

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of David Wellman,)	
)	
Complainant,)	
)	
v.)	Case No. 99-768-TP-CSS
)	
Ameritech Ohio,)	
)	
Respondent.)	

In the Matter of the Complaints of Ruth L. Wellman,)	
)	
Complainant,)	Case Nos. 00-1138-TP-CSS
)	00-1317-TP-CSS
v.)	
)	
Ameritech Ohio,)	
)	
Respondent.)	

ENTRY

The attorney examiner finds:

- (1) On June 11, 2002, David Wellman and Ruth Wellman (the Wellmans) filed a motion and memorandum of support requesting that the Commission issue an order compelling Ameritech Ohio (Ameritech) to respond to certain interrogatories contained in the Wellmans' March 1, 2002 discovery request.¹ Included with the filing was an affidavit in which Ruth Wellman affirms that all reasonable means have been exhausted by the Wellmans in resolving differences concerning Ameritech's responses to the Wellmans' interrogatories.
- (2) On June 18, 2002, Ameritech filed a memorandum contra the Wellmans' motion to compel.
- (3) The Wellmans' Interrogatory No. 1 requests the names and addresses of each person, agent, or others having personal knowledge of any facts or circumstances alleged by the

¹ The discovery request had been served upon Ameritech counsel William Hunt earlier than March 1, 2002, but because of Mr. Hunt's change of business address he did not receive the request until March 1, 2002.

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Wellmans and filed with the Commission. The Wellmans' memorandum of support asks that the address of Ameritech employee Marci Carris be provided because Ms. Carris can attest to information concerning disconnection of service. Ameritech had only provided Ms. Carris' name in its response to the interrogatories; for her address, Ameritech had indicated "no longer employed at Ameritech; address unknown."

In its memorandum contra, Ameritech emphasizes that it does not know the current address of Ms. Carris.

The attorney examiner observes that the Wellmans are seeking Ms. Carris' "last known address" and that, in response to this interrogatory, Ameritech had provided the names and work addresses of nine other Ameritech employees. The attorney examiner presumes that if Ameritech had provided Ms. Carris' last known address, it would have been at the Ameritech location where she no longer works. With this in mind, the attorney examiner considers Ameritech's response appropriate, and denies the Wellmans' request to compel discovery of Interrogatory No. 1.

- (4) The Wellmans' Interrogatory No. 2 concerns the posting of a \$200.00 check that the Wellmans allegedly paid to an Ameritech agent, Morton's, toward the Wellmans' account. The Wellmans indicate that the payment occurred on June 19, 1997, and that the check was made payable to Morton's. In their Request for Production of Documents No. 1, the Wellmans seek documents related to the June 19, 1997 check.

In the memorandum of support, the Wellmans state that during the prehearing conference the attorney examiner ordered Ameritech to determine what happened to the aforementioned payment. The Wellmans object to Ameritech's response, which refers to a \$200.00 payment on September 3, 1997; in the Wellmans' opinion, the September 3, 1997 payment is unrelated to the June 19, 1997 payment. The Wellmans allege that the June 19, 1997 payment was actually \$200.25 because Morton's had added a \$0.25 service charge. The Wellmans conclude that determining when the June 19, 1997 payment was posted is relevant because on July 23, 1997, their local and long distance service was disconnected without notification. The Wellmans believe that a payment to Morton's should be posted within 24 hours.

In its memorandum contra, Ameritech states that it "has no records indicating any payment was made in the July 1997 timeframe. The only records it still has demonstrate that a \$200.00 payment was made in September."

The attorney examiner notes that Ameritech's initial response to the interrogatory was an objection, on the basis that the request concerned the substance of a prehearing conference and was beyond the scope of discovery under Rule 4901-1-16(B), Ohio Administrative Code (O.A.C.). The attorney examiner disagrees. Information concerning timely posting of the Wellmans' alleged payment on June 19, 1997, is pertinent toward evaluating the Wellmans' complaints. Such information "appears reasonably calculated to lead to the discovery of admissible evidence," per Rule 4901-1-16(B), O.A.C.

However, having studied Ameritech's initial response to the second interrogatory and its memorandum contra, the attorney examiner is satisfied that Ameritech has produced all relevant information concerning this interrogatory. The motion to compel discovery of Interrogatory No. 2 and the Request for Production of Documents No. 1 is denied.

- (5) The Wellmans' Interrogatory No. 3 requests Ameritech to provide all information regarding any verbal communication between the Wellmans and Ameritech concerning payments in the summer of 1997. A Request for Production of Documents No. 2 "in connection with Interrogatory No. 3" was also made.

In their memorandum of support, the Wellmans object that Ameritech's response to the third interrogatory concerns "*payment plans*. The information requested has to do with *PAYMENTS made in the summer of 1997*" (emphasis in original). In addition, the Wellmans object that the documents produced by Ameritech consist of "our letter to the PUCO and communication between the PUCO and Ameritech. This has absolutely nothing to do with the facts on your computer notes between the Wellmans and Ameritech." Finally, the Wellmans ask for transcripts of the documents that Ameritech provided because of abbreviations in those documents.

In its memorandum contra, Ameritech states that it has provided all the information that it has on this subject.

The attorney examiner has reviewed Attachment No. 2, which Ameritech provided in its response to the Wellmans' third interrogatory. Attachment No. 2 contains Ruth Wellman's July 24, 1997 letter to the Commission regarding alleged overcharges by "phone carriers" and her arrangements "to send in \$200.00 every two weeks to pay towards the unpaid balance." Attachment No. 2 also contains Ameritech's records of telephone discussions with Ms. Wellman after this complaint was referred to Ameritech by the Commission. Finally,

Attachment No. 2 contains a September 25, 1997 letter to Ms. Wellman from Ameritech representative Marci Carris concerning adjustments to her credit balance following a telephone discussion the prior day. The adjustments reflect credits associated with the AT&T portion of the Wellmans' telephone bill.

The attorney examiner observes that while Attachment No. 2 does concern "payment plans," Ms. Wellman's July 24, 1997 complaint to the Commission was forwarded to Ameritech and resulted in numerous conversations with Ameritech representatives. In turn, Ameritech representative Marci Carris verified the Wellmans' payments pertaining to the AT&T portion of their account, which resulted in a reduction of the unpaid balance of their bill. In sum, Ameritech did respond with records of verbal communications during the summer of 1997 concerning payments made to the Wellmans' account.

The attorney examiner is satisfied that Ameritech has provided all the information that it has available concerning this interrogatory. In addition, Ameritech should not be required to provide documents in a format other than what Ameritech ordinarily maintains. The motion to compel discovery of the Interrogatory No. 3 and the Request for Production of Documents No. 2 are denied.

- (6) In Interrogatory No. 4, which refers to "each occasion identified in response to the preceding and following interrogatories," the Wellmans request (a) the name of each Ameritech employee, attorney, agent, or others engaged in communications or conversations with the Wellmans, (b) the substance and date of such communications or conversations, and (c) the response of each party concerning such communications or conversations. A Request for Production of Documents No. 3 states that if the response to the fourth and fifth interrogatories "is in the affirmative, please provide copies of these documents."²

The Wellmans' memorandum of support disagrees with Ameritech's answer to Interrogatory No. 4. Ameritech had described Interrogatory No. 4 as "vague, overly broad and incapable of being answered without unreasonably burdensome data compilation" The Wellmans also believe that Ameritech's production of documents, designated as Attachment No. 3 to Ameritech's initial response, is incomplete because (a) the documents do not contain the names of

² The Wellmans did not object to Ameritech's response to the fifth interrogatory. This interrogatory asks whether Ameritech has in its possession "any logs, notes compilations of the like concerning the allegations in these Complaints." Ameritech simply responded "yes."

Ameritech employees identified in response to the first interrogatory and (b) the documents contain abbreviations which cannot be understood.

Ameritech restates the arguments from its initial response in its memorandum contra. Ameritech also argues that it has produced the pertinent documents it has in its possession and that it is not required to create a "translation" of the abbreviations in the documents.

The attorney examiner believes that Interrogatory No. 4 is broad in its scope, thus making it difficult to answer. For example, the fourth interrogatory does not specify which of the "preceding and following interrogatories" are referred to. Considering this, the attorney examiner believes that through the attachments provided with its initial response and the memorandum contra Ameritech has responded satisfactorily. Therefore, the motion to compel discovery of Interrogatory No. 4 and the Request for Production of Documents No. 3 are denied.

- (7) The Wellmans' Interrogatory No. 6 asks Ameritech to identify each witness that Ameritech will call to the hearing, including the address and telephone number for each witness, and the purpose for calling each witness to the hearing.

The Wellmans disagree with Ameritech's response, which states that information relating to trial preparation, tactics and/or impressions of counsel is not discoverable under the "work product" doctrine. In the Wellmans' opinion, there should be no "Trial by Surprise."

In its memorandum contra, Ameritech adds that under Rule 4901-1-16(C), O.A.C., it is only required to disclose the names of expert witnesses. Without waiving this objection, Ameritech then discloses the names of two fact witnesses. The attorney examiner observes that the addresses of the two fact witnesses are provided in Ameritech's response to the first interrogatory.

Given that Ameritech has not identified its two witnesses as expert witnesses, Ameritech is not required to disclose their identities under Rule 4901-1-16(C), O.A.C. Still, Ameritech has voluntarily provided the names and addresses of two witnesses that it intends to call. Therefore, the motion to compel discovery of Interrogatory No. 6 is denied.

- (8) The Wellmans' Interrogatory No. 7 asks Ameritech to provide any information concerning the disconnection of the Wellmans' long distance service by Ameritech on December 29, 1997, and

the disconnection of the Wellmans' local and long distance service on July 23, 1997. The interrogatory also requests information, notes, and any other records of Ms. Marci Carris in Illinois and Mr. Scott Levin who was contacted by Ms. Carris on December 29, 1997.

The Wellmans' Interrogatory No. 8 requests that Ameritech provide any information for "Melany, Ms. Sadie, Ms. Linda Foy, Ms. Ann Frangos, and Ms. Marcy Carris for the period of time from June 1, 1997 through August 31, 1997."

Finally, in the Request for Production of Documents No. 4, the Wellmans state that "if there is any information for Interrogatory No. 7 and Interrogatory No. 8 please provide copies of these documents."

The attorney examiner notes that Ameritech's response objected to Interrogatory No. 7 by stating that it "calls for a lengthy narrative and inappropriate for discovery by interrogatories." Ameritech also objected to Interrogatory No. 8 by stating that it is "vague, overly broad and incapable of being answered without unreasonably burdensome data compilation...." However, without waiving this objection, Ameritech then referred to Attachment No. 3 concerning Interrogatory No. 7 and to Attachment Nos. 2 and 3 concerning Interrogatory No. 8.

Concerning Ameritech's response to Interrogatory No. 7, the Wellmans consider the documents in Attachment No. 3 to be "incomplete and written in abbreviations for Ameritech employees. These need to be transcribed for the consumer to be able to read." The Wellmans consider this information to be relevant because "it has to do with the disconnection of service without notification on 12-29-97 and 7-23-97."

As for Ameritech's response to Interrogatory No. 8, the Wellmans disagree with Ameritech's answer that the interrogatory is "vague" and "overly broad." The Wellmans consider such information to be relevant because it has to "do with the payment plan. This has to do with the disconnect."

The Wellmans also object to the documents that Ameritech did provide in response to Interrogatories No. 7 and No. 8 because the documents are not "labeled" and are not readable to the consumer.

In its memorandum contra, Ameritech states that it has produced all relevant records concerning Interrogatories No. 7 and No. 8.

The attorney examiner denies the motion to compel discovery of Interrogatories No. 7 and No. 8 and the Request for Production of Documents No. 4. The attorney examiner believes that Ameritech has provided all documents that it has available to respond to these interrogatories. While recognizing the Wellmans' concern about the readability of Ameritech internal documents to the consumer, Ameritech is not required to provide such information in a format different from what Ameritech ordinarily uses. In addition, the attorney examiner notes that some of the information sought by the Wellmans in Interrogatory No. 7 is unavailable to Ameritech, because Scott Levin is an AT&T employee. Furthermore, the attorney examiner agrees with Ameritech that the eighth interrogatory is vague, insofar as the references to "Melany" and "Ms. Sadie."

- (9) The Wellmans' Interrogatory No. 9 requests any information concerning telephone calls to Ameritech made by Ruth Wellman on December 29, 1997, and for the next ten days following. The interrogatory also requests any information concerning telephone calls to Ameritech by Ruth Wellman on July 23, 1997, and for the next ten days following.

The Wellmans object to Ameritech's reply, which stated that Interrogatory No. 9 calls for a lengthy narrative inappropriate for discovery and, without waiving objection, referred the reader to Attachment No. 3. The Wellmans say this information is "evasive" because it is written in abbreviations that are difficult to understand.

In its memorandum contra, Ameritech essentially says that it has provided all available information in response to this interrogatory.

The attorney examiner has studied Ameritech's Attachment No. 3 and the additional documents submitted with Ameritech's memorandum contra. References to the Wellmans' account beginning in December 1997 can be found in Attachment No. 3 to Ameritech's initial response; references to the Wellmans' account in June 1997 are present in the documents provided by Ameritech with its memorandum contra. Furthermore, the attorney examiner believes that Ameritech should not be required to provide information in a format different from what it ordinarily uses. Therefore, the motion to compel discovery of Interrogatory No. 9 is denied.

- (10) The Wellmans' Interrogatory No. 10 states that Ameritech "has its own person or persons whom the PUCO contacts concerning complaints and a person or persons whom the FCC

contacts concerning complaints. Please provide any and all information related to any of these complaints that Respondent's person or persons might have." In their Request for Production of Documents No. 6, the Wellmans seek documents concerning "these complaints" that are in the possession of Ameritech's PUCO or FCC "contact person."

The Wellmans object to Ameritech's reply, which described the interrogatory as "vague" and "overly broad." Without waiving this objection, the reply also referred the Wellmans to documents provided with Ameritech's initial response. The Wellmans believe that Ameritech's response does not "provide the information related to these complaints that these FCC and PUCO contacts have." The Wellmans also object to the information that Ameritech did provide because it is written in a way not understandable to the consumer.

In its memorandum contra, Ameritech identifies Kathy Gentile-Klein as the Ameritech "contact" for PUCO concerning the Wellmans' complaints. In addition, the attorney examiner notes that Attachment No. 2 to Ameritech's response to the interrogatories indicates that John Georgiadis of the Commission contacted Ameritech's Kathy Gentile-Klein on August 21, 1997, concerning Ms. Wellman's complaint letter that was received at the Commission on August 8, 1997. Attachment No. 2 also contains documents discussing actions taken by Ameritech after the contact by Mr. Georgiadis.

Ameritech states in its memorandum contra that it is "presently searching for any FCC related documents that may exist." While aware of this, the attorney examiner notes that the Wellmans' complaints concern whether policies of this Commission were properly followed regarding imposition of a toll block and termination of service. Thus, information concerning Federal Communications Commission knowledge of the Wellmans' complaints is not imperative in a final determination of this matter.

Therefore, the motion to compel discovery of Interrogatory No. 10 and the Request for Production of Documents No. 6 are denied.

- (11) The Wellmans' Interrogatory No. 11 requests any information concerning regulations, rulings, and laws between Ameritech and AT&T which authorize Ameritech to act as AT&T's collection agent. This interrogatory also asks Ameritech to provide any regulations, rulings, and laws which permit Ameritech to refuse to lift "pic freezes and toll blocks between AT&T's customer and other long distance carriers with whom

AT&T's customer and other long distance carriers may wish to initiate long distance services." Finally, this interrogatory requests a copy of the contract between AT&T and Ameritech which authorizes Ameritech to act as AT&T's agent for billing and which authorizes Ameritech to refuse the lifting of PIC freezes.

The Wellmans' Interrogatory No. 12 requests Ameritech to provide any regulations, rulings, and laws between Ameritech and AT&T which are related to the Wellmans' case, and to "specifically quote sections of said regulations, rulings, or laws that apply during the period of time covered by the above cases."

Finally, the Wellmans' Request for Production of Documents No. 7 asks Ameritech to provide copies of the relevant regulations, rulings, or laws referred to in Interrogatory No. 11 and Interrogatory No. 12. The request also asks that the parts of such regulations, rulings, or laws applicable to the Wellmans' complaints be underlined or highlighted.

The Wellmans object to Ameritech's response to Interrogatory No. 11, Interrogatory No. 12, and Request for Production of Documents No. 7, in which Ameritech states that the interrogatories are "vague, overly broad and incapable of being answered without unreasonably burdensome data compilation" The Wellmans reemphasize that Ameritech needs to indicate the laws under which Ameritech did not lift a toll block and disconnected the Wellmans' telephone service.

The attorney examiner denies the Wellmans' motion to compel discovery of Interrogatories No. 11 and No. 12 and the Request for Production of Documents No. 7. The attorney examiner cannot order a respondent to conduct legal research for a complainant. In addition, the attorney examiner is aware of relevant Commission policies concerning PIC freezes, toll blocks, and disconnection of telephone service; thus, the Wellmans' interrogatory would not produce information otherwise unavailable to the attorney examiner in determining whether Ameritech provided inadequate service. As for the Wellmans' request for a copy of the contract between Ameritech and AT&T, the attorney examiner does not consider this to be essential information in determining whether Ameritech complied with Commission policies regarding disconnection of service and imposition of a toll block.

- (12) In determining whether to approve any parts of the Wellmans' motion to compel discovery, the attorney examiner also takes notice that in the May 6, 2002 Entry postponing the hearing in

this matter, a deadline of May 26, 2002, was established for further discovery requests. As discussed above, the Wellmans docketed their motion on June 11, 2002. Despite this, the attorney examiner chose to study the motion and Ameritech's memorandum contra.

The attorney examiner further notes that a scheduled hearing date of April 4, 2002, was postponed because the Wellmans indicated a desire to file a motion to compel discovery. Finally, a scheduled hearing date of January 16, 2002, was also postponed at the Wellmans' request.

Given the determinations in the above findings, the length of time during which the Wellmans had to prepare the motion, the late filing of the motion, the age of the complaints, and the postponements of prior hearing dates, the attorney examiner considers it imperative to proceed with the hearing as scheduled on June 26, 2002. No further opportunity to file a reply memorandum or any additional motions will be provided to either party.

It is, therefore,

ORDERED, That in accordance with the above findings, the Wellmans' motion to compel discovery is denied. It is, further,

ORDERED, That a copy of this entry be served upon Mr. David Wellman, Ms. Ruth Wellman, Ameritech and its counsel, and all interested parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

By: James M. Lynn
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Attorney Examiner

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Secretary