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# BAILEY CAVALIERI LLC

ATTORNEYS AT LAW

One Columbus 10 West Broad Street, Suite 2100 Columbus, Ohio 43215-3422  
telephone 614.221.3155 facsimile 614.221.0479  
www.baileycavalieri.com

direct dial: 614.229.3278  
email: William.Adams@BaileyCavalieri.com

July 13, 2009

Ms. Renee Jenkins  
Docketing Division  
Public Utilities Commission of Ohio  
180 East Broad Street, 13<sup>th</sup> Floor  
Columbus, OH 43215-3793

PUCO

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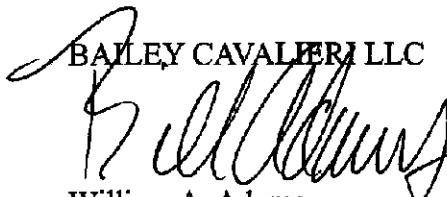
Re: *OHIO TELNET.COM, INC. v. Windstream Communication, Inc., et al.*  
Case No. 09-515-TP-CSS

Dear Ms. Jenkins:

Enclosed for filing in the above-captioned matter are the original and ten (10) copies of Respondents' Memorandum Contra Motion for Temporary Restraining Order. Please time-stamp the additional two (2) copies of the Motion and return them with our courier.

Thank you for your assistance.

Very truly yours,

BAILEY CAVALIERI LLC  
  
William A. Adams

WAA:sg

Enclosure

cc(w/enclosure): James R. Cooper, Esq., Attorney for Complainant  
Doug Jennings, Attorney Examiner

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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

OHIO TELNET.COM, INC.,

Complainant,

v.

Windstream Communications, Inc., et al.,

Respondents.

Case No. 09-515-TP-CSS

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**MEMORANDUM CONTRA MOTION FOR TEMPORARY RESTRAINING ORDER**

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Windstream Ohio, Inc. and Windstream Communications, Inc.<sup>1</sup> ("Windstream") file this Memorandum Contra to the Motion for Temporary Restraining Order filed by Ohiotelnet.com, Inc. ("Complainant") on June 19, 2009. In the motion, Complainant seeks to prevent Windstream from terminating service before the Commission conducts a hearing. Windstream, by electronic mail correspondence dated July 6, 2009, previously agreed not to terminate service to Complainant while this motion is pending. Windstream now commits not to disconnect service to Complainant during the pendency of this case, provided that the Commission requires Complainant to escrow funds, as set forth below.

By way of background, on or about April 3, 2009, Windstream notified Complainant that an embargo was being placed on Complainant's account on April 21, 2009, if Complainant did not provide Windstream with the payment of its overdue January 2009 invoice by April 20, 2009. On or about April 20, 2009, Complainant sent a check to Windstream in an attempt to

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<sup>1</sup> Although Complainant incorrectly included Windstream Communications, Inc. ("WCI"), WCI is not a proper party to this proceeding as it has no interconnection agreement with Complainant, and as the underlying dispute is between Windstream and Complainant and not with WCI, WCI should be dismissed from this proceeding.

satisfy the outstanding January invoice. Pending verification that the check was good, Windstream held off on placing an embargo on Complainant. On or about April 25, 2009, Windstream was notified that the check would not be honored due to insufficient funds, and on April 29, 2009 Windstream instituted embargo based on the fact that the January invoice was not satisfied in a timely manner. Subsequently, on or about May 14, 2009 Complainant wired funds to Windstream for payment of the January invoice.

In the interim, the Complainant's February 2009 invoice came due. On April 22, 2009, Windstream, thinking that the January invoice had been paid by the check sent by Complainant, notified Complainant that an embargo was being placed on Complainant on May 8, 2009, if Windstream did not receive payment of the overdue February invoice amounts by May 7, 2009. These embargo actions were taken pursuant to Section 3.9.5 of the Interconnection Agreement between the parties, which allows a party to take any actions at law or in equity when the other party is in breach of the Interconnection Agreement. The embargo originally placed on April 29, 2009 remains in effect currently and should continue in effect until the resolution of this matter because Complainant owes outstanding past due amounts to Windstream. An embargo is a standard industry practice for addressing outstanding account balances and **does not impact any existing customer's service**. Rather, the embargo serves to prevent Complainant from increasing amounts owed to Windstream. Under the embargo, Windstream does not process orders for new services or additions of features to existing services but will process orders for disconnect, restoral and deletion of features from existing services.

Given the large dollar amount involved in the dispute between the parties, Complainant should be required to establish an escrow during the pendency of this matter to assure subsequent payment. The amount remaining in dispute is approximately \$70,666.84, and that is the amount

the Commission should order Complainant to immediately pay into escrow plus amounts for interest. This action is consistent with the action taken by the Commission in *In the Matter of the Complaint of Time Warner NY Cable LLC v. Cincinnati Bell Telephone Company LLC*, 2009 Ohio PUC LEXIS 353 (Case No. 09-379-TP-CSS), in which the Commission required a party disputing pole attachment charges to put the difference between the amount charged and the amount the claimant contended should have been charged in escrow.

Respectfully Submitted,



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William A. Adams, Counsel of Record  
BAILEY CAVALIERI LLC  
10 West Broad Street, Suite 2100  
Columbus, OH 43215-3422  
(614) 229-3278 (telephone)  
(614) 221-0479 (fax)  
[William.Adams@baileycavalieri.com](mailto:William.Adams@baileycavalieri.com)  
Attorneys for Respondents  
Windstream Communications, Inc. and  
Windstream Ohio, Inc.

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served upon Ohiotelnet.com, Inc. by regular U.S. Mail, postage prepaid, this 12<sup>th</sup> day of July, 2009, to:

James R. Cooper, Esq.  
MORROW, GORDON & BYRD, Ltd.  
33 West Main Street  
P.O. Box 4190  
Newark, OH 43058-4190  
Attorneys for Ohiotelnet.com, Inc.



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William A. Adams, Counsel of Record