

FILE

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

October 19, 2009

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RECEIVED-DOCKETING DIV  
2009 OCT 19 PM 3:37  
PUCO

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

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

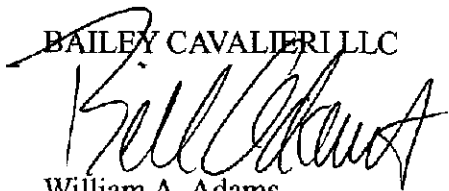
Dear Ms. Jenkins:

Enclosed for filing in the above-captioned matter are the original and ten (10) copies of *Windstream Ohio, Inc.'s Memorandum Contra Plaintiff's Motion for Partial Relief*. Please time-stamp the additional two (2) copies of the Memorandum Contra 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

This is to certify that the images appearing are an  
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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

RECEIVED-DOCKETING DIV.  
2009 OCT 19 PM 3:37  
PUCO

**OHIOTELNET.COM, INC.,**

**Complainant,**

**v.**

**Windstream Ohio, Inc.,**

**Respondent.**

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**Case No. 09-515-TP-CSS**

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**WINDSTREAM OHIO, INC.'S MEMORANDUM CONTRA PLAINTIFF'S MOTION  
FOR PARTIAL RELIEF**

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Windstream Ohio, Inc. ("Windstream") opposes the Motion for Partial Relief filed by Ohiotelnet.com, Inc. ("Complainant") on October 2, 2009. The Commission already has fully adjudicated this matter when it issued its September 23, 2009 Entry, and Complainant's motion should be denied.

Complainant does not argue that the Commission's Entry ordering Complainant to pay into escrow the sum of \$70,666.84 plus interest is not reasonable. Rather, Complainant argues that it cannot afford to make such an escrow payment. That is precisely the point of the Commission's Entry. Complainant has not made a payment to Windstream since April, 2009. Windstream cannot be expected or required to provide services without being paid. Complainant's financial condition was taken into consideration by the Commission when it ordered the escrow payment. The relief requested by Complainant only would make the current situation worse.

Indeed, on the date the escrow payment was due, October 8, 2009, counsel for Complainant advised that his client was not able to make the payment. Consequently, in accordance with the Commission's Entry (paragraph 7), Windstream gave the attached disconnection notice. Since the notice was issued, the parties have had discussions at the October 15, 2009 settlement conference and reached an agreement relating to the escrow payment and disconnection.

Complainant's motion should be treated as an application for rehearing under Ohio Revised Code § 4903.10. Pursuant to that statute, the motion should be considered automatically denied by operation of law thirty days after filing, which is November 1, 2009.

For these reasons, Complainant's Motion for Partial Relief should be denied.

Respectfully Submitted,

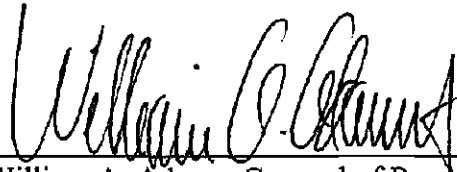


William A. Adams, Counsel of Record  
BAILEY CAVALIERI LLC  
10 West Broad Street, Suite 2100  
Columbus, OH 43215-3422  
(614) 229-3278 (telephone)  
(614) 221-0479 (fax)  
[William.Adams@baileycavalieri.com](mailto:William.Adams@baileycavalieri.com)  
Attorneys for Respondent  
Windstream Ohio, Inc.

**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 19<sup>th</sup> day of October, 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.

A handwritten signature in black ink, appearing to read "William A. Adams", is written over a horizontal line.

William A. Adams, Counsel of Record

## William Adams

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**From:** Bright, Michelle [Michelle.Bright@windstream.com]  
**Sent:** Friday, October 09, 2009 11:33 AM  
**To:** Tom.Cotton@ohiotelnet.com  
**Cc:** Doris.McCarter@puc.state.oh.us; Daniel.Anderson@puc.state.oh.us;  
Allen.Francis@puc.state.oh.us; Jeff.Jones@puc.state.oh.us; William Adams; Terry, Scott A;  
Hobbs, Kathy; Mabey, Rodger; Seifert, Tammy L; Weiland, Theresa; Henson, Tana  
**Subject:** Disconnection Notice-OhioTelnet-441-158-1000  
**Importance:** High

Dear Mr. Cotton,

This notice is provided pursuant to Ohio Adm. Code Section 4901:1-7-29(A) (the "Rule") and the PUCO's Entry dated September 23, 2009 in PUCO Case No 09-515-TP-CSS (the "Entry"). The Entry required that Ohiotelnet.com, Inc. ("Ohiotelnet") remit in escrow \$70,666.84 plus interest by yesterday, October 8, 2009. We have been advised by counsel that Ohiotelnet will not and cannot do so. In accordance with the Entry and the Rule, this notifies Ohiotelnet that Windstream Ohio will disconnect all Ohiotelnet's services fourteen days from today, which is October 23, 2009. Regards,

Michelle Bright  
Financial Services Rep.  
704-321-6428

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The information contained in this message, including attachments, may contain privileged or confidential information that is intended to be delivered only to the person identified above. If you are not the intended recipient, or the person responsible for delivering this message to the intended recipient, Windstream requests that you immediately notify the sender and asks that you do not read the message or its attachments, and that you delete them without copying or sending them to anyone else.

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