

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Wendy Von Blon,

Complainant,

v.

TDS Telecom,

Respondent.

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Case No. 18-1556-TP-CSS

**TDS TELECOM'S MOTION TO DISMISS FOR LACK OF
SUBJECT MATTER JURISDICTION AND FAILURE TO STATE A
CLAIM UPON RELIEF MAY BE GRANTED
AND SUPPORTING MEMORANDUM**

Frank P. Darr (Reg. No. 0025469)
MCNEES WALLACE & NURICK LLC
21 East State Street, 17TH Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
fdarr@mwncmh.com
(willing to accept service via e-mail)

DECEMBER 11, 2018

ATTORNEYS FOR TDS TELECOM

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Wendy Von Blon,)	
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Complainant,)	
)	
v.)	Case No. 18-1556-TP-CSS
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TDS Telecom,)	
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CLAIM UPON RELIEF MAY BE GRANTED
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TDS Telecom Corporation (“TDS”) moves to dismiss the complaint because the Public Utilities Commission of Ohio is without subject matter jurisdiction to address the complaint. The reasons supporting this motion are set out in the accompanying Memorandum in Support.

Respectfully submitted,

/s/ Frank P. Darr

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MEMORANDUM IN SUPPORT

Wendy Von Blon, the complainant, has alleged TDS has “dug up [her] yard,” “broke [her] mower,” “killed [a] tree,” “broke [a] pipe,” and “left bare wires.” TDS has denied all allegations of the complaint. Even if taken as true, however, the allegations would not provide grounds for a Commission order against TDS. Because the Commission is without jurisdiction to consider these claims, the Complaint should be dismissed.

The Commission has exclusive jurisdiction under R.C. 4905.26 to hear complaints filed against a public utility alleging that rates or services rendered are in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law or that any practice relating to any service furnished by a public utility is unreasonable, unjust, insufficient, unjustly discriminatory, or unjustly preferential. The exclusive jurisdiction of the Commission over rate-related matters, however, does not affect “the basic jurisdiction of the court of common pleas in other areas of possible claims against utilities, including pure tort and contract claims.” *State, ex rel. Illuminating Co., v. Cuyahoga County Court of Common Pleas*, 97 Ohio St. 3d 69, ¶ 21 (2002).

The Ohio Supreme Court has adopted a two-part test to determine if the issues presented in a complaint are within the Commission's jurisdiction. The first part of the test asks whether the Commission's expertise is required to resolve the dispute. The second part asks whether the act complained of is a practice normally authorized by the utility. If the answer to either part of the test is negative, then the complaint is not within the subject matter jurisdiction of the Commission. *Allstate Ins. Co. v. Cleveland Elec. Illum. Co.*, 119 Ohio St. 3d 301 ¶¶ 12-13 (2008).

In this case, the answer to the first question whether the Commission's special expertise is necessary to address the merits of the complaint is negative. Construed in a way most favorable to the complainant, the complaint alleges that TDS damaged the complainant's real and personal property and left the property in an unsafe condition. These claims sound in basic tort law. Because the complaint presents basic tort claims, the Commission does not have any special expertise to address them. *Kazmaier Supermarket, Inc. v. Toledo Edison Co.*, 61 Ohio St. 3d 147, 154 (1991); *Citizens Against Clear Cutting v. Duke Energy Ohio, Inc.*, Case No. 17-2344-EL-CSS, Entry ¶ 48 (Mar. 8, 2018). As a result, a court of competent jurisdiction would be better suited to apply legal principles of tort law to resolve claims. *Jackson v. Duke Energy Ohio, Inc.*, Case No. 15-1517-EL-CSS, Entry ¶ 11 (Nov. 14, 2018) ("*Jackson*").

Under the *Allstate* two-part test, both parts must be answered in the affirmative. In this instance, the answer to the first part is negative. Because the Commission's administrative expertise is not necessary to resolve the dispute, this matter "falls beyond the Commission's jurisdiction and, as such, should be dismissed." *Jackson*, ¶ 12.

Respectfully submitted,

/s/ Frank P. Darr

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ATTORNEYS FOR TDS TELECOM

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *TDS Telecom's Motion to Dismiss for Lack of Subject Matter Jurisdiction and Failure to State a Claim upon Relief May Be Granted and Supporting Memorandum* was served upon Complainant at the following address via U.S. Mail, postage prepaid on this 11th day of December 2018.

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

/s/ Frank P. Darr

Frank P. Darr

cc: Dan Fullin, Attorney Examiner

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in

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

Summary: Motion Motion to Dismiss for Lack of Subject Matter Jurisdiction and Failure to State a Claim upon Relief May Be Granted and Supporting Memorandum electronically filed by Mr. Frank P Darr on behalf of TDS Telecom