

IN THE CIRCUIT COURT OF BROOKE COUNTY, WEST VIRGINIA

MONONGAHELA POWER COMPANY)

Plaintiff,)

v.)

CITIZENS TELECOMMUNICATIONS)
COMPANY OF WEST VIRGINIA)

d/b/a FRONTIER COMMUNICATIONS OF)
WEST VIRGINIA)

Corporation Service Company)

209 West Washington Street)

Charleston, WV 25302)

and)

Citizens Telecommunications Company of West)

Virginia d/b/a Frontier Communications of)

West Virginia)

3 High Ridge Park)

Stamford, CT 06905)

and)

FRONTIER COMMUNICATIONS)

CORPORATION,)

Corporation Services Company)

2711 Centerville Road)

Suite 400)

Wilmington, DE 19808)

Defendants.)

CIVIL ACTION NO. 14-C-7

FILED
2017
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COMPLAINT

COMES NOW Plaintiff Monongahela Power Company ("Mon Power"), and for its
Complaint states and avers as follows:

INTRODUCTION

1. Plaintiff Mon Power brings this suit because Citizens Telecommunications Company of
West Virginia, d/b/a Frontier Communications of West Virginia ("Citizens") and Frontier

Communications Corporation ("Frontier Communications") have failed to honor their obligations to pay Mon Power approximately \$350,400 as compensation for Citizens' use of Mon Power's utility poles pursuant to its contract with Mon Power.

THE PARTIES AND VENUE

2. Mon Power is a corporation formed under the law of the State of Ohio with its principal place of business in Fairmont, West Virginia. Mon Power is an electric utility operating company engaged in the delivery of electricity to individual and business customers located in West Virginia. Mon Power is a wholly-owned subsidiary of FirstEnergy Corp.

3. Defendant Citizens is a West Virginia corporation and wholly-owned subsidiary of Defendant Frontier Communications. On information and belief, Citizens is an incumbent local exchange carrier providing telephone service in West Virginia, and is the successor-in-interest to Continental Telephone Co. of WV, Continental Telephone Company of West Virginia, and Citizens Utilities Company, d/b/a Citizens Telecommunication Company of West Virginia.

4. Defendant Frontier Communications is the parent company of Defendant Citizens and is responsible for its operation. Frontier Communications is a corporation formed under the laws of the State of Delaware with its principal place of business in Stamford, Connecticut. Frontier Communications is the largest communications company in the United States providing services predominantly to rural areas and small and medium-sized towns and cities in the United States. Frontier Communications served approximately 350,070 residential customers, or 12.1% of the total residential customers in the State of West Virginia, according to its 2012 Annual Report. Frontier Communications operates a "Centralized Joint Use Team" that is responsible for overseeing and implementing the joint use agreement between Citizens and Mon Power.

5. Venue is proper in this Court pursuant to W. Va. Code § 56-1-1 because both Mon Power and Citizens do business in Brooke County, WV, because Mon Power operates a service center in Brooke County, WV, and because many of the poles at issue in this litigation are located in Brooke County.
6. The Court has original jurisdiction over this case under W. Va. Code § 51-2-2.

FACTS COMMON TO ALL CLAIMS

The Joint Use Agreement Enables the Parties to Use Each Other's Poles

7. Mon Power and Citizens each own utility poles on which their respective electric or communications facilities are attached.
8. Mon Power and Citizens' predecessor-in-interest, Continental Telephone Co. of WV, entered into an "Agreement for the Joint Use of Poles and Anchors" (the "Joint Use Agreement") effective April 1, 1987.
9. The Joint Use Agreement remains in full force and effect.
10. Because electric and telephone service areas overlap, the Joint Use Agreement enables Mon Power and Citizens to avoid the construction of duplicate pole lines by sharing the use of the other's poles.
11. The Joint Use Agreement enables Mon Power to attach electric facilities to poles owned by Citizens, and enables Citizens to attach communications facilities to poles owned by Mon Power.
12. The Joint Use Agreement contains rates, terms and conditions that govern each party's use of the other's utility poles.
13. This joint use of the parties' poles is the primary purpose of the Joint Use Agreement.

14. The poles that are the subject to this complaint are all poles that have been designated by the parties as joint use poles.

**The Joint Use Rental Rate is Clearly Identified
in the 2001 Amendment to the Joint Use Agreement**

15. On April 1, 1987 Mon Power and Continental Telephone Co. of WV entered into the Joint Use Agreement.

16. On December 31, 1993, Mon Power, Continental Telephone Company of West Virginia (which, on information and belief, is either the same entity or successor-in-interest to Continental Telephone Co. of WV), and Citizens Utilities Company d/b/a Citizens Telecommunication Company of West Virginia ("Citizens Utilities") entered in an assignment agreement to assign the Joint Use Agreement to Citizens Utilities.

17. On December 14, 2009, Mon Power and Citizens Utility Company, a/k/a Citizens Communications (which, on information and belief, is either the same entity or successor-in-interest to Citizens Utilities) agreed to continue paying each other the then-current pole attachment rates ("December 14, 2009 Letter Agreement").

18. Under the December 14, 2009 Letter Agreement, Mon Power agreed to pay \$39.83 per attachment to Citizens Utilities telephone poles and Citizens Utilities agreed to pay \$30.92 per attachment to Mon Power's poles.

19. As successor-in-interest to Citizens Utilities, Citizens is bound by the agreement reached in the December 14, 2009 Letter Agreement.

**Defendants Violated the Joint Use Agreement,
As Amended by the December 14, 2009 Letter Agreement,
By Paying Only a Portion of the Required Pole Rental Amount**

20. Mon Power invoiced Citizens three times (collectively known as the "2012 Joint Pole Invoices") for payment owed for three different sets of poles for calendar year 2012 under the Joint Use Agreement.
21. Each of the 2012 Joint Pole Invoices specifies the number of attachments Mon Power made to Citizens poles and the number of attachments Citizens made to Mon Power poles.
22. Collectively, the 2012 Joint Pole Invoices specify that during calendar year 2012, Mon Power was attached to, or reserved space on, 4,625 Citizens poles, and that Citizens was attached to, or reserved space on, 20,255 Mon Power poles.
23. Each of the 2012 Joint Pole Invoices calculates the total rental amount that Mon Power owes for attachments to Citizens poles and the total rental amount that Citizens owes for attachments to Mon Power poles.
24. Each of the 2012 Joint Pole Invoices calculates the total net amount that Citizens owes Mon Power for the difference in pole attachment billings.
25. The total amount that Citizens owes Mon Power for pole attachment billings in the 2012 Joint Use Invoices is \$442,644.67.
26. Mon Power received payments on the 2012 Joint Pole Invoices on July 4, 2012, December 4, 2012, and February 6, 2013, from an entity identified as Frontier Communications Inc., which has the same address as Frontier Communications.
27. The total amount of these payments received by Mon Power from Frontier Communications is \$92,243.75.

28. The net amount that Citizens owes Mon Power on the 2012 Joint Pole Invoices is \$350,400.92.

29. By letter dated May 7, 2013, Frontier Communications announced that it had unilaterally revised the pole annual rental amount required by the Joint Use Agreement, as amended by the December 14, 2009 Letter Agreement, to \$6.95/pole for Citizens' attachments to Mon Power's poles, and \$13.02/pole for Mon Power's attachments to Citizens' poles.

30. According to Frontier Communications, its payment is based on its calculation of what it claims to be the "just and reasonable pole attachment rates . . . based on the FCC's non-urban new telecom rate methodology."

31. Frontier Communications is attempting to impose the joint use rate that it speculates the Federal Communications Commission ("FCC") might impose if Frontier Communications had successfully challenged the December 14, 2009 Letter Agreement rate before the FCC.

However, neither Citizens nor Frontier Communications has challenged the December 14, 2009 Letter Agreement rate before the FCC, and that rate remains in effect.

32. All of the payments received by Mon Power under the 2012 Joint Pole Invoices have been recited above.

33. The amount that Citizens and Frontier Communications still owe to Mon Power for use of Mon Power's poles during 2012 is \$350,400.92, which is the \$442,644.67 amount specified in the 2012 Joint Pole Invoices minus the \$92,243.75 paid by Frontier Communications Inc.

34. Letters from Mon Power's service company FirstEnergy Service Company were sent to Frontier Communications on June 5, 2013 and October 10, 2013, notifying Frontier Communications that Citizens was in default of the Joint Use Agreement for its failure to pay in full Mon Power's joint pole invoices.

35. Citizens and Frontier Communications continue not to pay the remaining amount that they owe on Mon Power's 2012 Joint Pole Invoices.

COUNT ONE: BREACH OF CONTRACT

36. Mon Power adopts and incorporates paragraphs 1 through 35 above as if fully set forth herein.

37. The Joint Use Agreement, as amended by the December 14, 2009 Letter Agreement, is a valid contract and remains in full force and effect as to all poles being jointly used by the parties.

38. Defendants breached the Joint Use Agreement, as amended by the December 14, 2009 Letter Agreement, by failing to pay Mon Power the difference between what Mon Power owed Citizens for the use of its poles in 2012 and what Citizens owed Mon Power for the use of its poles.

39. As a result of Defendants' breach, Mon Power has been damaged in the amount of \$350,400.92.

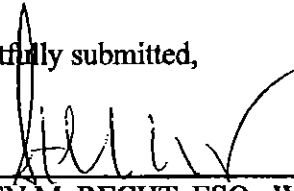
PRAYER FOR RELIEF

WHEREFORE, Mon Power respectfully prays that the Court enter judgment against Citizens and Frontier Communications in the following manner:

1. For compensatory damages in an amount not less than \$350,400.92;
2. For pre- and post-judgment interest;
3. For costs and attorneys' fees; and

4. For such other and further relief in law or equity as may be just and appropriate.

Respectfully submitted,



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