

**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 MEMORANDUM CONTRA
AT&T'S MOTION FOR SECURITY PENDING FINAL DECISION**

Infotelecom, LLC ("Infotelecom"), by and through counsel, hereby submits this Memorandum Contra Ohio Bell Telephone Company's ("AT&T Ohio") September 13, 2011 motion for security pending final decision. There is no reason for any security because AT&T Ohio is enjoined from terminating the Interconnection Agreement ("ICA") between the parties by virtue of an order by the Second Circuit Court of Appeals and by the August 30, 2011 Entry in this case and because Infotelecom has paid and is paying all undisputed amounts to AT&T Ohio. Maintaining the *status quo* without requiring a bond by Infotelecom is also consistent with Ohio law.

As noted in Infotelecom's motion for stay pending decision by the Second Circuit in a related case between the parties (filed September 14, 2011), the Second Circuit has enjoined AT&T Ohio from terminating the parties' ICA while Infotelecom's motion to stay at the Second Circuit is submitted to a motions panel there. A decision is not expected from the Second Circuit before at least October 18, 2011, if not later. The Second Circuit Order means that AT&T Ohio

cannot disconnect service to Infotelecom. Ordering escrow could lead to an inconsistent or contradictory result between this Commission and the Second Circuit. Indeed, the Second Circuit itself has not ordered any bond of Infotelecom while it considers Infotelecom's motion to stay pending appeal, demonstrating the inconsistent results that might arise if this Commission orders a bond for the same relief.

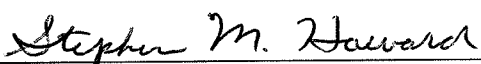
AT&T Ohio's purported need for security should also be viewed skeptically by the Commission given that AT&T Ohio admits it has waited two years before asserting the present dispute and that Infotelecom pays AT&T Ohio all undisputed amounts. *See* AT&T Motion at 3. It also cannot be overlooked that the security requested by AT&T Ohio relates to a provision in the parties' ICA whereby AT&T Ohio may never obtain the actual money demanded to be escrowed. *See id.* ("the escrowed funds will be available for payment to AT&T if the Federal Communications Commission decides long distance internet traffic should be subject to access charges. "). Under AT&T Ohio's view of the world, AT&T Ohio slumbered on its ability to demand escrow payments for nearly two years and is paid undisputed amounts during this time, but nevertheless argues that it needs four months of escrow for security against the loss of escrow under the parties' ICA that AT&T Ohio may never see in any event. Such a demand for security should be denied.

Finally, maintaining the *status quo* without requiring any security of Infotelecom is consistent with Ohio law. Even accepting AT&T Ohio's comparison to a preliminary injunction, courts in Ohio have the ability and discretion to require a nominal or zero dollar bond, which is effectively no bond at all. *Vanguard Transp. Sys., Inc. v. Edwards Transfer & Storage Co., Gen. Commodities Div.*, 109 Ohio App. 3d 786, 673 N.E.2d 182 (10th Dist. Franklin County 1996) (citing 56 Ohio Jur. 3d Injunctions § 193). This is especially true where an injunction simply

prevents the party from engaging in some action they could not do in any event and would not suffer any additional damages for which a bond would provide security. *See e.g. id.* Here, AT&T Ohio cannot lawfully terminate the ICA and the bond that AT&T Ohio requests may be meaningless if the FCC decides a certain way.

No bond is necessary for the reasons set forth above: AT&T Ohio is already enjoined from terminating service by virtue of the Second Circuit order and the August 30, 2011 Entry in this case; AT&T Ohio is paid all undisputed amounts so a bond is unnecessary for any additional protection; AT&T Ohio may never see the bond in any event, because the FCC decides against AT&T Ohio's interests; and not requiring a bond is consistent with Ohio law. Infotelecom, therefore, respectfully requests that the Commission deny AT&T's motion for security and maintain the *status quo* in this proceeding.

Respectfully submitted,


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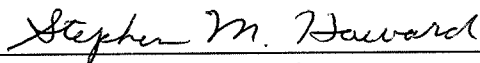
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served by electronic mail on the following persons this 28th day of September, 2011.



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Summary: Memorandum Infotelecom's Memorandum Contra AT&T's Motion for Security
Pending Final Decision electronically filed by Mr. Stephen M Howard on behalf of Infotelecom,
LLC