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BEFORE THE PUBLIC UTILITIES COMMISSION
OF OHIO

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

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**INFOTELECOM LLC'S MOTION FOR STAY PENDING DECISION BY THE
SECOND CIRCUIT IN A RELATED CASE BETWEEN THE PARTIES**

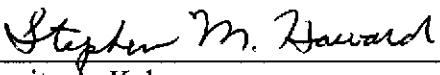
Infotelecom, LLC ("Infotelecom"), by counsel and pursuant to Rules 4901-1-13 and 4901-1-14 of the Ohio Administrative Code, hereby moves for a short stay pending a decision on Infotelecom's motion to stay pending appeal by the Second Circuit in a related federal appeal between the parties, *Infotelecom, LLC v. Illinois Bell Telephone Co., et al*, Case No. 11-2916 (2d Cir.) appeal from *Infotelecom, LLC v. Illinois Bell Telephone Company d/b/a AT&T Illinois, et al*, 3:11-cv-00739-JCH (D. Conn.). The Second Circuit has already ordered a temporary stay enjoining AT&T from disconnecting until a Second Circuit motions panel rules on Infotelecom's motion. *See* Exhibit A, Order, *Infotelecom, LLC v. Illinois Bell Telephone Co., et al*, Case No. 11-2916, slip op., ECF No. 43 (2d Cir. Sept. 9, 2011). If the Second Circuit motions panel grants Infotelecom's motion it will have a significant impact on this proceeding, and if this proceeding continues, may lead to inconsistent or conflicting results. For the reasons set forth in the accompanying Memorandum In Support, a short stay to allow a decision by the Second Circuit is

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appropriate in these circumstances. Given the nature of Infotelecom's motion and Infotelecom counsel's discussions with staff at the Second Circuit, Infotelecom expects a decision from the Second Circuit within 5-6 weeks.

WHEREFORE, Infotelecom respectfully requests that the Commission grant its motion to stay this proceeding pending appeal by the Second Circuit Court of Appeals.

Respectfully submitted,


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Counsel for Infotelecom, LLC

MEMORANDUM IN SUPPORT

On August 24, 2011, Infotelecom filed a complaint against AT&T Ohio. It also requested that the Commission direct AT&T Ohio not to terminate it during the pendency of this complaint case. The Attorney Examiner subsequently issued an entry directing AT&T Ohio to refrain from disconnection of service.

On May 5, 2011, Infotelecom filed a federal lawsuit against the AT&T Ohio, together with the other relevant AT&T ILECs that are not a part of this proceeding. *See Infotelecom, LLC v. Illinois Bell Telephone Company d/b/a AT&T Illinois, et al*, No. 3:11-cv-0739 (JCH) (D. Conn.). Infotelecom also sought a preliminary injunction prohibiting AT&T from disconnecting services to Infotelecom. *Id.* at Dkts. 33 - 36, 38-41 (portions filed under seal). In lieu of seeking a temporary restraining order, the parties agreed that AT&T would not terminate the ICA pending the resolution of the motion for preliminary injunction. Infotelecom also agreed to escrow \$150,000. AT&T filed a motion to dismiss, wherein it argued that (1) the court did not have jurisdiction over Infotelecom's request for a declaratory ruling that Infotelecom had not breached the ICA and (2) that Infotelecom's complaint did not state a claim for discrimination. On July 15, 2011, the court granted in part and denied in part AT&T's motion to dismiss, finding that it did not have federal subject matter jurisdiction over the ICA interpretation issue, but that Infotelecom had stated a claim against AT&T for discrimination based on AT&T's alleged secret agreement with Level 3.

On September 6, 2011, Infotelecom filed a motion to stay pending appeal at the Second Circuit, which AT&T opposed on September 8, 2011. The Second Circuit issued an order on September 9, 2011 submitting Infotelecom's motion to stay pending appeal to a motions panel

and enjoining AT&T from disconnecting Infotelecom until the motions panel ruled on Infotelecom's motion. Specifically, the Second Circuit ordered:

IT IS HEREBY ORDERED that the motion by appellant Infotelecom for an order staying appellees Illinois Bell Telephone Co. et al. from disconnecting services will be submitted to a motions panel as soon as possible. In the interim, appellees are enjoined from disconnecting services until the motions panel has ruled.

Ex. A.

A decision by the Second Circuit granting Infotelecom's motion will have a significant impact on this proceeding. Infotelecom's appeal to the Second Circuit concerns whether the federal district court had jurisdiction to hear the parties' Interconnection Agreement dispute. If the Second Circuit grants Infotelecom's motion, this proceeding can be held in abeyance while the Second Circuit determines whether the federal district court erred when it held it did not have jurisdiction over Infotelecom's Interconnection Agreement claims. If the Second Circuit decides the district court has jurisdiction this proceeding may be dismissed, because the parties will continue their case at the federal district court. If the Second Circuit denies Infotelecom's motion, this proceeding will continue after only a short delay. Thus, in order to conserve the parties' and the Commission's resources and to avoid conflicting proceedings, Infotelecom requests a short stay to allow the Second Circuit to rule on Infotelecom's motion. In light of the significant impact a grant of Infotelecom's motion will have on this proceeding as compared to small burden of a short stay, a stay is appropriate.

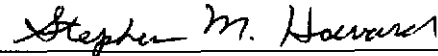
AT&T's actions have created the present situation. Infotelecom's preference has always been to resolve the present Interconnection Agreement controversy between the parties in a single forum, which is why Infotelecom filed its complaint with the federal district court. When the federal district court decided it did not have jurisdiction over the Interconnection Agreement

dispute between the parties, Infotelecom appropriately appealed to the Second Circuit where the issue has not been considered before. Instead of allowing an orderly determination of the jurisdictional issue, AT&T responded by sending a disconnection notice to Infotelecom. This triggered requirements in certain state commissions to which Infotelecom had to immediately respond. When AT&T persisted in its threat to terminate, Infotelecom was compelled to file complaints in other states or risk the chance of waiving its right to ever receive a determination on the merits because of a termination by AT&T. In light of AT&T's threat to terminate, Infotelecom also exercised its rights to seek a stay pending appeal from the Second Circuit, which is presently under consideration and AT&T is enjoined from disconnecting in the interim. Ex. A. Thus, AT&T's actions have created the potential for conflicting proceedings. Rather than continuing a proceeding that may conflict with the Second Circuit, this proceeding should be stayed for a short period of time to allow a decision by the Second Circuit on Infotelecom's motion. In short, the best way to address the situation created by AT&T is to stay this proceeding for the short period of time it takes the Second Circuit to rule on Infotelecom's motion. If the Second Circuit grants Infotelecom's motion, this proceeding may be held in abeyance while the Second Circuit determines whether the federal court has jurisdiction over the parties' Interconnection Agreement dispute.

For the reasons set forth above, Infotelecom respectfully request that the Commission grant its stay of this proceeding pending appeal by the Second Circuit Court of Appeals.

Dated: September 14, 2011.

Respectfully submitted,



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Counsel for Infotelecom, LLC

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 12th day of September, two thousand eleven.

Before: Robert A. Katzmann,
Circuit Judge

Infotelecom, LLC,

Plaintiff - Appellant,

v.


Illinois Bell Telephone Company, DBA ATTEllinois,
Indiana Bell Telephone Company, DBA ATTIndiana,
Michigan Bell Telephone Company, DBA ATTMichigan,
Nevada Bell Telephone Company, DBA ATTNevada,
Ohio Bell Telephone Company, DBA ATTOhio,
Pacific Bell Telephone Company, DBA ATTCalifornia,
Southwestern Bell Telephone Company, DBA ATTArkansas,
DBA ATTKansas, DBA ATTMissouri, DBA ATTOKlahioma,
DBA ATTTexas, Wisconsin Bell, Inc., DBA ATTWisconsin,
Southern New England Telephone Company, DBA ATTConnecticut,

Defendants - Appellees.

IT IS HEREBY ORDERED that the motion by appellant Infotelecom for an order staying appellees Illinois Bell Telephone Co. *et al.* from disconnecting services will be submitted to a motions panel as soon as possible. In the interim, appellees are enjoined from disconnecting services until the motions panel has ruled.

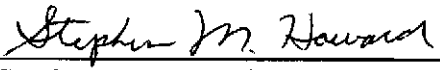
FOR THE COURT:
CATHERINE O'HAGAN WOLFE, Clerk

Catherine O'Hagan Wolfe

The seal of the United States Court of Appeals for the Second Circuit is circular. It features the words "UNITED STATES" at the top, "SECOND CIRCUIT" in the center, and "COURT OF APPEALS" at the bottom, separated by small stars.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served via electronic mail upon Mary K. Fenlon this 14th of September, 2011.



Stephen M. Howard