

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Wendy Von Blon,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 18-1556-TP-CSS
	)	
TDS Telecom,	)	
	)	
Respondent.	)	

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**MOTION OF TDS TELECOM FOR LEAVE TO FILE AN ANSWER  
AND SUPPORTING MEMORANDUM**

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**Frank P. Darr** (Reg. No. 0025469)  
Counsel of Record  
**Matthew R. Pritchard** (Reg. No. 0088070)  
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**NOVEMBER 9, 2018**

**ATTORNEYS FOR TDS TELECOM**

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Under Rules 4901-1-12 and 4901-9-01, Ohio Administrative Code ("O.A.C."), TDS Telecom ("TDS") seeks leave to file an answer. A copy of the proposed answer is attached. The reasons supporting this motion are set out in the supporting memorandum.

Respectfully submitted,

/s/ Frank P. Darr

**Frank P. Darr** (Reg. No. 0025469)  
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**MEMORANDUM IN SUPPORT OF MOTION OF TDS TELECOM  
FOR LEAVE TO FILE AN ANSWER**

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After an underground cable in the public right of way was moved at the request of governmental officials, the Complainant raised concerns with TDS regarding alleged damage to her property. Representatives of TDS and the contractor that performed the work giving rise to the alleged damage investigated the claim and found no damages. Apparently bypassing the Commission's call center and not satisfied with the response of TDS, the Complainant filed a complaint with the Public Utilities Commission of Ohio ("Commission") that was docketed on October 16, 2018.

The Commission docket record indicates that a copy of the complaint was sent to TDS that day with a letter indicating that an answer was due in 20 days. Following its practice of submitting materials to the Commission Staff, TDS initially responded with an informal response. Following instructions from Commission Staff, TDS then docketed a general denial by the manager for state government affairs on November 6, 2018. TDS

was subsequently advised on November 6, 2018 that Commission rules required an answer to be filed by counsel licensed to practice in Ohio.

Under Commission rules, an answer to a complaint should be filed within 20 days or such time as ordered by the Commission, the legal director, deputy legal director, or an attorney examiner. Rule 4901-9-01(B), O.A.C. As the rule makes clear, the Commission may extend the answer date under appropriate circumstances. In practice, the Commission may grant a motion for an extension after the due date for an answer. *Fiber Network Solutions, Inc. v. LCI International Telecom Corp.*, Case No. 97-747-TP-CSS, Entry (Aug. 18, 1997).<sup>1</sup>

In this instance, an extension of the answer date is justified. TDS has made a good faith effort to file a timely response to the complaint but erred in the form of its response. Rather than securing counsel to file an answer, it did so through its state manager. Any delay in filing an answer in the form required by Commission rules will not cause the Complainant any prejudice for several reasons.

First, she had already met with TDS and the contractor and was aware that TDS had not identified any damage. Thus, the general denial will come as no surprise to the Complainant.

Second, the process concerning this complaint is in such an early stage that the Complainant will not be harmed in any way by a few days' delay in the notice provided by the answer. In fact, a formal hearing is not yet imminent. As required by Commission

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<sup>1</sup> The Commission may grant a request for an extension of the filing to file pleadings of five days or less immediately. Rule 4901-1-12(C). In this instance, TDS is seeking the filing of the attached pleading. It would be filed upon the granting of this motion.

rules, this matter will be initially assigned for a settlement conference prior to hearing.  
Rule 4901-9-01(G), O.A.C.

Finally, the Commission itself could suspend this matter because it appears from TDS records that the Complainant did not seek to resolve this matter by first contacting the Commission's call center. Under the Commission's rules, the legal department may refer the complaint to the call center for an opportunity to resolve the issue before formally proceeding on the complaint. Rule 4901-9-01(A), O.A.C.

For good cause and given that there is no harm to granting the motion for leave to answer, the motion should be granted.

Respectfully submitted,

/s/ Frank P. Darr

**Frank P. Darr** (Reg. No. 0025469)

Counsel of Record

**Matthew R. Pritchard** (Reg. No. 0088070)

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**ATTORNEYS FOR TDS TELECOM**

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Motion of TDS Telecom for Leave to File an Answer and Supporting Memorandum* was served upon Complainant at the following address via U.S. Mail, postage prepaid on this ninth day of November 2018.

Wendy Von Blon  
9703 Morrow-Woodville Road  
Pleasant Plain, Ohio 45162-8114

/s/ Frank P. Darr

Frank P. Darr

cc: Dan Fullin, Attorney Examiner

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**ANSWER OF TDS TELECOM**

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**ANSWER OF TDS TELECOM**

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For its Answer and Defenses, TDS Telecom ("TDS") states as follows:

1. Denies the allegations of the complaint.

**First Defense**

2. TDS restates paragraph 1 as if fully stated herein.
3. The Complaint fails to set forth reasonable grounds for complaint as required by R.C. 4905.26.

**Second Defense**

4. TDS restates paragraphs 1-3 as if fully stated herein.
5. TDS complied with the requirements of Ohio law, the applicable rules of the Public Utilities Commission of Ohio, and the applicable tariffs.

**Third Defense**

6. TDS restates paragraphs 1-5 as if fully stated herein.
7. Property damage, if any, was the result of actions of a third party for which TDS is not responsible.



#### **Fourth Defense**

8. TDS restates paragraphs 1-7 as if fully stated herein.
9. The Complaint is barred in whole by the doctrines of laches, waiver, and/or estoppel.

#### **Fifth Defense**

10. TDS restates paragraphs 1-9 as if fully stated herein.
11. TDS reserves the right to raise other defenses as warranted by discovery in this matter.

Wherefore, TDS requests that the Complaint be dismissed.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Answer of TDS Telecom* was served upon Complainant at the following address via U.S. Mail, postage prepaid on this \_\_\_\_ day of November 2018.

Wendy Von Blon  
9703 Morrow-Woodville Road  
Pleasant Plain, Ohio 45162-8114

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Frank P. Darr

cc: Attorney Examiner, Dan Fullin

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**11/9/2018 10:23:51 AM**

**in**

**Case No(s). 18-1556-TP-CSS**

Summary: Motion Motion of TDS Telecom for Leave to File an Answer and Supporting Memorandum electronically filed by Mr. Frank P Darr on behalf of TDS Telecom