

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

Infotelecom LLC,)	
)	
Complainant,)	
)	
v.)	Case No. 11-4887-TP-CSS
)	
AT&T Ohio,)	
)	
Respondent.)	

AT&T OHIO'S ANSWER TO COMPLAINT OF INFOTELECOM, LLC

AT&T Ohio¹, by its attorneys and pursuant to Section 4901-9-01(B), of the Ohio Administrative Code, for its Answer to the Complaint filed in this matter by Infotelecom, LLC (“Infotelecom”), states as follows:

I. SUMMARY AND BACKGROUND ALLEGATIONS

1. Denied.
2. AT&T Ohio is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 and therefore denies those allegations.
3. Admitted, except that the “communications traffic” for the mutual exchange of which the interconnection agreements provide is limited as provided in the agreements.
4. AT&T Ohio denies the allegations of the last sentence of Paragraph 4. Further answering those allegations, AT&T Ohio states that (i) its interpretation of the First Amendment accurately reflects the language of the First Amendment and is corroborated by the sworn testimony of knowledgeable representatives of both parties that negotiated the First Amendment, and (ii) Infotelecom has met the trigger. With respect to the remaining allegations of Paragraph 4, the First Amendment speaks for itself and AT&T Ohio admits those allegations to the extent they are consistent with the First Amendment and denies all remaining allegations of Paragraph 4.

¹ The complaint names The Ohio Bell Telephone Company d/b/a AT&T Ohio as the Respondent. In keeping with the Commission's practice, the name AT&T Ohio is used in this pleading.

5. AT&T Ohio admits that it has threatened to terminate its interconnection agreement (“ICA”) with Infotelecom, as the ICA entitles it to do in consequence of Infotelecom’s ongoing material breach of the ICA; denies the remaining allegations of the first sentence of Paragraph 5; and states that all demands it has made of Infotelecom are reasonable and consistent with the terms of the ICA. AT&T Ohio denies the allegations of the second sentence of Paragraph 5.

6. AT&T Ohio denies the allegations of the first sentence of Paragraph 6. The second sentence of Paragraph 6 merely summarizes the relief Infotelecom seeks and therefore requires no answer, but AT&T Ohio states that it has made no wrongful demand.

7. AT&T Ohio admits that the parties have not been able to reach agreement, notwithstanding AT&T Ohio’s exhaustive good faith efforts to do so. AT&T Ohio is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 concerning Infotelecom’s beliefs and objectives and therefore denies those allegations. AT&T Ohio denies all remaining allegations of Paragraph 7.

II. ALLEGATIONS CONCERNING PARTIES AND JURISDICTION

8. Admitted on information and belief.

9. Admitted.

10. Admitted.

11. Admitted with respect to AT&T Ohio, which is also represented by:

Mary Ryan Fenlon
Jon F. Kelly
AT&T Services, Inc.
50 E. Gay St., Room 4-A
Columbus, OH 43215
614-223-3302
mf1842@att.com
jk2961@att.com

12. AT&T Ohio admits that it is subject to the jurisdiction of the Commission.

13. AT&T Ohio admits that the Commission also has jurisdiction over the Complaint.

14. AT&T Ohio admits that the Commission has jurisdiction to provide the relief requested in the Complaint in a case in which such relief is warranted but denies that the relief requested in the Complaint is warranted and denies that the threatened termination of services to Infotelecom is wrongful. Further answering, AT&T Ohio states that Infotelecom is in material breach of the parties’ interconnection agreement and that AT&T Ohio, pursuant to the terms of that agreement, is therefore entitled to terminate the agreement.

III. FACTUAL ALLEGATIONS

15. The Telecommunications Act of 1996 (“1996 Act”) speaks for itself. AT&T Ohio admits the allegations of Paragraph 15 to the extent they are consistent with the Act and denies the remaining allegations of Paragraph 15.

16. AT&T Ohio admits the allegations of the first sentence of Paragraph 16. AT&T Ohio admits that three types of carriers are incumbent local exchange carriers (“ILECs”), as that term is defined in 47 U.S.C. § 251(h); competing local exchange carriers (“CLECs”); and interexchange carriers (“IXCs”), which are commonly known as long distance carriers. AT&T Ohio denies the remaining allegations of Paragraph 16.

17. The 1996 Act speaks for itself. AT&T Ohio admits the allegations of Paragraph 17 to the extent they are consistent with the 1996 Act and denies the remaining allegations of Paragraph 17.

18. AT&T Ohio admits that local exchange carriers typically own transmission lines connected to their end user customers; admits that many end users in the United States have only one local exchange carrier at any given time; and admits that in order to transmit calls destined to the end users of an ILEC, a facilities-based competitive carrier typically must interconnect its network with the ILEC’s network. AT&T Ohio denies the remaining allegations of Paragraph 18.

19. The 1996 Act speaks for itself. AT&T Ohio admits the allegations of Paragraph 19 to the extent they are consistent with the 1996 Act and denies the remaining allegations of Paragraph 19.

20. The 1996 Act speaks for itself. AT&T Ohio admits the allegations of Paragraph 20 to the extent they are consistent with the 1996 Act and denies the remaining allegations of Paragraph 20.

21. The 1996 Act speaks for itself. AT&T Ohio admits the allegations of Paragraph 21 to the extent they are consistent with the 1996 Act and denies the remaining allegations of Paragraph 21.

22. The 1996 Act speaks for itself. AT&T Ohio admits the allegations of Paragraph 22 to the extent they are consistent with the 1996 Act and denies the remaining allegations of Paragraph 22.

23. The 1996 Act speaks for itself. AT&T Ohio admits the allegations of Paragraph 23 to the extent they are consistent with the 1996 Act and denies the remaining allegations of Paragraph 23.

24. The 1996 Act speaks for itself. AT&T Ohio admits the allegations of Paragraph 24 to the extent they are consistent with the 1996 Act and denies the remaining allegations of Paragraph 24.

25. Ohio law speaks for itself. AT&T Ohio admits the allegations of Paragraph 25 to the extent they are consistent with Ohio law and denies the remaining allegations of Paragraph 25.

26. ORC Section 4905.041 speaks for itself. AT&T Ohio admits the allegations of Paragraph 26 to the extent they are consistent with that statute and denies the remaining allegations of Paragraph 26.

27. ORC Section 4905.22 speaks for itself. AT&T Ohio admits the allegations of Paragraph 27 to the extent they are consistent with that statute and denies the remaining allegations of Paragraph 27.

28. ORC Section 4905.35 speaks for itself. AT&T Ohio admits the allegations of Paragraph 28 to the extent they are consistent with that statute and denies the remaining allegations of Paragraph 28.

29. ORC Section 4927.16 speaks for itself. AT&T Ohio admits the allegations of Paragraph 29 to the extent they are consistent with that statute and denies the remaining allegations of Paragraph 29.

30. Admitted, except that the AT&T-owned ILECs were SBC-owned ILECs at the time.

31. Admitted, except that the AT&T ILECs were then known as the SBC ILECs.

32. The provisions speak for themselves. AT&T Ohio admits the allegations of Paragraph 32 to the extent they are consistent with the referenced provisions and denies the remaining allegations of Paragraph 32.

33. AT&T Ohio is without knowledge or information sufficient to form a belief as to the reason(s) for which Level 3 engaged in negotiations and therefore denies the allegations of Paragraph 33.

34. The First Amendment speaks for itself. AT&T Ohio admits the allegations of Paragraph 34 to the extent they are consistent with the First Amendment and denies the remaining allegations of Paragraph 34.

35. The First Amendment speaks for itself. AT&T Ohio admits the allegations of Paragraph 35 to the extent they are consistent with the First Amendment and denies the remaining allegations of Paragraph 35.

36. Admitted. The Commission approved the Level 3 ICA on March 16, 2005 in Case No. 05-344-TP-NAG.

37. AT&T Ohio denies that all of the traffic that Infotelecom delivers on its network is IP-PSTN traffic. Further answering, AT&T Ohio states that traffic studies have shown that most of the traffic that Infotelecom delivers to AT&T ILECs is not IP-PSTN traffic. AT&T Ohio does not understand the reference in Paragraph 37 to the “relevant Defendants,” as the only

named defendant is AT&T Ohio. AT&T Ohio is without knowledge or information sufficient to form a belief as to the truth of the allegation that Infotelecom has paid AT&T Ohio \$.00035 for each of the minutes of traffic that Infotelecom delivers to AT&T Ohio and therefore denies that allegation; further answering, AT&T Ohio states that the allegation has no bearing on the fact that Infotelecom is in material breach of the parties' ICA.

38. Admitted on information and belief.

39. Denied. Although the Delta is reported on a monthly basis, the Delta is a cumulative number that increases from each month to the next as the Delta for the most recent month is added to the total Delta preceding that month. This is clear both from the language of the First Amendment and from the sworn testimony of representatives of Level 3 and SBC (as it then was) who were principals in the negotiation of the First Amendment. In Ohio, Infotelecom triggered long ago the negotiation or escrow provisions of paragraph 7.3 of the First Amendment.

40. AT&T Ohio admits that the AT&T ILECs, including AT&T Ohio, have demanded that Infotelecom fulfill its contractual obligation by escrowing funds in accordance with the requirements of paragraph 7.3 of the First Amendment. AT&T Ohio denies the remaining allegations of Paragraph 40. Further answering, AT&T Ohio states that the Delta does indeed accumulate from month-to-month and across all thirteen states, as representatives of Level 3 and SBC (as it then was) who were principals in the negotiation of the First Amendment have testified under oath.

41. The February 16, 2011 letter speaks for itself. AT&T Ohio admits the allegations of Paragraph 41 to the extent they are consistent with that letter and denies the remaining allegations of Paragraph 41.

42. The February 23, 2011 letter speaks for itself. AT&T Ohio admits the allegations of Paragraph 39 to the extent they are consistent with that letter and denies the remaining allegations of Paragraph 39.

43. The March 25, 2011 letter speaks for itself. AT&T Ohio admits the allegations of Paragraph 43 to the extent they are consistent with that letter and denies the remaining allegations of Paragraph 43.

44. The March 25, 2011 letter speaks for itself. AT&T Ohio admits the allegations of Paragraph 44 to the extent they are consistent with that letter and denies the remaining allegations of Paragraph 44.

45. AT&T Ohio admits the allegations of the first sentence of Paragraph 45; admits that Infotelecom asked the AT&T ILECs to disclose confidential information concerning Level 3 that the AT&T ILECs could not disclose to Infotelecom without Level 3's consent; and admits that the AT&T ILECs would not solicit Level 3's consent unless Infotelecom agreed to fulfill its contractual obligations to the AT&T ILECs. AT&T Ohio is without knowledge or information sufficient to form a belief as to what Infotelecom believed or the motivations for Infotelecom's request for confidential information concerning Level 3 and therefore denies the allegations of Paragraph 45 concerning those beliefs and motivations. AT&T Ohio denies the remaining

allegations of Paragraph 45, and particularly denies the allegation that Infotelecom's request was reasonable.

46. AT&T Ohio is without knowledge or information sufficient to form a belief as to what Infotelecom has learned and therefore denies the allegations of Paragraph 46.

47. AT&T Ohio admits that Infotelecom filed the federal lawsuit identified in Paragraph 47, and that at the time of the filing efforts to resolve the dispute had been unsuccessful. AT&T Ohio is without knowledge or information sufficient to form a belief concerning what Infotelecom believed, and therefore denies the allegation in the first sentence of Paragraph 47 concerning Infotelecom's belief. AT&T Ohio denies the allegations of the fifth sentence of Paragraph 47, concerning an agreement between the parties, but admits that the parties reached an agreement one element of which was that the AT&T ILECs would forbear from terminating service to Infotelecom until a hearing on Infotelecom's motion for preliminary injunction. AT&T Ohio admits the remaining allegations of Paragraph 47 to the extent they are consistent with the public record of the federal lawsuit and denies all remaining allegations of Paragraph 47.

48. AT&T Ohio denies the allegations of the fifth sentence of Paragraph 48, concerning the events of August 17, 2011. The notice referenced in the sixth sentence of Paragraph 48 speaks for itself, and AT&T Ohio admits the allegations of that sentence to the extent they are consistent with the content of that notice and denies the remaining allegations of that sentence. AT&T Ohio is without knowledge or information sufficient to form a belief as to Infotelecom's purposes and therefore denies the allegations of the last sentence of Paragraph 48. AT&T Ohio admits the remaining allegations of Paragraph 48.

49. Denied.

COUNT I

(Alleged Violation of Interconnection Agreement)

50. AT&T Ohio realleges and incorporates herein each of its answers to Paragraphs 1 through 49 as if fully set forth herein.

51. AT&T Ohio admits that an actual, present and justiciable controversy exists between Infotelecom and AT&T Ohio; admits that AT&T Ohio has demanded that Infotelecom fulfill its contractual obligations by escrowing money that the parties' ICA requires Infotelecom to escrow; and denies the remaining allegations of Paragraph 51.

52. Denied.

53. Denied.

54. Denied.

55. Denied.

COUNT II

(Regulatory Relief)

56. AT&T Ohio realleges and incorporates herein each of its answers to Paragraphs 1 through 55 as if fully set forth herein.

57. Denied.

58. Ohio law speaks for itself. AT&T Ohio admits the allegations of Paragraph 58 to the extent they are consistent with Ohio law and denies the remaining allegations of Paragraph 58.

59. Denied.

60. *Connect America Fund* speaks for itself. AT&T Ohio admits the allegations of Paragraph 60 to the extent they are consistent therewith and denies the allegations of Paragraph 60 to the extent they are inconsistent therewith. AT&T Ohio denies the allegations of the first sentence of Paragraph 60.

61. Denied.

62. Denied.

63. Denied.

PRAYER FOR RELIEF

AT&T Ohio respectfully requests that the Commission grant the following relief:

a. Find and declare that Infotelecom has a duty to escrow the amounts demanded by AT&T Ohio and that Infotelecom is in material breach of the parties' ICA and that AT&T Ohio is entitled to terminate the ICA and discontinue the provision of service to Infotelecom under the agreement.

b. Deny all relief requested by Infotelecom.

c. Grant AT&T Ohio such other and additional relief as the Commission may find appropriate.

September 13, 2011

Respectfully submitted,

AT&T Ohio

By: /s/ Mary Ryan Fenlon
Mary Ryan Fenlon (Counsel of Record)
Jon F. Kelly
AT&T Services, Inc.
150 E. Gay St., Room 4-A
Columbus, OH 43215
614-223-3302
mf1842@att.com
jk2961@att.com

Dennis G. Friedman
Mayer Brown LLP
71 S. Wacker Dr.
Chicago, IL 60606
312-701-7319
dfriedman@mayerbrown.com

Its Attorneys

Certificate of Service

I hereby certify that a copy of the foregoing has been served this 13th day of September, 2011 by e-mail on the parties shown below.

/s/ Mary R. Fenlon
Mary R. Fenlon

Benita A. Kahn
Stephen M. Howard
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, OH 43215
bakahn@vorys.com
smhoward@vorys.com

Ross A. Buntrock
G. David Carter
Arent Fox LLP
1050 Connecticut Ave, N.W.
Washington, DC 20036-5339
Buntrock.ross@arentfox.com
Carter.david@arentfox.com

Alexander E. Gertsburg
General Counsel
1228 Euclid Avenue, Suite 390
Cleveland, OH 44115
agertsburg@infotelecom.us

11-4887.sl

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

9/13/2011 2:05:32 PM

in

Case No(s). 11-4887-TP-CSS

Summary: Answer AT&T Ohio's answer to Infotelecom's complaint. electronically filed by Ms. Mary K. Fenlon on behalf of AT&T Ohio