, at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, 11th Floor, Hearing Room 11-C, Columbus, Ohio 43215-3793.
- (7) The parties are encouraged to work toward resolving this matter. A telephonic status/prehearing conference is scheduled for June 3, 2013, at 10:00 a.m. At that time, the parties to this proceeding should call the Commission at 866-209-2820 and enter conference code 4900652354. The purposes of the conference include confirming discovery status, readiness for hearing, need for rebuttal testimony, and other matters as needed.

- (8) Any party intending to present direct testimony (expert or otherwise) should file that testimony in writing with the Commission and serve it upon all parties, no later than seven days prior to the commencement of the hearing.
- (9) In the event that any motions are made in this case, any memoranda contra shall be required to be filed within seven calendar days after the service of such motions, and any reply memoranda within four calendar days after the service of memoranda contra. Rule 4901-1-07(B), O.A.C., which permits three additional days to take action if service is made by mail, will not apply. The parties are encouraged to take advantage of Rule 4901-1-05(C), O.A.C., which provides that service of pleadings may occur by facsimile transmission or electronic message.
- (10) In addition, the parties are reminded that, pursuant to Rule 4901-1-17, O.A.C., discovery may begin immediately after a proceeding is commenced and should be completed as expeditiously as possible. The attorney examiner finds that the response time for discovery shall be shortened to ten calendar days. Unless otherwise agreed to by the parties, discovery requests and replies shall be served by hand delivery, facsimile transmission, or electronic message. An attorney serving a discovery request shall attempt to contact the attorney upon whom the discovery request will be served in advance to advise him/her that a request will be forthcoming.

It is, therefore,

ORDERED, That the motion for admission *pro hac vice* filed by Thomas Dethlefs be granted. It is, further,

ORDERED, That the parties comply with the directives set forth in findings (9) and (10). It is, further,

ORDERED, That a telephonic prehearing conference be held on June 3, 2013, at 10:00 a.m. It is, further,

ORDERED, That all direct testimony be filed by June 3, 2013. It is, further,

ORDERED, That a hearing be scheduled for June 10, 2013, at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, 11th Floor, Hearing Room 11-C, Columbus, Ohio 43215-3793. It is, further,

ORDERED, That a copy of this entry be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Sarah Parrot

By: Sarah J. Parrot
Attorney Examiner

JRJ/sc

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in

Case No(s). 13-0836-TP-CSS

Summary: Attorney Examiner Entry granted motion for admission pro hac vice filed by Thomas Dethlefs, ordered the parties to comply with the directives set forth in findings (9) and (10), ordered a telephonic prehearing conference for 06/03/13 at 10:00 a.m., ordered all direct testimony filed by 06/03/2013, and ordered a hearing for 06/10/2013 at 10:00 a.m. - electronically filed by Sandra Coffey on behalf of Sarah Parrot, Attorney Examiner, Public Utilities Commission of Ohio