

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

DALLAS T. RUNYON, SR., and
DAVID E. RUNYON
Plaintiffs,

v.

Civil Act. No.: 17-C-108
Hon. Miki Thompson

Admitted to Record
2017 JUN 16 PM 3:42
Mingo County, West Virginia

CITIZENS TELECOMMUNICATIONS COMPANY OF WEST VIRGINIA d/b/a FRONTIER
COMMUNICATIONS OF WEST VIRGINIA, FRONTIER WEST VIRGINIA, INC., and
APPALACHIAN POWER COMPANY,

Defendants.

VERIFIED COMPLAINT

COMES NOW, Dallas T. Runyon, Sr., and David E. Runyon ("Plaintiffs"), by and through counsel, Nathan D. Brown of Ferrell & Brown, PLLC, and for their Complaint against the Defendants, Citizens Telecommunications Company of West Virginia d/b/a Frontier Communications of West Virginia, Frontier West Virginia, Inc., (collectively "Frontier") and Appalachian Power Company, (sometimes hereinafter "APC") and states and avers as follows:

PARTIES

1. The Plaintiffs are all citizens of Mingo County, state of West Virginia and were so during the allegations in this Complaint.
2. The Defendant, Citizens Telecommunications Company of West Virginia d/b/a Frontier Communications of West Virginia, is a West Virginia corporation with a local principal office address of 1500 MacCorkle Ave. S.E. Charleston, WV, 25396 engaged in providing telecommunication services in Mingo County, West Virginia at all relevant times herein.
3. The Defendant, Frontier West Virginia, Inc., is a West Virginia corporation with a local principal office address of 1500 MacCorkle Ave. S.E. Charleston, WV, 25396 engaged in providing telecommunication services in Mingo County, West Virginia at all relevant times herein.

4. The Defendant, Appalachian Power Company, is a Virginia corporation with a principal office address of 1 Riverside Plaza, 29th Floor, Columbus, OH, 43215, which was engaged in providing services to its customers in Mingo County, West Virginia at all relevant times herein.

5. At all relevant times herein, Plaintiffs are informed and believe, and on the basis of such information and belief, allege that Christopher Collier and Robert Hughart were agents and/or employees of Frontier, acting within the scope of their authority, engaged in the performance of duties which were expressly or impliedly assigned to them by Frontier.

JURISDICTION

6. Jurisdiction and venue are proper in this Court pursuant to West Virginia Code §§ 51-2-2 and 56-1-1 as the causes of actions in this Complaint occurred in Mingo County, West Virginia.

BACKGROUND

7. The property involved in this dispute is located at 16/65 Caney Branch Rd. Creek Side Drive, Delbarton, WV 25670, and more or less constitutes one hundred seventy-four (174) acres total.

8. A review of the records housed in the County Clerk's Office of Mingo County indicates that the property was conveyed to W.T Floyd in deeds dated March 1915 and 1916.

9. In or around June 10, 1939, Mr. Floyd entered into an agreement providing Appalachian Power Company ("APC") an easement on the subject property for the erection and maintenance of power poles and attendant electric lines.

10. On May 9, 2008, W.T. Floyd's heirs entered into a purchase agreement with Gene Brinager and Dallas T. Runyon, Sr. whereby Mr. Brinager and Mr. Runyon purchased the subject

property, and all mineral rights therein, for the sum of one hundred sixty-five thousand dollars (\$165,000).

11. The property was then deeded as contemplated in the purchase agreement to Dallas T. Runyon, Sr. and Gene Brinager on June 10, 2008.

12. On September 29, 2009, Mr. Brinager, and his wife, sold their interest in the subject property to David E. Runyon for the sum of seventy-seven thousand five hundred dollars (\$77,500) as reflected in Deed Book 426 Page 511.

13. That the current owners of the subject property are Plaintiffs, Dallas T. Runyon, Sr., and David E. Runyon.

14. After acquiring an interest in the property, the Plaintiffs learned that Frontier, without Plaintiffs' permission, had installed its communication lines on APC power poles which were on the property at the time Plaintiffs purchased the same. Presumably, Frontier's lines were placed on APC's power poles with APC's permission.

15. Pursuant to the easement language referenced in Paragraph Nine (9) of this Complaint, APC, sometime after Plaintiffs' purchase, entered Plaintiffs' property and erected new power poles and lines, as dictated by the terms of the easement, and in an effort to provide Plaintiffs better access to their property.

16. Frontier's lines remained, and continue to remain, on the "old" APC power poles denying Plaintiffs reasonable access to their property and prohibiting the commercial development of the property as intended by Plaintiffs. Plaintiffs continued to contact Frontier in an effort to gain access to their property.

17. In a final effort to remedy the issues with Frontier, Kimberly Runyon, in her capacity as power of attorney for her husband, David E. Runyon, and Dallas T. Runyon, Sr.,

drafted and submitted a proposed easement agreement to Frontier on July 21, 2016. The language of the proposed easement agreement essentially mirrored the language found in the easement agreement Plaintiffs enjoy with APC.

18. The proposed easement agreement provided Frontier seven (7) months to acquiesce to its terms. The proposed Frontier easement agreement expired on February 21, 2017. Please see **Exhibit A** attached hereto.

19. During the seven (7) month period described in Paragraph Nineteen (19), Plaintiffs made substantial efforts with Frontier to garner compliance, as its lines prohibited Plaintiffs from further developing their property. And entering into a lucrative timbering agreement.

20. As a result of Frontier's actions, Plaintiffs have lost revenue opportunities associated with their property due to limited access resulting from Frontier's illegally placed lines.

21. All the while, Frontier profited, and continues to profit, from its lines illegally placed on Plaintiffs' property.

COUNT I – UNJUST ENRICHMENT (Frontier)

22. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as if fully set forth herein.

23. Frontier has improperly maintained, stored, and used for profit its communications lines on Plaintiffs' property all at a time when it had no legal right or valid claim to do the same.

24. As a result of Frontier's actions, it has become unjustly enriched by the monies it has made through the communication lines illegally located on Plaintiffs' property.

25. Plaintiffs seek to recover a percentage of all profits made by the communication lines which are illegally located on its property.

COUNT II – DEMAND FOR ACCOUNTING AND DAMAGES

26. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as if fully set forth herein.

27. The illegal placement of Frontier's communication lines on Plaintiffs' property has caused Plaintiffs irreparable harm by prohibiting their use and development of the property.

28. Plaintiffs have yet to receive either its interest or profits for the uses of its property and assets by Frontier.

29. As a result of the wrongful actions by Frontier, Plaintiffs have suffered damages, including but not limited to, loss of income, loss of assets, aggravation, annoyance, and inconvenience.

30. Plaintiffs demands an accounting of Frontier's gross profit for the lines located in Plaintiffs' property since its illegal takeover of Plaintiffs' property.

COUNT III – DECLARATORY JUDGMENT

31. Pursuant to West Virginia Code § 55-13-1 et. seq., Plaintiffs request a declaration from the Court that Frontier had no legal right to place or maintain its communication lines on Plaintiffs' property, and thereby, Frontier became unjustly enriched by its actions.

COUNT IV – INTENTIONAL TRESPASS (Frontier)

32. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as if fully set forth herein.

33. Plaintiffs are the sole owner of the land described in Paragraph Seven (7) of this Complaint.

34. Defendant intentionally entered onto Plaintiffs' land without consent or any other valid privilege, and all the while precluding Plaintiffs from using their property for its intended use.

COUNT V – PERMITTING INTENTIONAL TRESPASS (APC)

35. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as if fully set forth herein.

36. Plaintiffs are the sole owner of the land described in Paragraph Seven (7) of this Complaint.

37. Defendant APC intentionally entered into an agreement with and permitted Frontier to allow it to use APC's power poles on Plaintiffs' land, without consent or any other legal privilege, and all the while precluding Plaintiffs from using their property for its intended use.

PRAYER FOR RELIEF

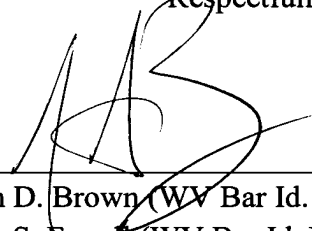
WHEREFORE, Plaintiffs demands judgment against the Frontier and APC in the amount to be determined based the Defendants' unjust enrichment and/or intentional trespass and other relief for the following:

- A. A declaration that Frontier became unjustly enriched by its actions;
- B. Actual Damages;
- C. Compensatory Damages;
- D. Damages for annoyance, and inconvenience;
- E. Disgorgement of Frontier's profits and restitution;
- F. Creation of a constructive trust;
- G. Punitive and exemplary damages;
- H. Pre-judgment interest;

- I. Attorney Fees and Cost; and
- J. All other equitable and legal relief which is deemed fair and just by the Court.

A JURY TRIAL IS DEMANDED

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'N.D. Brown', written over a horizontal line.

Nathan D. Brown (WV Bar Id. No.: 12264)

Joshua S. Ferrell (WV Bar Id. No.: 11607)

Ferrell & Brown, PLLC

Post Office Box 401

160 East Second Avenue

Williamson, West Virginia 25661

(304) 235-5674 (telephone)

(304) 235-5675 (facsimile)

EXHIBIT A

July 21, 2016

Kimberly Runyon
32 Conley Branch
Delbarton, WV 25670

Frontier West Virginia, Inc.
1500 MacCorkle Ave., SE
Charleston, WV 25396
Attn: Technical Supervisor

Dear Sir or Madam:

Please find enclosed an easement agreement and exhibit map for the property recorded in deed book 426, page 5110, tax map 325, parcel 86. If you have any questions or require further information please contact me at 304-928-6769 or 304-475-3113. I can also be reached by email at kimberlyrunyon@suddenlink.net. Thank you for your time concerning this project.

Sincerely,

Kimberly Runyon

Kimberly Runyon

EASEMENT AGREEMENT

Received of Frontier West Virginia Inc., One Dollar, \$1.00, in consideration of which we hereby grant unto Frontier West Virginia Inc., its successors and assigns, the right and easement now and in the future to construct, reconstruct, operate, maintain, repair, replace and remove telephone communication systems consisting of poles, anchors, guides & aerial cable, as shown on Exhibit "A" attached hereto and made a part hereof, the property of which we own, or in which I have any interest in the District of Lee, County of Mingo, and State of West Virginia. Said sum is received in full payment of said rights. It is expressly understood that this right and easement includes the right from time to time to cut and trim trees and brush that may threaten, endanger, or interfere with the operation or maintenance of said facilities including ingress thereto and egress therefrom.

The property across with this right and easement is granted is the same property which is recorded in deed book 426, page 5110, tax map 325, and parcel 86.

Frontier West Virginia Inc., its successors and assigns shall promptly compensate the grantor(s) for all damages to growing crops and repair any damage done to the driveways, fences, and fields in the exercise of the rights herein granted.

It is further understood and agreed by Frontier West Virginia Inc. and the Grantors that a minimum clearance of 18-feet, measured from the lowest telephone or cable line on the pole to the ground, shall be maintained.

It is also further understood and agreed by Frontier West Virginia Inc. and the Grantors that the existing telephone communications, that occupy the Grantors property without an easement, shall be relocated to the new location shown on aforesaid Exhibit "A" within seven (7) months of the date of this agreement.

DALLAS RUNYON and KIMBERLY RUNYON, Grantors, insofar as their interest is concerned, declare the total consideration paid for the rights conveyed by this document is One Dollar, \$1.00.

WITNESS our hand and seal this _____ day of _____ A.D. _____ at _____

(Post Office Address)

DALLAS RUNYON

Dallas T. Runyon
(Grantor Seal)

KIMBERLY RUNYON

Kimberly Runyon
(Grantor Seal)

This instrument was prepared by Kimberly Runyon

STATE OF WEST VIRGINIA)

County of Mingo)

TO WIT:

I, _____, a Notary Public of Mingo County and State of West Virginia do
certify that Dallas Runyon and Kimberly Runyon, whose names are signed to the within writing bearing the
date the _____ day of _____ A.D. _____ have
acknowledged the same before me in my said county.
Given under my hand this _____ day of _____ A.D. _____.

Notary Public

My commission expires _____

VERIFICATION OF COMPLAINT

STATE OF West Virginia

COUNTY OF Mingo TO-WIT:

This day appeared before me Dallas T. Runyon Sr., affiant, who having first been duly sworn, deposes and states that the facts and allegations contained in the foregoing document(s) are true to the best of his/her knowledge, belief, and information.

Dallas T. Runyon
AFFIANT

Taken and subscribed, and sworn to before me in my aforesaid County and State on the 16th day of June, 2017.

My commission expires: 2/17/2024



Marissa Roberts
Notary Public

VERIFICATION OF COMPLAINT

STATE OF West Virginia

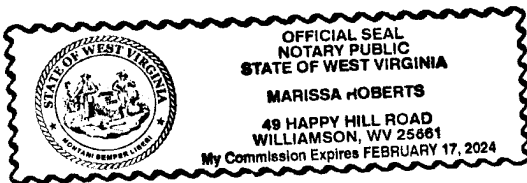
COUNTY OF Mingo TO-WIT:

This day appeared before me David E. Runyon, affiant, who having first been duly sworn, deposes and states that the facts and allegations contained in the foregoing document(s) are true to the best of his/her knowledge, belief, and information.

David E. Runyon
AFFIANT

Taken and subscribed, and sworn to before me in my aforesaid County and State on the 16th day of June, 2017.

My commission expires: 2/17/2024



Marissa Roberts
Notary Public

905

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

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Plaintiffs,

v.

Civil Act. No.: 17-C-108
Hon. Miki Thompson

CITIZENS TELECOMMUNICATIONS COMPANY OF WEST VIRGINIA d/b/a
FRONTIER COMMUNICATIONS OF WEST VIRGINIA, FRONTIER WEST
VIRGINIA, INC., and APPALACHIAN POWER COMPANY,

Defendants.

SERVE: Frontier West Virginia, Inc.,

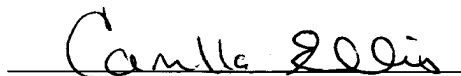
Process Agent: Corporation Service Company
209 West Washington Street
Charleston, West Virginia 25302

IN THE STATE OF WEST VIRGINIA you are hereby summoned and required to serve upon Nathan D. Brown, Attorney whose address is Post Office Box 401; 160 East Second Avenue; Williamson, West Virginia 25661, an answer including any related counterclaim you may have to the complaint filed against you. You are required to serve your answer **Thirty (30) days** after service of this summons upon you exclusive of the day of service. If you fail to do so, Judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting, in another action against you, any claim you may have which must be asserted by counterclaim in the above styled civil action.

Date: 10-16-2017



CLERK OF THE COURT



Deputy Clerk

505

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

DALLAS T. RUNYON, SR., and
DAVID E. RUNYON.
Plaintiffs,

v.

Civil Act. No.: 17-C-108
Hon. Miki Thompson

CITIZENS TELECOMMUNICATIONS COMPANY OF WEST VIRGINIA d/b/a
FRONTIER COMMUNICATIONS OF WEST VIRGINIA, FRONTIER WEST
VIRGINIA, INC., and APPALACHIAN POWER COMPANY,

Defendants.

SERVE: Citizens Telecommunications Company of West Virginia

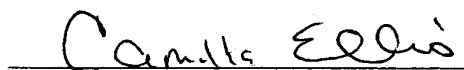
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Charleston, West Virginia 25302

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Date: 6-16-2017



CLERK OF THE COURT



Deputy Clerk

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CITIZENS TELECOMMUNICATIONS COMPANY OF WEST VIRGINIA d/b/a
FRONTIER COMMUNICATIONS OF WEST VIRGINIA, FRONTIER WEST
VIRGINIA, INC., and APPALACHIAN POWER COMPANY,

Defendants.

SERVE: Appalachian Power Company

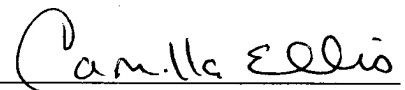
Process Agent: CT Corporation System
5400 D. Big Tyler Road
Charleston, West Virginia 25313

IN THE STATE OF WEST VIRGINIA you are hereby summoned and required to serve upon Nathan D. Brown, Attorney whose address is Post Office Box 401; 160 East Second Avenue; Williamson, West Virginia 25661, an answer including any related counterclaim you may have to the complaint filed against you. You are required to serve your answer **Thirty (30) days** after service of this summons upon you exclusive of the day of service. If you fail to do so, Judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting, in another action against you, any claim you may have which must be asserted by counterclaim in the above styled civil action.

Date: 6-16-2017



CLERK OF THE COURT



Deputy Clerk

IN THE CIRCUIT COURT OF

Mingo

COUNTY, WEST VIRGINIA

CIVIL CASE INFORMATION STATEMENT
(Civil Cases Other than Domestic Relations)

I. CASE STYLE:

Case No. 17-C-108

Plaintiff(s)

Judge: Miki ThompsonDallas Runyon SR
David E. Runyon
C/o Ferrell & Brown PLLC

vs.

Defendant(s)

Days to
Answer

Type of Service

Citizens Telecommunications30SOS

Name

401 Merritt 7

Street Address

Norwalk CT 06851

City, State, Zip Code

II. TYPE OF CASE:

- ☒ General Civil
- ☐ Mass Litigation [As defined in T.C.R. 26.04(a)]
- ☐ Asbestos
- ☐ FELA Asbestos
- ☐ Other: _____
- ☐ Habeas Corpus/Other Extraordinary Writ
- ☐ Other: _____

- ☐ Adoption
- ☐ Administrative Agency Appeal
- ☐ Civil Appeal from Magistrate Court
- ☐ Miscellaneous Civil Petition
- ☐ Mental Hygiene
- ☐ Guardianship
- ☐ Medical Malpractice

III. JURY DEMAND: ☒ Yes ☐ No CASE WILL BE READY FOR TRIAL BY (Month/Year): 06/2018IV. DO YOU OR ANY
OF YOUR CLIENTS
OR WITNESSES
IN THIS CASE
REQUIRE SPECIAL
ACCOMMODATIONS?☐ Yes ☒ No

IF YES, PLEASE SPECIFY:

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Interpreter or other auxiliary aid for the deaf and hard of hearing
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Foreign language interpreter-specify language: _____
- ☐ Other: _____

Attorney Name: Nathan D. BrownFirm: Ferrell & Brown, PLLCAddress: Po Box 401 Williamson WV 25661Telephone: 304 235-5674

Representing:

- ☒ Plaintiff ☐ Defendant
- ☐ Cross-Defendant ☐ Cross-Complainant
- ☐ 3rd-Party Plaintiff ☐ 3rd-Party Defendant

☐ Proceeding Without an Attorney

Original and _____ copies of complaint enclosed/attached.

Dated: 06/16/2017Signature: [Signature]

Plaintiff: Dallas Runyon SR et al. Case Number: _____
vs.
Defendant: Citizens Telecommunications et al.

**CIVIL CASE INFORMATION STATEMENT
DEFENDANT(S) CONTINUATION PAGE**

Frontier West Virginia Inc.
Defendant's Name

401 Meritt 7
Street Address

Norwalk, CT 06851
City, State, Zip Code

Days to Answer: 30

Type of Service: SOS

Appalachian Power Company
Defendant's Name

One Riverside Plaza
Street Address

Columbus OH 43215
City, State, Zip Code

Days to Answer: 30

Type of Service: SOS

Defendant's Name

Street Address

City, State, Zip Code

Days to Answer: _____

Type of Service: _____

Defendant's Name

Street Address

City, State, Zip Code

Days to Answer: _____

Type of Service: _____

Defendant's Name

Street Address

City, State, Zip Code

Days to Answer: _____

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Defendant's Name

Street Address

City, State, Zip Code

Days to Answer: _____

Type of Service: _____

Defendant's Name

Street Address

City, State, Zip Code

Days to Answer: _____

Type of Service: _____