BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

INFOTELECOM, LLC Complainant, v. Ohio Bell Telephone Company D/B/A AT&T Ohio Respondent.	)	Case No. 11-4887-TP-CSS

INFOTELECOM'S REPLY IN SUPPORT OF MOTION TO SUSPEND SCHEDULE

Infotelecom, LLC ("Infotelecom"), by and through counsel, hereby submits this Reply in Support of its Motion to Suspend the Schedule Pending a Decision by the Second Circuit in a Related Case (the "Motion"). Ohio Bell Telephone Company ("AT&T Ohio") provides no basis for its request that the Commission ignore the clear import of the Second Circuit's September 9, 2011 injunction order. Infotelecom's motion should be granted.

AT&T Ohio's opposition tries mightily to mischaracterize the natural import of the Second Circuit's Order in an effort to dissuade the Commission from granting Infotelecom's motion and in an obvious effort to prejudice Infotelecom. Lest there be any doubt, Infotelecom's motion for a stay pending appeal asks the Second Circuit to maintain the *status quo* while that court evaluates whether the district court erred in dismissing Infotelecom's complaint for declaratory relief regarding the appropriate interpretation of the disputed escrow provision. The purpose of such a stay would not simply be to prevent the AT&T ILECs from terminating Infotelecom's ICA and disconnecting service to Infotelecom, as AT&T Ohio suggests, but rather

to maintain the *status quo* in its entirety. The reason that Infotelecom sought this relief from the Second Circuit is because, if it is forced to expend considerable sums litigating this issue before six different state Commissions, and if those Commissions act before the Second Circuit completes its analysis, the legal issues giving rise to the appeal may become moot.

Contrary to AT&T's arguments, the legal issues in the appeal now before the Second Circuit are significant and would be dispositive of whether this Commission should ultimately resolve the issues raised in this proceeding. Despite AT&T's representations to the contrary, the legal question of whether a federal court has original jurisdiction to resolve post-formation ICA disputes has never been definitely resolved and is far from settled.

Indeed, there is a split of authority, no dispositive decision of the Second Circuit, and authority from the FCC that strongly supports Infotelecom's position that the district court erred when it dismissed Infotelecom's post-formation ICA dispute. On the issue of whether there is original federal court jurisdiction under 28 U.S.C. § 1331 and 47 U.S.C. §§ 206 & 207 over a post-formation ICA dispute, the district court relied on *Law Offices of Curtis V. Trinko, LLP v. Bell Atlantic Corp.*, 305 F.3d 89, 98 (2d Cir. 2002), *rev'd on other grounds*, 540 U.S. 398 (2004). The AT&T ILECs never cited that case in their motion to dismiss (or in their reply brief), and, therefore, Infotelecom never had the opportunity to provide any meaningful argument against the conclusions in that case. In fact, counsel for the AT&T ILECs conceded during oral argument that they had not raised the case before that district court and that "if we thought we had a good Second Circuit decision on that, we would cite it...." *See* Ex. 1, Transcript Excerpts from the July 12, 2011 Hearing, at 10.

As Infotelecom explained to the Second Circuit in its motion for a stay pending appeal, had it been provided the opportunity to do so, Infotelecom would have argued against the

application of *Trinko* on the grounds that the very analysis that the District Court relied upon in dismissing Infotelecom's ICA claims was rejected by the FCC. Specifically, after concluding that the breach of an interconnection agreement "constitutes a violation of both 47 U.S.C. § 251(c)(2)(D) and 47 C.F.R. § 51.305(a)(5)," sufficient to give rise to a cause of action within the Commission's jurisdiction, the FCC turned to address the Second Circuit's decision in *Trinko*. The FCC stated:

> Finally, although Verizon does not cite it, we note that the United States Court of Appeals for the Second Circuit recently issued an opinion considering whether, under the particular circumstances at issue, an alleged breach of an interconnection agreement constituted an alleged violation of section 251 of the Act. In *Trinko v. Bell Atlantic Corp.*, a divided panel concluded, over a vigorous dissent, "that in this case it does not." *Trinko* does not undermine our conclusion here, however. ***Trinko* implies that an incumbent LEC has no obligation under the Communications Act to comply with an interconnection agreement; thus, an incumbent LEC's obligations would flow solely from contract law** enforceable only in a court. In the case of interconnection, **this conclusion conflicts with express statutory language obligating incumbent LECs to provide interconnection "in accordance with the terms and conditions of the agreement."** 47 U.S.C. § 251(c)(2)(D). In addition, the Second Circuit's conclusion is not consistent with the great weight of court and Commission authorities holding that state commissions have authority to enforce interconnection agreements. *Trinko* does not discuss or distinguish those authorities. Indeed, as the dissenting opinion observes, the parties had not raised the issue before either the district court or the Second Circuit, and thus the *Trinko* Court did not have the benefit of any briefing or factual record. Finally, the Commission was not a party in *Trinko*, so the *Trinko* holding is not binding.

Core Comm'cns, Inc. v. Verizon Md., Inc., FCC 03-96, Mem. Op. & Order, 18 FCC Rcd. 7962, 7973, ¶ 28 (2003). And, because a court must defer to the FCC's analysis, *see Nat'l Cable & Telecomms. Assoc. v. Brand X Internet Serv.*, 545 U.S. 967, 982-86 (2005), the inescapable conclusion is that allegations regarding a breach of an ICA do give rise to federal question jurisdiction and Infotelecom is entitled to have this dispute resolved uniformly by the federal court, rather than proceeding with the piecemeal resolution that AT&T is attempting to require of Infotelecom.

In addition, the Fourth Circuit has agreed with Infotelecom, holding that a breach of an interconnection agreement that implements a duty imposed by the Telecommunications Act arises under federal law. *See, e.g., Verizon Md., Inc. v. Global NAPs, Inc.,* 377 F.3d 355, 364 (4th Cir. 2004)*; Central Tel. Co. of Va. v. Sprint Commc'ns Co. of Va.,* 759 F. Supp. 2d 772, 777 (E.D. Va. 2011). Thus, in the absence of dispositive precedent in the Second Circuit, and the plain meaning of the FCC's decision in *Core*, Infotelecom demonstrated to the satisfaction of at least one judge of the Second Circuit Court of Appeals that it has a significant probability of success on appeal that warrants maintaining the *status quo* so that Infotelecom's claims will not become moot during the pendency of that appeal. While the decision to maintain the current injunction will be evaluated in the near-term by a three judge panel at the Second Circuit, it is fair to say that there has been an initial determination that Infotelecom's motion has sufficient merit such that the Second Circuit does not want its ability to fully address the open legal questions to be rendered moot by AT&T's threats to improperly disconnect service and terminate the ICA in the interim.

At present, all that Infotelecom seeks is a brief suspension of the schedule. It is true that if the Second Circuit extends its injunction and concludes that the *status quo* should be maintained through the duration of the appeal, Infotelecom will ask that the Commission honor that Second Circuit's order, precisely because that order will be directed at preventing this and other state commissions from rendering the Second Circuit incapable of resolving the legal issues in that appeal. But, the parties and the Commission should cross that bridge when and if we get there.[1]

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[1] AT&T Ohio does not suggest (and nor could it) that if the Second Circuit's motion panel agrees with Infotelecom and extends the stay pending appeal that it would be entitled to ignore that decision and proceed to terminate Infotelecom if this Commission subsequently determined

In the interim, the Commission needs to only decide how much credence it will give to AT&T Ohio's argument that the brief delay requested by Infotelecom will somehow damage AT&T Ohio's interests so significantly as to warrant ignoring the Second Circuit's current injunction. Here, Infotelecom respectfully submits that AT&T Ohio's argument is lacking. Under AT&T Ohio's view of the world, AT&T Ohio slumbered on its ability to demand escrow payments for nearly two years, AT&T Ohio Opp. at 1, but nevertheless argues that it cannot now withstand even the brief delay requested by Infotelecom. This argument rings hollow. AT&T Ohio also suggests that Infotelecom seeks delay for delay's sake. But, this is not true. Infotelecom's actions have consistently sought to accomplish two interrelated objectives: (1) prevent the AT&T ILECs for unlawfully terminating the ICA and disconnecting Infotelecom's service, which the AT&T ILECs have repeatedly threatened to do, rather than seeking this or any other Commission's intervention; and (2) avoid having the AT&T ILECS use their substantial resources to spend Infotelecom into submission by needlessly creating duplicative and conflicting proceedings. Neither of these objectives undermine AT&T Ohio's legal rights or present any immediate and irreparable harm to it.

Infotelecom, therefore, respectfully requests that the Commission grant the brief stay requested by Infotelecom's motion.

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that AT&T Ohio is entitled to obtain the escrow payments sought by AT&T Ohio. In other words, AT&T Ohio asks the Commission to expend considerable time and resources to issue what may ultimately be an "advisory" opinion that provides no legal rights to AT&T Ohio. Such a course of action is a waste of both the Commission and the parties' resources.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served by electronic mail on the following persons this 26th day of September, 2011.

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EXHIBIT 1

UNITED STATES DISTRICT COURT.

DISTRICT OF CONNECTICUT

INFOTELECOM, LLC Plaintiff. vs. ILLINOIS BELL TELEPHONE COMPANY, Defendant.	NO: 3:11cv739(JCH) July 12, 2011 10:00 a.m.

915 Lafayette Boulevard
Bridgeport, Connecticut

HEARING

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THE HONORABLE JANET C. HALL, U.S.D.J.

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understand we're taking this through the allegation of the complaint so I think there would be Rule 11 problems with an allegation of a secret deal. The second is there's no private right of action in federal court for that action. The alleged violation unless there were some kind of claim for damages in which case there would be a right of action under Section 207 of the Communications Act but we don't have that here.

THE COURT: I understand you to be suggesting that even if such a cause of action lay here or had been pled, that it couldn't be the basis for the equitable relief sought by the plaintiff?

MR. FRIEDMAN: Correct.

THE COURT: I was a bit surprised I guess I will say that you did not, you or your client in their briefing, did not rely more on the Trinko decision at the Second Circuit. And I guess my first question to you is to tell me if I'm wrong that when a case is decided by a circuit and five issues are addressed by that circuit opinion, two of those go up on a petition for cert, the court grants only one of the two questions posed and does its thing with respect to that one issue. In this case, it was an antitrust issue of the relationship between the Sherman Act and the FTCA but it makes no discussion and no mention of the opinion in the circuit below on matters

that I would say address the FTCA itself sort of. I can't say it is separate and apart from the antitrust issue but it was about the FTCA. Isn't that Second Circuit opinion in regard to the matter left unchanged by the Supreme Court cert still controlling law.

MR. FRIEDMAN: It is still controlling law, your Honor. I don't have a good explanation for why we didn't use it. I would attribute it to oversight.

THE COURT: Maybe it isn't as helpful as I think it is.

MR. FRIEDMAN: I would add on the question of whether a contract claim of the sort that Infotelecom alleges here, arises under 1331, frankly -- well, of course, if we thought we had a good Second Circuit decision on that, we would cite it but the law is so clear on that --

THE COURT: Okay. I guess I thought the language in Trinko that said the plaintiff's claim in this case "Only described conduct by the defendant that would violate the Intercommunication Agreement" and "therefore, the plaintiff had no cause of action pursuant to Sections 206 and 207 of the Communications Act."

MR. FRIEDMAN: Well.

THE COURT: Maybe it is not so directly on point. I do think the language in it suggested to me the

Second Circuit's view.

MR. FRIEDMAN: Infotelecom hasn't suggested that the court has jurisdiction over the contract claim pursuant to 207, right? Infotelecom said it is an arising under question and we have dealt with that.

THE COURT: All right.

MR. FRIEDMAN: If I may, your Honor, let me add to that as my memory is being refreshed, Infotelecom does not allege -- with respect to our treatment of Infotelecom under the Interconnection Agreement, Infotelecom does not allege that's a violation of the 96 Act.

THE COURT: Say that again.

MR. FRIEDMAN: I may be missing the import of your question. With respect to the contract question in this case, the meaning of the --

THE COURT: Delta.

MR. FRIEDMAN: The Delta and so forth. With respect to that issue, Infotelecom does not suggest that this court has jurisdiction under 207.

THE COURT: That's correct.

MR. FRIEDMAN: Nor does it suggest that there's a -- that there's a violation of the act with respect to the contract. The only violation of the act alleged in the complaint is a violation of 252I.

have to do in a preliminary injunction hearing in front of four different agencies.

MR. FRIEDMAN: In reality. There's a legal answer to that, then there's a reality. The reality is that AT&T appears before these state utility commissions all the time. Constantly has multiple matters pending there and is concerned about its relation with these commissions and if, for example, an ALJ in the exercise of what he or she thought was prudent administration, suggested to AT&T that it might be a good idea to not do anything drastic until the case had a chance to be heard, you can imagine the rest of the thought.

THE COURT: All right. I don't know if you want to add anything. I don't have anything further right now. I may after I hear from plaintiff's counsel, I may be back to you with some more questions.

MR. FRIEDMAN: Fine. Thank you, your Honor.

THE COURT: Is it Attorney Carter?

MR. CARTER: Yes, ma'am.

THE COURT: I would like to start with Trinko because if you heard my question to Attorney Friedman, I guess my first question would be would it be your view that the Second Circuit's discussion of local exchange carriers and entering into Interconnect Agreements is not good law because the Supreme Court chose to address one

aspect of the continuum?

MR. CARTER: Respectfully, your Honor, because the issue wasn't brief, I haven't looked at the issue in great detail but I would say as Mr. Friedman spoke earlier I think Trinko can be distinguished on the fact that it speaks to the issue of jurisdiction under 206 and 207 with regard to our claim under for the Interconnection Agreement issue under 1331. I would have to look more closely at that issue to address it in more detail but I'm not -- I wouldn't disagree with the general proposition if the Supreme Court didn't grant cert on the issue, that the Second Circuit opinion would remain.

THE COURT: I'm just struck in Trinko and maybe your bad luck that I just was on a panel about antitrust law and Trinko was a really big subject that we talked about. But the circuit in this case held after an incumbent local exchange fulfills the duties under the Telecommunications Act to enter into such agreement, file it and gets it approved, the carrier is "is then regulated directly by the Interconnection Agreement." The court went on to conclude that the plaintiff's claim in that case "only described conduct by the defendant that would violate the Interconnection Agreement" and therefore, the plaintiff had no cause of action pursuant

to 206 an 207 of the Communications Act which I think I heard you admit you didn't have a claim on this Delta escrow issue under 206 and 207, is that correct?

MR. CARTER: Correct. I think that in terms of looking at 206 and 207 of the act which allows you to bring claims against carriers, then the claim for the interpretation of the Interconnection Agreement is not pled based on 206 and 207 but is rather pled as a claim arising under federal law.

THE COURT: How does it arise under federal law?

MR. CARTER: Certainly. The claim arises under federal law because as Verizon Maryland Two under the Fourth Circuit decision under the Supreme Court ruled in the Verizon Maryland decision, reviewed this issue and they concluded that it arose under federal law because Interconnection Agreements are the manner in which Congress chose to implement the local telecommunications competition requirements and the contract is a mandated agreement that is required by Congress and that it is not analogous to or simply a contract between private parties. Yet because Congress requires Interconnection Agreements and requires the incumbent such as AT&T to open their networks to local competition. That the agreement itself becomes part of and arising out of federal law. And Verizon Maryland concluded, the Fourth

Circuit in Verizon Maryland Two decision concluded this. Respectfully we believe it is your opinion in Southern New England Telephone v. Global Naps. Also concluded that to the extent that the Global Naps was raising a breach of Interconnection claim, it was a claim subject to Section 1331 jurisdiction. We also point to in a case that AT&T neither addresses nor distinguishes which is a recent Eastern District of Virginia decision. Most recent decision was issued that we're aware of where that court concluded as well that the Interconnection Agreement is an agreement mandated by federal law and that arises under federal law and sufficient to give the court 1331 jurisdiction over that claim.

THE COURT: You have said a lot. Let me now come back. Let me start with the basic principals. Would you agree with me that the a claim for a breach of contract is not a federal claim just because the contract is mandated by federal law?

MR. CARTER: I would agree with you --

THE COURT: I hope the answer is going to be yes. Otherwise you are going to have to tell me that Empire Health Choice Assurance versus McVeigh as recent as yesterday was reversed by the Supreme Court. I'm quoting the holding of that opinion.

MR. CARTER: Certainly, your Honor. Certainly,

your Honor. I would say that the Supreme Court has made a variety of decisions about whether a particular contract arises under federal law and, for example --

THE COURT: Would that be a yes? Could you answer my question first, then I will permit you a few moments to respond. Five minute responses are counter productive.

MR. CARTER: Thank you, your Honor. It is not the case that every contract that is created in conjunction with federal law is a contract that arises under federal law.

THE COURT: So you would agree with me the other day when I remanded a case in which plaintiff sued a defendant for not playing the bills that they sent to them and the defendant responded these all contracts arise under Medicare. Put aside the fact he had the well pleaded complaint problem under federal jurisdiction. Even if he brought his own claim that still would not be a federal question just because the underlying obligation arose out of a federal scheme known as Medicare, right?

MR. CARTER: I don't disagree with you there, your Honor.

THE COURT: Then let's go to Verizon Maryland. Am I mistaken? My understanding in reading of Verizon Maryland was that the facts and the status or posture of

that case when it reached the Fourth Circuit was upon review of a state utility commission interpretation of an Interconnection Agreement, am I correct?

MR. CARTER: That is correct, your Honor.

THE COURT: Isn't that quite a different circumstance than the one we're in right now where you asked me in the first instance to take jurisdiction over contract dispute relating to an agreement approved, in effect created by the DPUC of Connecticut.

MR. CARTER: Your Honor, I do agree with you that there is a different situation. But I believe that the important distinction here that we believe is the appropriate analysis is that the determination of whether the court has original jurisdiction under 1331 is a decision that the Supreme Court and the Verizon Maryland Two opinion concludes that the contract is a contract that arises under federal law and that the second level of analysis that is certainly the point that you made, is whether there's an affirmative defense that would deprive the court of jurisdiction because of a failure to exhaust administrative remedies.

THE COURT: But I'm still -- I'm still confused. It's easy to say that this is issue arises under federal law. The problem is I can't get my hands wrapped around how your claim for breach of an Interconnection Agreement

not relating to a federal tariff but relating to in effect contractual business relationship between the parties on an escrow agreement that isn't required by the federal law, isn't required by the tariffs that are approved under federal law. I'm not saying there might be other issues between the parties that aren't federal jurisdiction but how this dare I say simple contract issue arises under federal law.

MR. CARTER: Certainly. Your Honor, as the court in Verizon Maryland Two recognized the payment of intercarrier compensation is a key feature of the Interconnection Agreement process. It is in fact central to that requirement within the Interconnection Agreement.

THE COURT: I would agree with you. I wouldn't necessarily disagree with the Fourth Circuit but they also said that not every dispute about the term in the ICA belongs in federal court. Their facts one were an appeal and two -- in other words, those parties had gone to the DPUC already but probably more importantly, I believe their dispute addressed in effect the tariff that had been approved under federal law how would that to be interpreted. Your claim and case doesn't involve the issue of interpreting a tariff.

MR. CARTER: Respectfully I would suggest, your

Honor, that the escrow provision itself, paragraph 7.3 of the First Amendment it seeks to a calculation, that Delta calculation as it is called, which is a calculation between the rates that in this case the telecom opting into the agreement pays, pursuant to the rates for local traffic and a calculation between that and the rates that would have approved if the rate had been the interstate tariff rate so in order to arrive at the calculation of what the Delta calculation will be is the difference between local rates and interstate tariff rates. The traffic that's subject to this provision, paragraph 7.3 is traffic that AT&T contends is long distance interstate traffic. It is traffic that AT&T contends is subject to its interstate tariff and ultimately this issue about what compensation is due. As you are recognize in the first question to Mr. Friedman, your Honor, is how long has the FCC been considering this issue. This issue about what compensation will be due is an issue that will be ultimately decided by the Federal Communications Commission so the provision itself -- you can take a very narrow view of the provision, I would submit, that looks only at the question of what does the escrow provision mean. In order to get the understanding of what the escrow provision intended to do, what the escrow provision is intended to accomplish, requires the parties

to look not simply at the Interconnection Agreement but also to look at AT&T's interstate tariff and the interstate tariff we submit is a central part of this analysis and the analysis that's required.

THE COURT: You need to take a breath. She needs to the take it done. I need to get a word in edgewise unless you don't think what I'm thinking.

MR. CARTER: No, ma'am.

THE COURT: That is all very interesting argument but it is beside the point of your complaint. There isn't one word in your complaint that you raise the question that this tariff that AT&T wants to charge which they are not charging is my understanding currently is the wrong one. Indeed your complaint says "The parties have intentionally held their dispute about which rate is appropriate in abeyance. That's your word. And the dispute which you come to court over relates to AT&T's view of whether you should escrow money pending the outcome of the rate dispute. So when I read this complaint, I guess I breath a sigh of relief. I won't ever have to decide what tariff applies under your complaint. I don't how, sir, I will ever be interpreting which transfer applies or what the tariff says. It doesn't seem to be a dispute about what the difference between the two rates is every month. The dispute is

over do you count them by month only and wipe the slate clean or do you add up the months one after another cumulatively. Do you count all 13 together or do you count one together? In that long explanation I just gave of what I read your complaint as never once did I say the federal tariff word. The federal tariff is not an issue. That's quite distinct from the Fourth Circuit Verizon Maryland case. Besides which the posture of the case was in a different posture. In terms of the Fourth Circuit statement, yes, here there was a federal issue, my reading of that opinion is yes because they had to dig into the tariff issue. Much as I did in the Global Naps case in one of the decisions I made but your complaint isn't that complaint. Your complaint is we entered into effect a contract. We have a dispute about one of the provisions of that contract which is required to be an interconnect agreement. Isn't related to the tariff. The interpretation of the tariff in any way. It is related to the word we picked Delta in the agreement. So I don't see how the Fourth Circuit case helps you.

MR. CARTER: Your Honor, I don't want to argue with your interpretation of the Fourth Circuit opinion. I will only add that it is my reading of the Fourth Circuit opinion that they took a broader view of disputes and nature between the parties and that view in the

holding of the central tenet of what they included is there is a payment of intercarrier compensation is a sufficient federal question to establish federal question jurisdiction. I believe that the escrow provision in our agreement speaks directly to the requirements to make intercarrier compensation payments.

THE COURT: Okay. You rely on my decision in the Global Naps case and the issue of subject matter jurisdiction which I decided I did have jurisdiction in that case, despite the defendant's motion to dismiss on the theory that it was a mire interconnection agreement and therefore there was no federal jurisdiction much like AT&T argues here but my understanding of the circuit's affirmance of me on that decision is they concluded I did have federal jurisdiction, not unlike the Fourth Circuit. While the dispute was about an interconnection agreement that isn't what gave me jurisdiction because on the face of the well-pleaded complaint rule, there was put at issue a tariff question and given it was an FCC tariff that did arise under federal law the FTCA and therefore, 1331 jurisdiction flowed from 1337 but again I don't see anything in your complaint that raises a dispute about -- well pleaded dispute about a tariff.

MR. CARTER: I don't disagree with you with your conclusions about the reasons the Second Circuit

ultimately held your determination in the SNET v. Global Naps case. I respectfully subject, however, that what I interpret to be your reasoning, the reasoning that you a applied in your conclusion that the Interconnection Agreement itself gave rise to a 1331 jurisdiction is the appropriate analysis and the same analysis that we ask you to apply here today. It is also the analysis that the Eastern District of Virginia in the Central Telephone case we cited applied very recently. That is that that court concluded that the breach of the Interconnection Agreement itself gave rise to our allegation regarding the interpretation breached in their interconnection agreement itself gave rise to 1331 jurisdiction. I think that case is particularly on point here today because it was in fact a disagreement between parties about whether traffic was subject to intercarrier compensation payment and what the appropriate payments s were for that traffic and so the court there concluded that as I read the opinion, the court concluded that there's jurisdiction over claims involving the interpretation or enforcement of interconnection agreement and there's not a requirement to exhaust administrative remedies in the various Public Utility Commission.

THE COURT: I thought in the Eastern District decision. I was trying to refresh my memory. It is

Judge Payne. I'm not familiar with Judge Payne. In his opinion and I may be wrong and apologize. You correct me if I'm mistaken. I thought the context of that dispute while it was a claimed breach of contract related to I think it was Sprint's position that they didn't have to pay a federal tariff which was not unlike Global Naps in my SNET case whose position was basically we're connected to SNET but we don't owe them any money. SNET alleged yes, you do. You have to pay this federal tariff. You are within the zone of the type of services covered by the tariff. I don't know that the Virginia District Court's decision, the Eastern District of Virginia, Judge Pain's decision is really any different than any Global Naps. I read a lot of cases and could have forgot the fact. Tell me if I'm wrong if that case is more like this one. ICA. There's a term in the ICA that the parties dispute and it doesn't relate to the tariff. And you want to sue off that dispute.

MR. CARTER: Certainly, your Honor.

It is my understanding that the Interconnection Agreement that the Central Telephone case does involve the interpretation of the Interconnection Agreement. That Interconnection Agreement spoke specifically in the way that our Interconnection Agreement does about what should happen to VOIP or IPPS traffic in the compensation

that should be due there. So I would say that that is my understanding that that agreement, the Interconnection Agreement, did as you might suggest, incorporate by reference, provisions of the tariff that was at issue but that really the court's finding, the holding of that opinion, is that it was interpreting an Interconnection Agreement and that it had authority jurisdiction to do so pursuant to 1331.

THE COURT: All right. I'm just reading from the judge's opinion at *776 of whatever printout I have here. I guess it is Central Telephone. It is a West Law print. The citation actually public opinion 759 F.Supp 2d, 772. This is the published page 776. There the Court is reciting the factual background. It says "in June '09, Sprint altered court and for the first time since the effective date of any ICA lodged a series of disputes over VOIP originated traffic contending the ICA's did not make Sprint liable to pay the charges re: tariff for this traffic. To me that sounds like the Global Naps people in the SNET case which as I said, the circuit in my view said yes, Hall, you are right. You had jurisdiction. Even though it involved an ICA, the dispute could only be resolved by interpreting a federal tariff and its applicability. I suggest to you that I don't have that in this case. You can point to me

something in your complaint a interpretation of a tariff is at issue, but I don't think you have that.

MR. CARTER: No. Your Honor, I wouldn't suggest that to reach the resolution of the escrow provision, you have to interpret our tariff.

I would for another moment focus on the Central Telephone case. I believe that the language that you read the central part of the facts was that the resolution of the dispute was a resolution of the dispute that would turn not on the interpretation of the tariff but on the interpretation of the plain language of the Interconnection Agreement. So I understand that --

THE COURT: Which case? You think that's Central?

MR. CARTER: Central Telephone. I believe it turns -- the interpretation of the judge's ultimate determination when it awarded judgment to Central Telephone Company in that case. It did it based on the language of the Interconnection Agreement. It didn't conclude that the tariff expressly provided for the payment of the intercarrier compensation for VOIP traffic rather it concluded that the Interconnection Agreement. The negotiated Interconnection Agreement between the parties was what gave rise to the requirements to make intercarrier compensation payments. I think that is

analogous to our situation here. The payments that we are talking about that are required -- that AT&T contends we must pay and that Infotelecom contends it already paid a sufficient amount of money are requirements that are directly impacted by and directly related to intercarrier compensation payments. I admit that we are not asking you to interpret the federal tariff to reach that.

THE COURT: You haven't alleged that AT&T is insisting that you pay -- I assume it is the higher tariff they would want the FCC to say applies.

MR. CARTER: Certainly AT&T submits invoices to us on a monthly basis that are invoices that are their view that the tariff traffic applies in this case. And that it is from those invoices that reflect the tariff payments that we calculate the monthly --

THE COURT: The bill. The ICA that you entered into, are tagged on with the level three ICA, provides, does it not by its terms, that AT&T has agreed to forebear from collecting those higher tariffs so long as you don't violate the ICA, one of which provision is the Delta escrow issue, right?

MR. CARTER: As long as we make the payment of the local.

THE COURT: The payment you agree to pay?

MR. CARTER: Correct.

Summary: Reply Reply in Support of Motion to Suspend Schedule electronically filed by Mr. Stephen M Howard on behalf of Infotelecom, LLC