

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of	)	
OHIOTELNET.COM, INC.,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 09-515-TP-CSS
	)	
Windstream Communications, Inc., et al.,	)	
	)	
Respondents.	)	

ENTRY

The Commission finds:

- (1) On June 19, 2009, OHIOTELNET.COM, INC. (OHIOTELNET) filed a complaint against Windstream Communications, Inc. (Windstream Communications) and Windstream Ohio, Inc. (Windstream Ohio) (collectively Windstream) concerning a billing dispute. OHIOTELNET describes itself as a provider of multiple services, including telephone, telecommunications, and broadband services to customers in Licking and surrounding counties in Ohio. Similarly, OHIOTELNET describes the respondents as corporations authorized to provide telephone, telecommunications, and broadband services in Ohio.

OHIOTELNET states that in 2001 it entered into an interconnection agreement with Alltel Ohio, Inc., the predecessor in interest to Windstream. OHIOTELNET alleges that the respondents demand payment of \$88,000 for billings related to various invoices. OHIOTELNET disputes the amount of the claim. Overall, OHIOTELNET asserts that Windstream has overcharged for services and has submitted incorrect and inaccurate invoices. Furthermore, OHIOTELNET alleges that Windstream has not dealt with disputed items in good faith and has not provided timely billings.

According to OHIOTELNET, the parties exhausted the dispute resolution process established by the parties' interconnection

agreement. On or about April 29, 2009, OHIOTELNET alleges that Windstream placed an embargo on OHIOTELNET's Ohio account because of nonpayment and initiated disconnection procedures. According to OHIOTELNET, on June 9, 2009, Windstream issued written notice to OHIOTELNET's customers that it intended to disconnect OHIOTELNET's service on June 23, 2009. Windstream advised the customers to seek alternative providers.

OHIOTELNET proclaims that Windstream's actions have violated several provisions in the interconnection agreement. To its motion, OHIOTELNET attached the affidavit of its president, Thomas W. Cotton, who alleges that Windstream has not worked orders, installs, or service orders in a timely manner. Moreover, Mr. Cotton declares that Windstream has acted in a discriminatory manner in conducting business for OHIOTELNET and Windstream customers.

By filing the complaint, OHIOTELNET seeks to compel Windstream to comply with the parties' interconnection agreement and to enjoin Windstream from terminating and disconnecting services.

- (2) Along with its complaint, OHIOTELNET filed a motion for a temporary restraining order pursuant to Rule 4901-1-12, Ohio Administrative Code (O.A.C.). Alleging that it will be irreparably harmed and damaged if Windstream disconnects OHIOTELNET's services, OHIOTELNET seeks to enjoin Windstream from disconnecting or interfering in any way with OHIOTELNET's telephone, telecommunications, or broadband services until the Commission decides the merits of the complaint. OHIOTELNET alleges that disconnection would affect thousands of its customers.
- (3) On July 8, 2009, Windstream filed a motion to extend the time for filing a memorandum contra OHIOTELNET's motion for temporary restraining order until July 16, 2009. Windstream also sought an expedited ruling.
- (4) On July 10, 2009, the attorney examiner issued an entry granting Windstream's motion to extend time.
- (5) On July 13, 2009, Windstream filed an answer, a motion to dismiss, and a memorandum opposing OHIOTELNET's

motion for temporary restraining order. In its motion to dismiss, Windstream notes that, as a party, Windstream Communications should be dismissed. Windstream Ohio explains that Windstream Communications is not a proper party to this proceeding because it has no interconnection agreement with OHIOTELNET. The dispute, Windstream clarifies, is with Windstream Ohio.

In its memorandum contra OHIOTELNET's motion for temporary restraining order, Windstream Ohio committed to maintaining service to OHIOTELNET during the pendency of this case provided that the Commission requires OHIOTELNET to place disputed funds into escrow. As background, Windstream Ohio states that it notified OHIOTELNET that it was going to place an embargo on its account on April 21, 2009, if OHIOTELNET did not pay a January 2009 invoice by April 20, 2009. OHIOTELNET submitted a check for the January invoice, but the check was dishonored because of insufficient funds. Windstream Ohio placed an embargo on the account on April 29, 2009. On May 14, 2009, OHIOTELNET wired funds in satisfaction of the January 2009 invoice.

Meanwhile, the February 2009 invoice became due. Windstream Ohio notified OHIOTELNET that it would place an embargo on the account on May 8, 2009, if it did not receive payment by May 7, 2009. Windstream Ohio proclaims that its embargo actions were consistent with the provisions of the interconnection agreement. Windstream Ohio notes that the embargo instituted on April 29, 2009, continues to this day. Explaining its embargo, Windstream Ohio describes it as a standard industry practice whereby Windstream Ohio does not process orders for new services or additions of features to existing services. On the other hand, the embargo does allow the processing of orders for disconnection, restoral of service, and deletion of features from existing services. The embargo does not impact any existing customer's service. The purpose of the embargo is to prevent an increase in the amount owed.

Windstream Ohio asks that the Commission issue an order requiring OHIOTELNET to establish an escrow account to deposit the disputed amount of approximately \$70,666.84 plus interest. Windstream Ohio reminds the Commission that it

instituted a similar action in *In the Matter of the Complaint of Time Warner NY Cable LLC v. Cincinnati Bell Telephone Company LLC*, Case No. 09-379-TP-CSS (Entry issued May 21, 2009).

- (6) In its motion to dismiss, Windstream Ohio contends that OHIOTELNET has calculated its disputed charges incorrectly by starting with current charges and failing to account for past due amounts owing along with current charges. Specifically, Windstream Ohio claims that OHIOTELNET ignores past disputed amounts that Windstream Ohio has, upon review, determined to be valid, due, and payable charges. By assuming the validity of all its disputes, Windstream Ohio concludes that OHIOTELNET has understated its outstanding balance.

Windstream Ohio rejects OHIOTELNET's claim that it has not acted in good faith. In February 2009, Windstream Ohio states that the parties agreed that Windstream Ohio would reexamine past disputes in exchange for putting up a deposit and bringing its account current and staying current on payments. OHIOTELNET provided a deposit. Because OHIOTELNET did not stay current in its payments, Windstream Ohio states that it had to apply a portion of the deposit to unpaid 2009 invoices.

According to Windstream Ohio, OHIOTELNET did not bring its account current after the embargo. Windstream Ohio, therefore, prepared a notice of disconnection for delivery to OHIOTELNET's end users. Windstream Ohio states that it forwarded the notice to OHIOTELNET on June 9, 2009, prior to delivering it to OHIOTELNET's customers. Windstream Ohio alleges that OHIOTELNET did not object to the notice but responded by requesting an extension of time to make payment arrangements. Because OHIOTELNET offered no details for a payment arrangement, Windstream Ohio delivered the notice to customers on June 12, 2009. Windstream Ohio acknowledges that OHIOTELNET proposed payment arrangements on June 15, 2009, but Windstream Ohio describes the proposed arrangements as unreasonable, in part because there was no provision for payment of past due amounts.

Windstream Ohio denies that it has acted in bad faith or that it has sent incorrect and untimely bills. To Windstream Ohio,

these accusations by OHIOTELNET are merely attempts to avert attention from its poor payment history.

- (7) For relief, Windstream Ohio requests that the Commission dismiss Windstream Communications as a party to this proceeding, that the Commission order OHIOTELNET to place \$70,666.84 plus interest into an escrow account, that the complaint be dismissed upon placement of funds into escrow, and that the Commission grant any other relief to which Windstream Ohio may be entitled.
- (8) On September 9, 2009, Windstream Ohio filed a letter referring to its pleadings and its request that OHIOTELNET place into escrow the amount of \$70,666.84 plus amounts for interest. Windstream Ohio points out that OHIOTELNET did not oppose Windstream Ohio's escrow request. Windstream Ohio further points out that OHIOTELNET has not paid any invoices for services since the complaint was filed.
- (9) In its motion for temporary restraining order, OHIOTELNET seeks to enjoin Windstream Ohio from terminating and disconnecting services until the Commission can conduct a hearing on the issues raised in this case. Windstream Ohio's position is that it will maintain service to OHIOTELNET while the complaint is pending, provided that the Commission orders OHIOTELNET to place funds into escrow. OHIOTELNET did not file a reply to Windstream Ohio's memorandum contra. Nor did OHIOTELNET respond to Windstream Ohio's motion to dismiss.
- (10) Upon examination of the pleadings, the Commission concludes that Windstream Ohio must maintain service to OHIOTELNET for the duration of this proceeding upon OHIOTELNET's deposit of funds into escrow. In its motion to dismiss and its memorandum contra OHIOTELNET's motion for temporary restraining order, Windstream Ohio claims that the sum of \$70,666.84 is in dispute. To assure payment, Windstream Ohio urges the Commission to order OHIOTELNET to pay \$70,666.84 into escrow plus amounts for interest. We find that Windstream Ohio's proposal is reasonable and should be granted. There can be no reasonable expectation on the part of OHIOTELNET that Windstream Ohio would provide service without payment or assurance of payment. Accordingly,

OHIOTELNET must remit the sum of \$70,666.84, plus amounts for interest into escrow within 15 days of this entry. If OHIOTELNET fails to place the requisite funds into escrow within 15 days, Windstream Ohio may proceed immediately with notice and disconnection pursuant to Rule 4901:1-7-29, O.A.C. It should be understood that OHIOTELNET is obligated to pay current invoices and undisputed amounts. If OHIOTELNET fails to pay current invoices and undisputed amounts, the Commission may allow Windstream Ohio to initiate disconnection of service to OHIOTELNET.

- (11) In its motion to dismiss, Windstream Ohio seeks to dismiss Windstream Communications as a party. Windstream Ohio also seeks to dismiss the complaint. Windstream Ohio's motion to dismiss Windstream Communications as a party should be granted. OHIOTELNET has not contested Windstream Ohio's assertion that Windstream Communications has no real interest in this proceeding. Based upon the pleadings, we shall dismiss Windstream Communications as a party.

It appears from the pleadings that there are sufficient facts in controversy to warrant further investigation. More importantly, allegations that Windstream Ohio has submitted incorrect, inaccurate, and untimely invoices and has failed to engage disputes in good faith, if true, would establish reasonable grounds for complaint. With respect to the matters beyond the dismissal of Windstream Communications, Windstream Ohio's motion to dismiss should be denied.

To limit any further prejudice to either party, arising from the embargo and unpaid invoices, we direct the attorney examiner to schedule a settlement conference as soon as practicable.

It is, therefore,

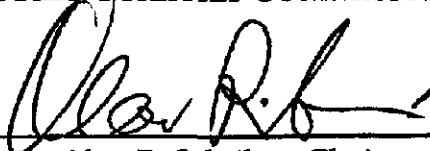
ORDERED, That Windstream Ohio maintain service to OHIOTELNET for the duration of this proceeding upon the condition that OHIOTELNET pay into escrow the sum of \$70,666.84 plus amounts for interest within 15 days of this entry. If OHIOTELNET fails to remit the sum of \$70,666.84 plus amounts for interest into escrow within 15 days of this entry, Windstream Ohio may initiate notice and disconnection procedures. It is, further,

ORDERED, That Windstream Communications is dismissed as a party to this proceeding. It is, further,

ORDERED, That, in accordance with Finding (11), Windstream Ohio's motion to dismiss the complaint is, in part, denied. It is, further,

ORDERED, That copies of this entry be served upon the parties, their counsel, and all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman



Paul A. Centolella

Ronda Hartman Fergus



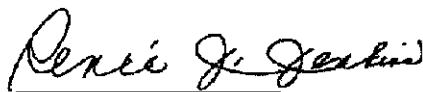
Cheryl L. Roberto

Valerie A. Lemmie

LDJ/vrm

Entered in the Journal

SEP. 29 2009



Renee J. Jenkins  
Secretary