

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of)	
Cincinnati Bell Telephone Company LLC,)	
)
Complainant,)	
)
v.)	Case No. 14-1576-TP-PWC
)
The Village of Batavia, Ohio,)	
)
Respondent.)	

ENTRY

The Commission finds:

- (1) On December 2, 2013, the Village of Batavia, Ohio (Batavia) adopted Ordinance No. 1284-13, which established various fees to be paid by users of the public way. Ordinance No. 1284-13 was first published in the Clermont Sun once a week for two consecutive weeks beginning on May 1, 2014.
- (2) On September 9, 2014, Cincinnati Bell Telephone Company LLC (CBT) filed a complaint with the Commission against Batavia concerning certain aspects of Ordinance No. 1284-13. In part, CBT alleges that:
 - (a) The public way fees required by the ordinance are based on costs that have not been, and cannot be, properly allocated and assigned to the occupancy or use of Batavia's public ways, nor can Batavia clearly demonstrate that its method of allocation or assigning costs complies with R.C. 4939.05(C);
 - (b) The public way fees required by the ordinance are not based on the actual costs attributable to occupancy or use of the public way and are, therefore, unreasonable, unjust, unjustly discriminatory, and unlawful pursuant to R.C. 4939.05(C);

- (c) Ordinance No. 1284-13 unreasonably and arbitrarily charges four times as much for administration and inspection of underground lines as it does for aerial lines;
 - (d) Batavia did not submit Ordinance No. 1284-13, or prior ordinances, to the Commission prior to consideration, as required by R.C. 4939.05(E) and the ordinances are, therefore, unlawful; and
 - (e) Ordinance No. 1284-13 fails to allocate any fees to the portion of the public way occupied by governmental entities and other types of utilities for which no fee is assessed.
- (3) On September 30, 2014, Batavia filed an answer, which denied the material aspects of the complaint. Among other defenses, Batavia asserts that CBT received notice of all actions by Batavia now complained of and failed to act in a timely fashion to preserve its objections to said actions, thereby waiving some or all of the claims presented in this matter. Additionally, Batavia claims that CBT failed to mitigate its claimed damages, if any, and that the Commission lacks jurisdiction over some or all of the claims presented. As a result, Batavia requests that the complaint be dismissed with prejudice.
- (4) R.C. 4939.06(B) provides for the suspension of public way fees under certain circumstances:

Only upon a finding by the commission that reasonable grounds are stated for a complaint filed under division (A) of this section, the commission by order shall suspend the public way fee provisions of the municipal ordinance for the duration of the commission's consideration of the complaint. For the purpose of this division, if the commission so suspends an ordinance pursuant to a complaint filed not later than thirty days after the date that the ordinance first takes effect, the suspension shall apply to the public way fee for every occupancy or use of the public way to which the fee would otherwise apply. For any other complaint, the suspension shall apply only to the

public utility filing the complaint. The municipal corporation may later collect, for the suspension period, any suspended public way fee only if the commission finds that the public way fee is not unreasonable, unjust, unjustly discriminatory, or unlawful.

- (5) In its complaint, CBT has requested that Ordinance No. 1284-13 be suspended for the duration of the Commission's consideration of the complaint. The standard under R.C. 4939.06(B) is whether reasonable grounds are stated for a complaint under R.C. 4939.06(A). CBT brought this action based on the amount of the public way fees imposed by the ordinance, the classification of public way occupants or users, as well as the assignment or allocation of costs to the public way fees, which are issues covered by R.C. 4939.06(A). CBT has raised substantial arguments with regard to these issues. The Commission, therefore, finds that reasonable grounds for the complaint have been stated and that this matter should proceed to hearing.

Based on this finding, R.C. 4939.06(B) requires that the Commission suspend the public way fee provisions established by the ordinance for the duration of the Commission's consideration of the complaint. R.C. 4939.06(B) also requires a determination as to whether the complaint was filed not later than 30 days after the date that the ordinance first took effect. CBT asserts that Ordinance No. 1284-13 was passed by council and signed by the mayor of Batavia on December 2, 2013. A copy of Ordinance No. 1284-13 attached to the complaint as Exhibit A indicates that the ordinance was indeed adopted on December 2, 2013, and that it shall take effect and be in force 30 days after passage by council. In its answer, Batavia admits the applicable allegations concerning the timing and enactment of the ordinance but denies CBT's allegation that it was first subject to Ordinance No. 1284-13 upon receipt of the August 21, 2014 invoice that was attached to the complaint as Exhibit B. Batavia, however, offers no support for its assertion. Exhibit B to the September 9, 2014 complaint purports to be an invoice from Batavia to CBT that "should cover all direct costs incurred to date" and if CBT attends promptly to payment, Batavia will "waive any

additional charges for administration, inspection, and ancillary costs."

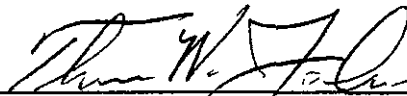
The Commission notes that Ordinance No. 1284-13 indicates that it became effective 30 days after passage by council (i.e., January 1, 2014). However, the August 21, 2014 invoice reflects the only information in the docket that substantiates when CBT was first subject to the ordinance and this is more than 30 days after the effective date of the ordinance. Therefore, the suspension of the public way fee provisions established by Ordinance No. 1284-13 shall be suspended only as to CBT and not as to any other occupancy of the public ways.

It is, therefore,

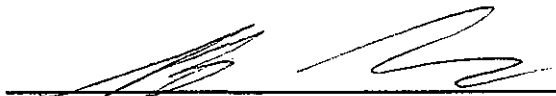
ORDERED, That the public way fee provisions of Batavia Ordinance No. 1284-13 be suspended as to CBT in accordance with finding (5) until otherwise ordered by the Commission. It is, further,

ORDERED, That a copy of this Entry be served upon all parties of record.

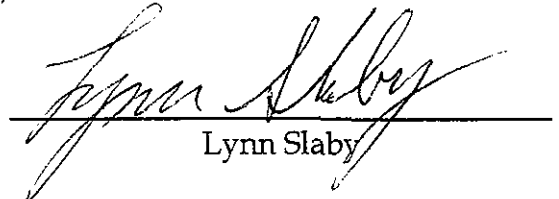
THE PUBLIC UTILITIES COMMISSION OF OHIO



Thomas W. Johnson, Chairman



Steven D. Lesser



Lynn Slaby



M. Beth Trombold



Asim Z. Haque

JRJ/dah

Entered in the Journal


OCT 15 2014

Barcy F. McNeal
Secretary