

**BEFORE**  
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Complaint of  
OHIOTELNET.COM, INC.**

**Complainant,**  
**v.**

**Case No. 09-515-TP-CSS**

**Windstream Communications, Inc., et al.**

**Respondents.**

**OHIOTELNET.COM, INC.'S APPLICATION FOR REHEARING**

Complainant, OHIOTELNET.COM, Inc. ("OTN"), moves the Public Utilities Commission of Ohio ("Commission") to grant rehearing in this matter pursuant to Ohio Revised Code §4903.10. The denial of all billing credits sought by the Complainant was unlawful and unjust. On September 20, 2011, the Commission entered its Opinion and Order ("Order") denying the complaint on the basis that Complainant has failed to sustain its burden of proof. This denial was in error in the following respects.

It appears from the testimony and evidence cited by the Commission in its Discussion and Conclusions that the Commission may not have performed a complete and thorough review the exhibits submitted into evidence by the Complainant. At the hearing in this matter, Annette Duboe, on behalf of Complainant, presented testimony describing her method of accounting and the process of identifying credits due to Complainant on a monthly basis.<sup>1</sup> To identify credits due, Ms. Duboe testified she individually examined each invoice and compared it with the customer's order entering any requests for credit on a spreadsheet.<sup>2</sup> The invoices were voluminous and were submitted to the Commission in their entirety for the Commission's review in electronic format.<sup>3</sup> Each request for credit was individually identified and submitted as a line

---

<sup>1</sup> Transcript p.38-58.

<sup>2</sup> *Id.* Comp. Ex. 1.

<sup>3</sup> Comp. Ex. 2-75.

item on Comp. Ex. 1. Ms. Duboe demonstrated the procedure for identifying credits due for the record, “walking through” several examples of how billing credits were calculated using these exhibits.

The Commission makes statements in its Discussion and Conclusions which demonstrate the absence of a complete and thorough review of the evidence placed before it. On page 19 of the Order, the Commission states “[t]he invoices *purportedly* contain an itemization of all charges.”<sup>4</sup> An examination of the invoices would show they do, indeed, contain an itemization of all charges. On page 20, the Commission makes reference to thousands of line item billing charges submitted into evidence by the Complainant.<sup>5</sup> The Commission then cites a single duplicate request for credit in Complainant’s presentation and 4 examples presented by the Respondents as the basis for denying the complaint.<sup>6</sup>

Moreover, the Order may reflect the absence of a complete review of the evidence by the statement “...we cannot extrapolate from these limited examples that [Complainant] is entitled to \$76,436.00 in billing credits from [Respondents].... Nor has [Complainant] presented sufficient evidence that it is entitled to some lesser amount.”<sup>7</sup> Complainant respectfully submits that its evidence is thorough, complete and presented several valid examples of credits due during Ms. Duboe’s testimony, only one of which was contradicted by Respondents.<sup>8</sup> This is despite testimony and admissions of the Respondents that billing credits were validly granted to Complainant. The Commission’s own findings cite that Respondents admit to billing errors based on discounts, manual processing or billing for services not requested.<sup>9</sup>

It appears from the Order that the Commission may have limited its review only to the direct testimony of the witnesses rather than completely examine what it considered a lengthy and tedious set of exhibits. Complainant acknowledges a large volume of records entered into

---

<sup>4</sup> Order p.19, ¶13.

<sup>5</sup> Order p.20, ¶12.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Tr. p.38-58.

<sup>9</sup> Order at p.9, ¶14.

evidence and it may be easier to summarily dismiss the complaint than find a single valid billing credit due the Complainant. However, it is by and through these records that the Complainant's burden was met.

Based on these reasons, the denial of all billing credits sought by the Complainant amounted to error on the part of the Commission. Therefore, Complainant requests rehearing of the Commission's action.

Respectfully submitted,

**/s/ James R. Cooper**  
James R. Cooper (0023161)  
**MORROW, GORDON & BYRD, Ltd.**  
33 West Main Street  
P.O. Box 4190  
Newark, Ohio 43058-4190  
Phone: (740) 345-9611  
Fax: (740) 349-9816  
Attorney for Complainant

#### **CERTIFICATE OF SERVICE**

A copy of the foregoing was served on William A. Adams, BAILEY CAVALIERI LLC, 10 West Broad Street, Suite 2100, Columbus, Ohio 43215-3422, Attorney for Windstream Windstream Communications, and Windstream Ohio, Inc., by electronic mail and by ordinary U.S. Mail, postage prepaid, this 20 day of October, 2011.

Respectfully submitted,

**/s/ James R. Cooper**  
James R. Cooper (0023161)  
Attorney for Complainant

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**10/20/2011 2:52:50 PM**

**in**

**Case No(s). 09-0515-TP-CSS**

Summary: Application For Rehearing electronically filed by Mr. James R Cooper on behalf of  
OHIOTELNET.COM INC PRESIDENT