

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE COMPLAINT OF
WENDY VON BLON,**

COMPLAINANT,

CASE NO. 18-1556-TP-CSS

v.

TDS TELECOM, INC.,

RESPONDENT.

ENTRY

Entered in the Journal on June 19, 2019

I. SUMMARY

{¶ 1} The Commission dismisses this case due to Complainant's lack of sufficient prosecution and due to lack of subject matter jurisdiction, as Commission expertise is not required to resolve this complaint.

II. DISCUSSION

{¶ 2} Little Miami Telecommunications Corporation dba TDS Telecom, Inc. (TDS Telecom or Respondent) is both a public utility as defined in R.C. 4905.02, and a telephone company as defined in R.C. 4927.01, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} Pursuant to R.C. 4927.21, the Commission has authority to consider a complaint filed against a telephone company by any person regarding any rate, service, regulation, or practice relating to any service furnished by the telephone company that is unjust, unreasonable, unjustly discriminatory, or in violation of, or noncompliance with any provision of R.C. 4927.01 to 4927.20, or a rule or order adopted or issued under those sections.

{¶ 4} On October 16, 2018, Wendy Von Blon (Complainant) filed a complaint in this case against TDS Telecom, alleging that Respondent damaged Complainant's property in several ways, causing Complainant to hand-deliver a note in response.

{¶ 5} On November 9, 2018, TDS Telecom filed an answer to the complaint in which it denies all of the allegations of the complaint and sets forth several affirmative defenses. By Entry issued December 5, 2018, TDS Telecom's answer was accepted as timely filed.

{¶ 6} By Entry issued December 5, 2018, a settlement conference was scheduled to take place on December 19, 2018 at the Commission's offices. At the appointed time and place, an attorney examiner from the Commission's legal department and a representative of TDS Telecom were in attendance. However, Complainant was not present and, consequently, the settlement conference was not convened.

{¶ 7} By Entry issued January 3, 2019, the settlement conference was rescheduled to occur on February 4, 2019. The Entry informed Complainant that failure to attend the settlement conference may result in dismissal of the complaint for lack of prosecution. On February 4, 2019, an attorney examiner from the Commission's legal department and a representative of TDS Telecom were in attendance for the rescheduled conference. However, Complainant, for a second time, did not appear at the conference.

{¶ 8} In a formal complaint, such as this one, the complainant has the legal obligation to prosecute the complaint. After receiving notice of the proceedings and sufficient warning that failure to appear may result in dismissal, Complainant in this matter has, twice, failed to appear at the scheduled settlement conferences. Moreover, to this date, Complainant has failed to file any correspondence or attempt to contact the attorney examiner in order to explain her absences or indicate that she wishes to pursue this matter. The case should, therefore, be dismissed for lack of sufficient prosecution by Complainant.

{¶ 9} On December 11, 2018, TDS Telecom filed a motion to dismiss. In support of its motion, TDS Telecom argues that the complaint sets forth a sole issue – Complainant's

claim that TDS Telecom negligently caused damage to Complainant's property, presumably entitling Complainant to an award of damages – that does not require the Commission's expertise to resolve. Consequently, TDS Telecom asserts that the Commission lacks subject matter jurisdiction.

{¶ 10} Complainant did not file a response to TDS Telecom's motion to dismiss.

{¶ 11} As noted above, the Commission has exclusive jurisdiction to hear complaints against telephone companies regarding any rate, practice, or service furnished by the telephone company that is unjust, unreasonable, or unjustly discriminatory. However, the Supreme Court of Ohio has determined that the Commission's jurisdiction over service-related matters does not affect the jurisdiction of the courts of common pleas to decide claims against utilities sounding in tort and contract. *Allstate Ins. Co. v. The Cleveland Elec. Illum. Co.*, 119 Ohio St.3d 301, 2008-Ohio-3917, 893 N.E.2d. 824, at ¶6. The Supreme Court of Ohio has adopted a two-part test to determine whether the issues raised in a complaint are within the exclusive jurisdiction of the Commission. The first part of the test asks whether the Commission's administrative expertise is required to resolve the issue in dispute. The second part of the test asks whether the act complained of constitutes a practice normally authorized by the utility. If the answer to either question is in the negative, then the claim is not within the Commission's jurisdiction. *Allstate* at ¶ 12-13.

{¶ 12} In this case, the jurisdictional question is whether the claim made by Complainant is within the Commission's exclusive jurisdiction or, instead, is a pure tort claim that should be adjudicated in a court of law. In making this determination, we must review the substance of the claim to determine if utility service-related issues are involved. *Allstate* at ¶ 7.

{¶ 13} The Commission answers the first question presented under the *Allstate's* two-part test in the negative. We find that the Commission's administrative expertise is not required to resolve the issue in dispute. Complainant alleges that TDS Telecom damaged her property by failing to exercise reasonable care. Our administrative expertise

is not necessary in order to determine whether TDS Telecom exercised reasonable care under the circumstances alleged in the complaint. The Complainant has not alleged that she is Respondent's telephone service customer. In any event, the complaint contains no allegation that TDS Telecom's actions, if any, giving rise to this complaint, impacted, in any way, the adequacy of the telephone service provided by TDS Telecom. For this reason, we find that, at best, the only issue presented is a pure tort claim and, as such, not one involving the manner in which an Ohio regulated public utility's service is provided or one to which our administrative expertise should be applied. See also *In re the Complaint of Richard Kawiecki v. Ohio Edison Company*, Case No. 17-2325-EL-CSS, Entry (May 29, 2019) at ¶11.

{¶ 14} Because both prongs of the *Allstate* test must be affirmatively satisfied in order for the Commission to have jurisdiction, and we have already reached a negative answer to the first question, it is not necessary for us, here, to reach any conclusion as to how the second prong of the *Allstate* test is answered. Nevertheless, the Commission does also answer the second question presented under *Allstate* in the negative. No basis exists to find, definitively, that the actions, if any, of TDS Telecom which gave rise to this complaint constitute a practice normally undertaken by the company to fulfill obligations that TDS Telecom holds as a regulated Ohio public utility and telephone company. Thus, in this case, neither prong of the *Allstate* test has been affirmatively satisfied. Consequently, this complaint case is not within this Commission's exclusive jurisdiction and, as such, should be dismissed.

{¶ 15} Based on the reasoning above, the Commission lacks subject matter jurisdiction in this case and finds that TDS Telecom's motion to dismiss should be granted.

III. ORDER

{¶ 16} It is, therefore,

{¶ 17} ORDERED, That, in accordance with the above findings, Case No. 18-1556-TP-CSS should be dismissed, both because of Complainant's lack of sufficient prosecution and because the Commission lacks subject matter jurisdiction. It is, further,

{¶ 18} ORDERED, That a copy of this Entry be served upon all parties and interested persons of record.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

DEF/sc

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