

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

2002 JUL -8 PM 2:23

PUCO

David L. Wellman, :
and :
Ruth L. Wellman, : Case No.
Complainants, : 99-768-TP-CSS
vs. : 00-1137-TP-CSS
Ameritech Ohio, : 00-1317-TP-CSS
Respondent. :

PUCO

2002 JUL -8 PM 2:23

RECEIVED-DCKETING DIV

PROCEEDINGS

Before Jim Lynn, Hearing Examiner, at the Public
Utilities Commission of Ohio, 180 East Broad
Street, Columbus, Ohio, on Wednesday,
June 26, 2002.

Armstrong & Okey, Inc.
185 South Fifth Street, Suite 101
Columbus, Ohio 43215-5201
(614) 224-9481 - (800) 223-9481
Fax - (614) 224-5724

ORIGINAL

ARMSTRONG & OKEY, INC., Columbus, Ohio (614) 224-9481

This is to certify that the images appearing are an
accurate and complete reproduction of a case file
document delivered in the regular course of business
technician Am Date Processed 7/8/02

1 APPEARANCES:

2 Mr. Dave Wellman
3 and Mrs. Ruth Wellman
4 7744 Cricket Circle Northwest
5 Massillon, Ohio 44646

6 On their own behalf.

7 Hunt & Cook, L.L.C.
8 By Mr. William H. Hunt
9 Gemini Tower II, Suite 375
10 2001 Crocker Road
11 Westlake, Ohio 44145

12 and

13 Ameritech Ohio
14 By Mr. Jon F. Kelly
15 150 East Gay Street, Room 4C
16 Columbus, Ohio 43215

17 On behalf of the Respondent.

18 - - -

Wednesday Morning Session;

June 26, 2002.

- - -

1
2
3
4 HEARING EXAMINER LYNN: Let's go on
5 the record. Good morning everyone. The Public
6 Utilities Commission has scheduled for this time
7 and date Case No. 99-768-TP-CSS being in the
8 Matter of David Wellman versus Ameritech Ohio
9 and Case Nos. 00-1137-TP-CSS and 00-1317-TP-CSS
10 being in the Matter of Ruth Wellman versus
11 Ameritech Ohio.

12 My name is Jim Lynn. I am the
13 Attorney Examiner with the Commission assigned
14 to hear this case. And at this time I will ask
15 that the parties enter an appearance for the
16 record. Please provide your name and address
17 for the record and I will begin with the
18 Complainants David and Ruth Wellman.

19 Mr. Wellman.

20 MR. WELLMAN: My name is Dave
21 Wellman, W-E-L-L-M-A-N, 7744 Cricket Circle
22 Northwest, Massillon, Ohio 44646.

23 HEARING EXAMINER LYNN: Okay. And
24 Mrs. Wellman.

1 MRS. WELLMAN: Ruth Wellman and then
2 the same address.

3 HEARING EXAMINER LYNN: Okay. Let's
4 see, just some basic rules for the proceedings.

5 I'm sorry. Mr. Hunt.

6 MR. HUNT: On behalf of Respondent
7 Ameritech Ohio William H. Hunt, Attorney at Law,
8 Gemini Tower II, Suite 375, Westlake, Ohio 44145
9 and Jon F. Kelly, Ameritech Ohio, 150 East Gay,
10 Room 4C, Columbus, Ohio.

11 HEARING EXAMINER LYNN: Thank you,
12 Mr. Hunt.

13 MR. HUNT: Thank you.

14 HEARING EXAMINER LYNN: I will just
15 ask that once we get under way everyone speak
16 loud enough that our court reporter can hear
17 what's being said, one person speak at a time,
18 and if there are objections, please make them to
19 the bench.

20 After a witness is sworn in, we will
21 proceed as follows: we will have direct
22 examination, then cross-examination, redirect,
23 and recross if necessary, and then some
24 questions by myself too.

1 And before we get under way I'm
2 going to ask if the parties would be able to
3 agree on the following: the complaints concern
4 not only -- not only a toll block or toll
5 restriction but also some disconnection and
6 roaming telephone service and wanted to clear on
7 the record exactly when the disconnections
8 occurred.

9 There were two disconnections that
10 have been referred to that I am aware of, the
11 first of which was July 23 of 1997. And my
12 understanding is that was for the -- both the
13 local and the long distance service of the
14 Wellmans; am I correct on the date and it was
15 both local and long distance?

16 MRS. WELLMAN: That's right.

17 HEARING EXAMINER LYNN: And,
18 Mr. Hunt, you will agree to that as well?

19 MR. HUNT: We are not aware that the
20 local service was ever disconnected.

21 HEARING EXAMINER LYNN: In July of
22 1997?

23 MR. HUNT: I don't believe so.

24 MRS. WELLMAN: Yes, it was.

1 MR. HUNT: As I say, we don't have
2 any record that verifies that one way or the
3 other.

4 MR. WELLMAN: Mr. Lynn, if I could
5 just briefly interrupt but I do have an opening
6 statement I would like to put on the record as
7 soon as possible when you get a chance to do so.

8 HEARING EXAMINER LYNN: Certainly.
9 That will be permitted. The December --
10 December 29, 1997 is the date -- the other date
11 that I have.

12 MRS. WELLMAN: And that's long
13 distance, but the 23rd was local and long
14 distance.

15 HEARING EXAMINER LYNN: You are
16 alleging that was local and long distance.

17 MRS. WELLMAN: I know it was.

18 HEARING EXAMINER LYNN: And,
19 Mr. Hunt, on the December 29, 1997, that
20 disconnection was just for long distance
21 service?

22 MR. HUNT: That is our belief.

23 HEARING EXAMINER LYNN: Okay. Thank
24 you. All right. We'll allow an opening

1 statement by Mr. Wellman, and then we'll call
2 witnesses first from the Wellmans. But,
3 Mr. Wellman, would you like to proceed.

4 MR. WELLMAN: Thank you very much.
5 Appreciate it, Mr. Lynn. In Ruth and my view I
6 believe this case is highly prejudiced because
7 it's actually being decided -- it's not being
8 decided, excuse me, on its merits. We were
9 never given the documents that we deserve and
10 requested.

11 So in our opinion state and federal
12 law in discovery is always being interpreted as
13 being very open and liberal. Even that the --
14 even if documents are not admissible at a
15 hearing, these documents if they -- they can
16 actually lead to admissible evidence. For
17 example, in Federal Rule of Civil Procedure 26A,
18 it's basically discovery is liberally
19 interpreted and there is always a balance that
20 is applied and this balance almost always tips
21 in favor of the parties seeking discovery.

22 So essentially -- so since we are
23 actually pro se, American -- Ameritech has their
24 own legal representation, it would appear that

1 they are of ample resources to -- to initiate
2 and complete any document production that we
3 might request.

4 As you probably know, Ameritech is
5 sued on a regular basis by wealthy clients and
6 also in class action suits that demand volumes
7 of document production. And this production is
8 almost always met. So this basically -- their
9 refusal to proceed with getting those documents
10 that are requested flies in the face of liberal
11 discovery, and their refusal to do so is
12 basically nothing but boilerplate objections.
13 And it seems to be only with pro se plaintiffs.

14 Basically I wanted to let you know
15 that I believe a grave miscarriage of justice is
16 being done and is highly prejudiced against us.
17 For the record I am considering an appeal,
18 interlocutory appeal, in this discovery issue
19 and I really don't know how we can proceed until
20 we have had an opportunity to not only receive
21 documents that were requested from Ameritech and
22 to then study that.

23 So my statement basically is
24 requesting a -- an appeal of the discovery

1 issue. Ruth and I do not have the resources or
2 the money that Ameritech has and we do not have
3 the staff of attorneys and, therefore, we are
4 requesting as pro se that we request at least a
5 three-month delay.

6 And we did not get the -- we did not
7 get Mr. Hunt's response to the PUC and we have
8 not received other documents that we requested
9 which we feel are reasonable and which we feel
10 Ameritech is objecting because of boilerplate
11 objections.

12 So my question would be to you is
13 that and I guess my statement would lead that
14 for the record I am requesting a delay in this
15 hearing until these issues not only are met by
16 Ameritech but that we as pro se have an
17 opportunity to examine the items that we
18 requested and that this is only fair to us as
19 Ameritech does it all the time. They do it with
20 class action suits. They produce volumes of
21 documents, and they have the resources and the
22 means financially and otherwise to do that.

23 What my wife is saying basically is
24 that Ameritech and Mr. Hunt through their

1 attorney -- Ameritech through their attorney
2 Mr. Hunt requested delay in this case already
3 and although we have requested a delay, one
4 reason was because of Mrs. Wellman's teaching
5 and she feels her job of teaching is just as
6 important as Mr. Hunt's legal representation of
7 Ameritech.

8 Therefore, as I said, I will
9 conclude this but, therefore, I am requesting a
10 delay at least for three months until we can
11 receive the documentation requested and, again,
12 if -- and I will certainly be considering an
13 appeal on the discovery issue, you know, these
14 things are not met. So that's my statement,
15 sir. So I am asking basically the issue before
16 we proceed further.

17 HEARING EXAMINER LYNN: So that's
18 the conclusion of your statement.

19 MR. WELLMAN: Well, that's my
20 conclusion and final point, that this hearing is
21 really not going to be fair to us pro se unless
22 we have the documents we requested. Ameritech
23 is certainly capable of producing this and they
24 had the facilities to do so and so that's

1 because I feel otherwise this hearing is not
2 going to be fair because we need other documents
3 to review.

4 HEARING EXAMINER LYNN:

5 Mrs. Wellman, do you have any comments to add or
6 is that basically your husband has said what you
7 would say also?

8 MRS. WELLMAN: I'm sorry that I had
9 to ask for an extension for teaching but there
10 were eight teachers in that classroom before I
11 got there and -- and my being there in the
12 classroom is important, and I brought along my
13 children's test scores. They came up a great --
14 some of them came up two grade levels and that
15 was really important. It's an important job
16 too. It may not be paying like an attorney, but
17 it's an important job.

18 HEARING EXAMINER LYNN: I
19 understand. Mr. Wellman, I believe what we will
20 do is this, given that all parties are here
21 right now, we will proceed this morning, get as
22 much information as we can on the record.

23 Given that there was a delay in
24 starting we may need to take a break and if so,

1 I'll -- during the break I will do some
2 investigating and get back to you on your
3 request, but my initial thought is that the
4 hearing has been delayed numerous times really
5 by the request of both parties and that you had
6 indicated you didn't receive what would be the
7 response to the motion to compel?

8 MRS. WELLMAN: We don't even know
9 who those people are.

10 HEARING EXAMINER LYNN: Well, the
11 thing is that this morning you were giving your
12 address. You indicated it as being still in
13 Massillon and yet when --

14 MRS. WELLMAN: That's where our
15 house is.

16 HEARING EXAMINER LYNN: But when I
17 have been corresponding with you lately, the
18 address, you have been in Indianapolis.

19 MRS. WELLMAN: That's where the
20 house is that we own. We are trying to sell it.

21 MR. WELLMAN: We had the information
22 forwarded down to the.

23 MR. HUNT: Your Honor, may we be
24 heard?

1 HEARING EXAMINER LYNN: Yes.

2 MR. HUNT: Whenever you are.

3 HEARING EXAMINER LYNN: And when I
4 was discussing the matters with you last week,
5 did you get in touch with Mr. Hunt at all about
6 an address change or getting any information
7 faxed?

8 MRS. WELLMAN: Well, he was sending
9 it to our address in Indiana, weren't you?

10 MR. HUNT: We don't have it in
11 Indiana.

12 MR. WELLMAN: It doesn't make any
13 difference. The post office will still forward
14 that mail down to our new address. We are in
15 the process of selling one home but we are
16 living in the area but from my indication the
17 point nevertheless is in any event we were still
18 not receiving the information. Regardless of
19 where the address is we are not receiving the
20 information as per our request as of even today
21 so, you know, to me that's the issue and it's an
22 important issue.

23 MRS. WELLMAN: I have some papers
24 Mr. Hunt sent to our mailing address.

1 HEARING EXAMINER LYNN: I believe
2 given that everybody is present right now, we
3 will proceed and --

4 MRS. WELLMAN: Is that going to be
5 fair?

6 HEARING EXAMINER LYNN: During a
7 break, I'll resume --

8 MR. HUNT: Your Honor, I apologize
9 for interrupting you, if we can be heard for one
10 moment.

11 HEARING EXAMINER LYNN: Fine.

12 MR. HUNT: I would like to provide a
13 little bit of not necessarily response but an
14 observation. A couple of things with regard to
15 the continuances and so forth. I will happily
16 concede teaching children is more important than
17 what I am doing for Ameritech. I think that's
18 true. And so I certainly have no objection to,
19 you know, continuances or if we have had any
20 objections to continuances with regard to, you
21 know, your teaching activities.

22 The second thing is we served the
23 only address we had which was Massillon. More
24 importantly, however, your Honor, and the reason

1 I would -- I feel it necessary to interrupt you
2 given the other cases that these Complainants
3 have had at the Commission and the course that
4 they have taken my concern is I think what I
5 heard Mr. Wellman say is I want to make an
6 interlocutory appeal of the Attorney Examiner's
7 ruling with regard to the motion to compel.

8 Having said that I am not sure -- I
9 don't have a copy of the interlocutory appeal
10 rule in front of me, but I am not sure what
11 discretion you have with regard to if that's, in
12 fact, what he has just done.

13 And the other piece that I have that
14 I would offer to you is that if we are going to
15 carry on and as you all know or as you know,
16 we're here and we are prepared to go forward, I
17 have a serious concern that this may turn out to
18 be all for naught if his interlocutory appeal
19 must be heard within the meaning of the rule and
20 whether you have discretion to say I'll take it
21 under advisement.

22 I just don't know, your Honor. I
23 would like an opportunity to look at the rule.
24 On the one hand I don't want to waste my

1 client's time and money litigating a case that's
2 going to have to get done, you know, de novo
3 three months from now.

4 So I guess for our part we would
5 like a determination of, A, his interlocutory
6 appeal at this time committed under the rules,
7 is that, in fact, what just happened and see do
8 we need to rule on it before we take any
9 evidence, for example.

10 We share your desire to get the
11 matter heard, but I am afraid that we may have a
12 problem here that it's not going to be most
13 efficient adjudication if we don't stop and take
14 a quick look at it.

15 HEARING EXAMINER LYNN: Thank you,
16 Mr. Hunt.

17 MR. HUNT: Thank you.

18 HEARING EXAMINER LYNN: We will go
19 off the record.

20 (Recess taken.)

21 HEARING EXAMINER LYNN: I've
22 reviewed with some of my superiors Mr. Wellman's
23 request, and I have also examined the rule on
24 interlocutory appeals. The rule doesn't

1 explicitly cover a situation like this. Again,
2 Mr. Wellman, my understanding is you wanted that
3 appeal because you had not received the response
4 to the motion to compel.

5 MR. WELLMAN: The reason I wanted
6 the appeal was because the particular matter
7 that I need to have resolved I don't feel that
8 any other process is -- this is the process that
9 I feel we need and deserve because I feel the
10 matter of the discovery is a particular issue
11 that I feel at this particular time of paramount
12 importance.

13 And I feel that this is the -- I
14 basically need also to know if an interlocutory
15 appeal -- I need to know what the procedures of
16 that are and I believe I have the -- I need to
17 know what -- what the procedure and where I
18 can -- which court I can appeal to.

19 HEARING EXAMINER LYNN: Mr. Wellman,
20 the rule would require that the -- if we could
21 go off the record just one minute, please.

22 (Discussion off the record.)

23 HEARING EXAMINER LYNN: Mr. Wellman,
24 the rule would require that any such appeal

1 would have been filed within five days of the
2 date which I deny your -- which I denied the
3 motion and that would have been today.

4 I'll also mention though that I
5 understand your concern about not receiving the
6 response to Ameritech's response to the motion
7 to compel. What I will propose we do is this,
8 it's already noon. We can take a lunch break
9 for an hour. We can allow you an opportunity
10 during that period of time to examine what
11 Ameritech's response to the motion to compel
12 is.

13 We will then proceed with matters
14 and if the -- at the end of the proceedings
15 today you will be given an opportunity to file a
16 motion within two to three weeks and I will set
17 a date on that later in the proceeding today
18 and, if necessary, you would have further
19 opportunity to question witnesses or to present
20 your case based upon what you would have seen in
21 the response to the motion to compel.

22 So we'll allow you to examine what
23 was in that response during a break that will
24 begin in just a few minutes.

1 MR. WELLMAN: Well, then I am going
2 to request an adjournment for 30 days because,
3 first of all, that is not nearly enough time to
4 examine their response and, second of all, I
5 need to do that to research which jurisdiction
6 that I can appeal this decision of yours as far
7 as the interlocutory appeal is concerned.

8 I feel that that is respectfully
9 deserved by Ruth and I as pro se, and I also
10 feel that 30 days is not going to be a problem
11 to Ameritech but will be a problem if I need to
12 do this this quickly. I feel that I need to
13 know what my options are. And I feel also that
14 I need to know what papers I need to file in
15 response to this interlocutory appeal and to do
16 my own research so that I can state for certain
17 that this is not calling into account any
18 misinformation -- I am not taking any
19 misinformation that you have given me, sir, but
20 what I am stating is that I may request an
21 adjournment so I have a right to, one, look over
22 these documents whatever they present with not
23 just in a short time of an hour or two.

24 Secondly, I am also requesting

1 adjournment so I can research the interlocutory
2 appeal further to see what options Ruth and I
3 have how to file this, how I go back to present
4 any motions or papers. So I need also to
5 determine what jurisdiction this interlocutory
6 appeal is -- whether it goes to a Federal
7 District Court, whether it goes to a state
8 court, what control these courts have over the
9 PUC, how they have jurisdiction over the PUC so
10 that's what I am requesting.

11 HEARING EXAMINER LYNN: Mr. Wellman,
12 in my anticipation of some of that I discussed
13 that with my superiors, given all parties are
14 present today, I still think it's best to
15 proceed, to allow you an opportunity prior to
16 proceeding with testimony and witnesses that you
17 have some opportunity to examine what was in
18 Ameritech's response to the motion to compel.

19 MR. WELLMAN: Do we have that, sir?
20 Do we have that?

21 HEARING EXAMINER LYNN: We will
22 provide you with a copy.

23 MR. WELLMAN: Sir, that's not enough
24 time for us. That is not -- and let me just

1 very respectfully request that that is not
2 sufficient time for Ruth and I to look over the
3 response. We do not have that document in our
4 possession and if there was an attorney present,
5 I am sure the attorney if we had one would also
6 request sufficient time to do research and to
7 read that document.

8 On that point I feel that
9 adjournment for that case and for the other is
10 not unrealistic and it brings no burden with the
11 exception of the fact that to PUC and if PUC is
12 in the process of seeking and determining
13 justice from all the best types -- let me
14 rephrase that. If the PUC is searching for
15 total justice for the facts, I feel that a
16 request for adjournment is -- is certainly in
17 order and is not without its merits and so that
18 case I would again request that you and the PUC
19 allow me to do so.

20 MR. HUNT: Your Honor, may we --

21 HEARING EXAMINER LYNN: Mr. Hunt.

22 MR. HUNT: May we meet with you off
23 the record?

24 HEARING EXAMINER LYNN: Okay. Off

1 the record just for a few minutes, please.

2 (Discussion off the record.)

3 HEARING EXAMINER LYNN: It's been
4 determined that this hearing will be postponed
5 to a tentative date of August 14, 2002 at 10
6 a.m., and the parties for Ameritech as well as
7 the Wellmans will confirm with me that date is
8 suitable for everyone. Also it's been requested
9 by Ameritech that the Wellmans file a letter
10 indicating an address at which they wish to be
11 contacted by mail in the future given that they
12 have several residences.

13 And I believe that closes things for
14 today. We will resume again August 14 at 10
15 a.m. or a date no earlier than the week of
16 August 12. Thank you.

17 (Thereupon, the hearing was
18 concluded at 12:37 p.m.)

19 - - -

20

21

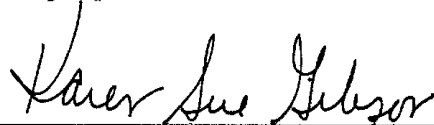
22

23

24

CERTIFICATE

I do hereby certify that the foregoing
is a true and correct transcript of the
proceedings taken by me in this matter before
the Public Utilities Commission of Ohio on
Wednesday, June 26, 2002, and carefully compared
with my original stenographic notes.



Karen Sue Gibson, Registered
Professional Reporter.

- - - - -