

**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 OPPOSITION TO INFOTELECOM’S  
ASSERTION THAT THE BANKRUPTCY STAY UNDER  
11 U.S.C. § 362 APPLIES TO THIS PROCEEDING**

AT&T Ohio respectfully submits this Opposition to Infotelecom, LLC’s (“Infotelecom”) assertion, in its “Notice of Bankruptcy Filing and Suggestion of Stay,” that the automatic stay under bankruptcy law, 11 U.S.C. § 362, applies to this proceeding. Both the plain language of Section 362 and well-established case law show that this proceeding is *not* subject to the bankruptcy stay and should continue without any stay. In support of this Opposition, AT&T Ohio states as follows:

1. Complainant Infotelecom initiated this case by filing a complaint against AT&T Ohio on August 24, 2011. Infotelecom asked the Commission to find that a provision in the parties’ interconnection agreement (“ICA”) did not require Infotelecom to escrow amounts that it may owe AT&T Ohio for intercarrier compensation in order to ensure the money would be there to pay AT&T Ohio when the FCC resolved the issue of compensation for the traffic at issue. Infotelecom was permitted to litigate the complaint without posting any kind of security and the case has been set for a prehearing conference. (Entry 10-11-11).

2. On October 18, 2011, Infotelecom filed a petition for bankruptcy in the United States Bankruptcy Court for the Northern District of Ohio. Also on October 18, 2011

Infotelecom filed with the Commission its “Notice of Bankruptcy Filing and Suggestion of Stay,” baldly asserting that the instant proceeding “is subject to an automatic stay pursuant to the United States Bankruptcy Code. See 11 U.S.C. Sec. 362.”

3. Infotelecom is wrong. The automatic stay under 11 U.S.C. § 362 applies *only* to actions “against the debtor” (in this case, Infotelecom). 11 U.S.C. § 362(a)(1). The instant case is *not* one filed “against the debtor.” It was Infotelecom, not AT&T Ohio, that initiated this proceeding, and the proceeding is therefore “against” AT&T Ohio. Accordingly, the automatic bankruptcy stay under Section 362 does not apply here.

4. Section 362(a)(1) states that a bankruptcy petition acts to stay “the commencement or continuation . . . of a judicial, administrative, or other action *against* the debtor that was or could have been commenced” before the filing of the bankruptcy case. 11 U.S.C. § 362(a)(1) (emphasis added). Nothing in Section 362 acts to stay proceedings commenced *by* the debtor. The courts have therefore consistently interpreted this provision to mean that an action brought by the debtor – like this case – is *not* subject to the automatic stay. *E.g., In re Palmdale Hills Property, LLC*, 423 B.R. 655, 663 (B.A.P. 9th Cir. 2009) (“the automatic stay has been found inapplicable to lawsuits initiated by the debtor”); *In re Hall*, 304 F.3d 743, 746 (7th Cir. 2002) (“the automatic stay of 11 U.S.C. § 362 does not apply to suits by the debtor”); *Matter of U.S. Abatement Corp.*, 39 F.3d 563, 568 (5th Cir. 1994) (“The automatic stay of the Bankruptcy Code extends only to actions ‘against the debtor.’ 11 U.S.C. § 362(a). . . . [A] debtor’s offensive claims are not subject to the automatic stay.”); *Koolik v. Markowitz*, 40 F.3d 567, 568 (2d Cir. 1994) (“the automatic stay is applicable only to proceedings ‘against,’ 11 U.S.C. § 362(a)(1), the debtor.”); *In re Merrick*, 175 B.R. 333, 337 & n.6 (B.A.P. 9th Cir. 1994); *Martin-Trigona v. Champion Fed. Sav. & Loan Ass’n*, 892 F.2d 575, 577 (7th Cir. 1989) (“the

automatic stay is inapplicable to suits *by* the bankrupt (‘debtor,’ as he is now called). This appears from the statutory language, which refers to actions ‘against the debtor,’ 11 U.S.C. § 362(a)(1), and from the policy behind the statute . . . . There is . . . no policy of preventing persons whom the bankrupt has sued from protecting their legal rights.”); *Carley Capital Group v. Fireman’s Fund Ins. Co.*, 889 F.2d 1126, 1127 (D.C. Cir. 1989); *In re Association of St. Croix Condominium Owners v. St. Croix Hotel Corp.*, 682 F.2d 446, 448 (3d Cir.1982) (“Section 362 by its terms only stays proceedings against the debtor. The statute does not address actions brought by the debtor”); *Madison Capital Co., LLC v. Smith*, 2009 WL 1119411, at \*2 (E.D. Ky. 2009) (“[A]ccording to the plain language of the statute, the filing of a bankruptcy petition only initiates a stay with respect to actions or proceedings *against* a debtor, not actions or proceedings pursued by a debtor against another party.”); *Rett White Motor Sales Co. v. Wells Fargo Bank*, 99 B.R. 12, 15 (N.D.Cal.1989) (“[T]he stay provisions are not designed to stay actions which have been commenced by the bankrupt party. . . . There is simply no language in Section 362(a) designed to stay actions initiated by the debtor.”).

5. For these reasons, Infotelecom’s “Suggestion of Stay” is contrary to established law. The Section 362 stay does not apply here, and this case should therefore proceed on an expedited complaint schedule. Only this Commission (not any federal court or bankruptcy court) has jurisdiction to resolve the ICA-interpretation dispute that Infotelecom has raised in this case and determine the meaning of the ICA’s escrow provision. This issue continues to be important for Infotelecom if and to the extent it desires to receive service from AT&T Ohio under the ICA while it seeks to reorganize. Bankruptcy does not allow Infotelecom to compel post-bankruptcy performance by AT&T Ohio under the ICA unless Infotelecom fully complies with the terms of the ICA. Thus, as long as Infotelecom intends to seek service from AT&T Ohio under the ICA

during its bankruptcy case, and afterwards, it is critical that its obligations with respect to the ICA escrow provision be promptly determined.

Respectfully submitted,

AT&T Ohio

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Certificate of Service

I hereby certify that a copy of the foregoing has been served this 21st day of  
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Summary: Memorandum AT&T Ohio's Opposition to Infolelecom's Assertion That the Bankruptcy Stay Applies to This Proceeding electronically filed by Ms. Mary K. Fenlon on behalf of AT&T Ohio