

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.

**COMPLAINANT OHIOTELNET.COM, INC.'S REPLY TO THE
POST-HEARING BRIEF OF WINDSTREAM OHIO, INC.**

At the hearing held December 7 and 8, 2010, Complainant OHIOTELNET.COM, Inc. ("OTN") provided evidence that Windstream Ohio, Inc., ("Windstream") breached the terms of the Interconnection Agreement ("ICA") between the parties by improperly placing an embargo on OTN orders and failing to provide billing credits to which OTN was entitled. Therefore, OTN is entitled to entry of an opinion in its favor which concludes that Windstream violated the terms of the ICA.

In Windstream's Post-Hearing Brief, Windstream claims OTN has not met its burden of proof claiming Windstream's actions were authorized under the ICA, alleging OTN failed to prove the validity of its requests for credit and suggesting OTN's requests for credit are time barred.

In claiming its actions were authorized under the ICA, Windstream mischaracterizes OTN's claim concerning its embargo and disconnection of OTN. Windstream cites its ability, as a party to the ICA, to embargo and disconnect a competitive local exchange carrier and states Windstream had done so based on "undisputed" amounts owed.¹ Windstream supports its contention that OTN failed to pay "undisputed" amounts by citing Windstream's Exhibit ST-7, the

¹ Windstream Ohio, Inc.'s Post-Hearing Brief, p.5-7.

testimony of its representative, Scott Terry, and Mr. Terry's own calculations² taken from the settlement discussions between the parties:

Q. I handed you what's been marked as 25 Exhibit ST-7. Can you describe what that is, please?

A. Yeah. ST-7 is what Windstream used to determine what needed to be paid, or what I used to determine what needed to be paid to get the January embargo lifted.

Q. This is relating now to the February 5, 2009 settlement and what came before it, right?

A. Correct. And I looked at it, you know, using the January 1st invoice, what's the total, subtracting out the two invoices, I believe December '08 and January '09 which weren't due yet based on the 80 day payment schedule, and then the first method is then subtracting what Windstream system showed to be disputes essentially still open, and that ultimately resulted in a \$70,000 balance. I also looked at it again using the same January 9 invoice, backing out December '08 and January 2009 invoices and subtracted out what Ohiotelnet was not paying and they said they did not owe, and that left a \$13,000 number.

* * *

Q. At any time during any of the negotiations between Windstream's representatives and Ohiotelnet's representatives, did Ohiotelnet agree that they were liable for an amount certain?

A. They did not agree that there was an amount they had to pay....³

OTN is not disputing the ICA contains embargo procedures, the remedy of disconnection or that a party may send notice to the end-users of a customer when justified. Apparent from the face of its complaint, exhibits presented into evidence and testimony, OTN claims that Windstream utilized these remedies for billing credits that remain in dispute.

Windstream alleges OTN failed to prove the validity of its requests for credit⁴ and cites the oversight of OTN's witness, Annette Duboe, in presenting an example during the hearing of

² Id at p.6.

³ Tr. p.165-167; 188.

⁴ Windstream's Post-Hearing Brief, p.8-12.

a request for credit for toll blocking which had already been credited.⁵ Ms. Duboe's efficiently summarized a voluminous amount of credit requests. Despite a single error during her testimony, she continued to present several other examples of valid requests for credit denied or rejected by Windstream⁶ but disputed by OTN, her method of recordkeeping, her procedure in submitting disputes, an explanation of each line item and her notations and how she arrived at the calculated amount of credit due.⁷

Stating "the validity of complex wholesale telecommunications invoices is a matter of extreme attention to detail," Windstream suggests Ms. Duboe's method is fallible,⁸ that OTN's entire presentation is invalid and instead urges the Commission to accept the testimony of Tana Henson, who testified that, unlike Ms. Duboe, she does not have personal knowledge of each disputed item:

Q. So you haven't reviewed every request for credit that's come in from Ohiotelnet. Is that fair to say?

A. That is fair to say, yes.

Q. Those items are reviewed by the LSPAC team, the 48 to 58 employees that compose the team; is that right?

A. Yes. They're initially reviewed by our representatives and they have the primary responsibility for that task.

Q. And they're the ones who would research the bill and invoice and make the initial decision?

A. Yes, that's correct. They would do that.

Q. Are you made aware when a request for credit is escalated to a level below your own?

A. In some instances, I am aware. In other instances I may not be notified that those disputes have been escalated.⁹

⁵ Id at p.9-11.

⁶ Tr. p.38-58.

⁷ Id.

⁸ Windstream's Post-Hearing Brief, p.11.

⁹ Tr. p.131.

Windstream also suggests the “vast majority” of OTN’s requests for credit are time barred or previously settled.¹⁰ In support of this contention, Windstream states “Ohiotelnet did not properly escalate denied billing disputes.”¹¹ Windstream claims that under the ICA, OTN’s disputes are not true disputes because they were not “escalated” within the twelve (12) month timeframe for disputes under the ICA and are, therefore, time-barred. The ICA agreed to between the parties contains no provision or procedures for “escalation.” Windstream’s representative, Tana Henson, testified that the “escalations”, not the original disputes, were time barred:

Q. Okay. So is it your testimony today that the escalations of the original disputes are outside of the 12-month time frame?

A. Yes. That's exactly what this particular E-mail was. This was an escalation of the request. This was not the initial review. As a matter of fact, there's a column in here that Ohiotelnet has populated, and assuming it's accurate, it is the Date Closed Column which is the third column from the end, and that would reflect the date that Windstream had initially responded to that particular dispute. So I'm not indicating that we're necessarily saying all of these were outside the 12-month interval at our initial review.¹²

Moreover, Windstream’s representative, Scott Terry, testified as to the differing interpretations of the term “dispute” as used in the ICA:

Q. So that amount was always in dispute by Ohiotelnet?

A. That amount, I classify that amount was always unpaid. Now, I heard your question earlier to Ms. Henson: was it in dispute in accordance with the Interconnection Agreement? Our information, you know, indicated it was not. Was that amount, you know, not paid by Ohiotelnet? Certainly.

Q. Let's talk about that. Is there a specific provision in the Interconnection Agreement that differentiates an escalation from a dispute?

¹⁰ Windstream’s Post-Hearing Brief, p.12.

¹¹ Id.

¹² Tr. p.140.

A. The Interconnection Agreement does not specifically identify time frames for disputes separate from escalations.¹³

OTN has met its burden proving the allegations set forth in its complaint. OTN provided evidence during the hearing in this case that Windstream Ohio, Inc., (“Windstream”) breached the terms of the Interconnection Agreement (“ICA”) between the parties by improperly placing an embargo on OTN orders and failing to provide billing credits to which OTN was entitled. As a result of this breach, OTN has suffered financial harm and lost customers. Ms. Duboe testified OTN is owed \$76,436.00 in billing credits from Windstream.¹⁴ Therefore, OTN is entitled to entry of an opinion in its favor which concludes that Windstream violated the terms of the ICA.

Respectfully submitted,

/s/ James R. Cooper

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¹³ Tr. p.189.

¹⁴ Tr. p.69.

CERTIFICATE OF SERVICE

A copy of the foregoing was served on William A. Adams, BAILEY CAVALIERI LLC, 10 West Broad Street, Suite 2100, Columbus, Ohio 43215-3422, Attorney for Windstream Communications, and Windstream Ohio, Inc., by electronic mail and by ordinary U.S. Mail, postage prepaid, this 7th day of March, 2011.

Respectfully submitted,

/s/ James R. Cooper

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Summary: Reply Of Complainant, OHIOTELNET.COM, Inc. to the Post-Hearing Brief of Respondent, Windstream Ohio, Inc. electronically filed by Mr. James R Cooper on behalf of OHIOTELNET.COM, INC.