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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Ruth L. Wellman,	:	
Complainant,	:	Case No. 00-582-TP-CSS
vs.	:	
AT&T Communications of Ohio, Inc.,	:	
Respondent.	:	

MOTION OF AT&T COMMUNICATIONS OF OHIO, INC. TO DISMISS THE COMPLAINT

Now comes Respondent, AT&T Communications of Ohio, Inc. ("AT&T"), and moves this Commission to dismiss the Complaint of Mrs. Wellman on the following grounds: (i) Mrs. Wellman's Complaint is barred by long-standing principles of res judicata; and (ii) Mrs. Wellman is now attempting to improperly appeal this Commission's prior decisions in *In the Matter of the Complaint of Ruth L. Wellman*, Case Nos. 98-516-TP-CSS and 99-770-TP-CSS. A Memorandum in Support of this Motion is attached.

Respectfully submitted,

Gregory D. Russell (0059718)
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
P. O. Box 1008
Columbus, Ohio 43216-1008
(614) 464-5468

Counsel for Respondent,
AT&T Communications of Ohio, Inc.

MEMORANDUM IN SUPPORT

I. PRELIMINARY STATEMENT

Wellman I – Case No. 98-516-TP-CSS

On March 27, 1998, Ruth L. Wellman filed a complaint with this Commission against AT&T Communications of Ohio, Inc. ("AT&T") alleging, in part, that AT&T had failed to provide her with adequate and accessible rate information. See *In the Matter of the Complaint of Ruth L. Wellman*, Case No. 98-516-TP-CSS (February 17, 1999 Opinion and Order at 1) ("Order").[1] An evidentiary hearing was held on December 4, 1998, at which time both parties presented testimony and documentary evidence to support their positions.[2]

On February 17, 1999, this Commission dismissed Mrs. Wellman's complaint against AT&T. See *id.* Among other things, the Commission held that AT&T had provided to Mrs. Wellman adequate and accessible rate information that allowed her to periodically review and revise her AT&T calling plan.[3]

On March 19, 1999, Mrs. Wellman requested a rehearing of the Commission's Order.[4] Mrs. Wellman assigned as error, in part, the Commission's decision to admit the direct testimony of Lila McClelland on behalf of AT&T. The Commission overruled that assignment of error, observing that Mrs. Wellman had been afforded an ample opportunity to cross examine that witness and was even aided by the Attorney

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[1] Attached hereto as Exhibit 1.
[2] *Id.*
[3] *Id.* at 5-6.
[4] See *In the Matter of the Complaint of Ruth L. Wellman*, Case No. 98-516-TP-CSS (Letter from R. Wellman to Commission dated March 18, 1999) (attached hereto as Exhibit 2).

Examiner, who – in addition to assisting Mrs. Wellman's examination of that witness – conducted her own, independent examination of Ms. McClelland.[5]

Wellman II – Case No. 99-770-TP-CSS

On June 28, 1999, Mrs. Wellman filed her second complaint with this Commission against AT&T, alleging, in part, that "AT&T should have given [her] 'a limited number of offerings' by sending to [her] the applicable tariff pages."[6] As subsequently found by this Commission, Mrs. Wellman's request was based on the exact same series of events that formed the basis of her earlier action against AT&T and was therefore barred by the doctrine of res judicata.[7]

On January 31, 2000, Mrs. Wellman requested a rehearing of the Commission's order. As error, she assigned – again – the Commission's decision to admit the direct testimony of Lila McClelland on behalf of AT&T in Wellman I. See *Wellman II* App. for Rehearing attached as Exhibit 6. This Commission overruled that error – again – finding "as this request for rehearing is based solely on findings and decisions made in the prior case, no new issues have been raised for consideration and the request for rehearing should be denied." See *Wellman II* Entry on Rehearing attached as Exhibit 7.

Wellman III – This Complaint

On March 29, 2000, Mrs. Wellman filed this Complaint with the Commission against AT&T, alleging – again – that she never had a fair hearing in Wellman I

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[5] *In the Matter of the Complaint of Ruth L. Wellman*, Case No. 98-516-TP-CSS (Entry on Rehearing at ¶6, dated April 8, 1999) (attached hereto as Exhibit 3).
[6] See *In the Matter of the Complaint of Ruth L. Wellman*, Case No. 99-770-TP-CSS (Complaint) (Demand Paragraph) (emphasis in original) (attached as Exhibit 4).
[7] See *In the Matter of the Complaint of Ruth L. Wellman*, Case No. 99-770-TP-CSS (Jan. 20, 2000 Entry) (attached as Exhibit 5).

because of the admission of the direct testimony of Lila McClelland. See, e.g., Complaint at 1-2 ("**Nevertheless, allowing the attorney examiner to ask questions, and giving me 15 minutes before the hearing to read AT&T's document does not make a hearing fair**.") (emphasis in original).

Mrs. Wellman had a full and adequate opportunity to litigate her present claims in her earlier actions against AT&T – and in fact did. Mrs. Wellman's Complaint, therefore, must and should be dismissed.

II. ARGUMENT

A. Mrs. Wellman's Complaint is Barred by the Doctrine of Res Judicata.

Mrs. Wellman's Complaint is barred by long-standing principles of res judicata. It is axiomatic that res judicata operates to bar *all* claims and issues "which were or might have been litigated in the first lawsuit." *National Amusements, Inc. v. Springdale* (1990), 53 Ohio St.3d 60, 62 (quoting *Rogers v. Whitehall* (1986), 25 Ohio St.3d 67, 69). "A valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action." *Grava v. Parkman Twp.* (1995), 73 Ohio St.3d 379, syll. The policy of the doctrine is to assure an end to litigation and prevent a party from being repeatedly vexed for the same cause. *LaBarbera v. Batsch* (1967), 10 Ohio St.2d 106, 113. That doctrine applies here.

In both of her prior actions against AT&T, Mrs. Wellman objected to this Commission's admission of Ms. McClelland's direct testimony.[8] Thus, not only did

[8] See *In the Matter of the Complaint of Ruth L. Wellman*, Case No. 98-516-TP-CSS (Letter from R. Wellman to Commission dated March 18, 1999) (attached hereto as Exhibit 2); *In the Matter of*

Mrs. Wellman have an opportunity to bring her present claim in the prior actions, but the very issues now raised were argued by the parties and ruled upon by the Commission.[9] Mrs. Wellman's Complaint, accordingly, is barred by the doctrine of res judicata.

B. Mrs. Wellman's Complaint Must Be Dismissed as an Improper Appeal of this Commission's Prior Decisions.

Alternatively, Mrs. Wellman's Complaint must be dismissed as an improper appeal of this Commission's prior decisions in *In the Matter of the Complaint of Ruth L. Wellman*, Case Nos. 98-516-TP-CSS and 99-770-TP-CSS. Mrs. Wellman complains that the Commission was in error (i) when it admitted the direct testimony of Lila McClelland in Wellman I and (ii) found – in Wellman II – that she (Mrs. Wellman) had had a fair hearing in Wellman I.[10] Accordingly, Mrs. Wellman is now asking this Commission to reverse its earlier findings and hold that Wellman I did not constitute a fair hearing – i.e., it is an appeal of both Wellman I and II. Yet, if this is an appeal (as it appears to be), it is being made in the wrong forum.

Under Ohio law, the Ohio Supreme Court has exclusive jurisdiction over appeals from final Commission determinations. See R.C. 4903.12. By filing what is in all respects an appeal of this Commission's prior Entries on Rehearing, Mrs. Wellman has attempted to circumvent the mandatory and exclusive appeal process established by statute. Because this Commission, by statute, has no jurisdiction to hear that

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the Complaint of Ruth L. Wellman, Case No. 99-770-TP-CSS (App. for Rehearing dated January 31, 2000) (attached hereto as Exhibit 6)

[9] See Exhibits 3 and 7 hereto.

[10] Complaint at 1-2.

appeal, Mrs. Wellman's Complaint must be dismissed. Cf., e.g., *State ex rel. Ohio Edison Co. v. Parrott* (1995), 73 Ohio St.3d 705.

III. CONCLUSION

For the reasons stated above, AT&T respectfully requests that Mrs. Wellman's Complaint be dismissed.

Respectfully submitted,

Gregory D. Russell (0059718)
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
P. O. Box 1008
Columbus, Ohio 43216-1008
(614) 464-5468

Counsel for Respondent,
AT&T Communications of Ohio, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion of AT&T Communications of Ohio, Inc., to Dismiss the Complaint was served upon the following party by regular U.S. mail, postage prepaid, this 1st day of May, 2000.

Ruth L. Wellman
7744 Cricket Circle
Massillon, Ohio 44646

2-17-99

EXHIBIT 1

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Ruth L. Wellman,	)	
Complainant,	)	
v.	)	Case No. 98-516-TP-CSS
AT&T Communications of Ohio, Inc.,	)	
Respondent.	)	

OPINION AND ORDER

The Commission, considering the complaint filed March 27, 1998, the public hearing held on December 4, 1998, and having determined that this matter should proceed to Opinion and Order, issues it Opinion and Order

APPEARANCES:

Ruth L. Wellman, 7744 Cricket Circle N. S., Massillon, Ohio 44646-2432, on behalf of herself as the complainant.

Gregory D. Russell, Vorys, Sater, Seymour and Pease, LLP, 52 East Gay Street, Columbus, Ohio 43216-1008, on behalf of AT&T Communications of Ohio, Inc.

HISTORY OF THE PROCEEDINGS:

On March 27, 1998, Ruth L. Wellman (complainant) filed a complaint against AT&T Communications of Ohio, Inc. (AT&T, respondent) alleging, among other things, that AT&T has overcharged her for telecommunication services and refused to provide her with adequate and accessible rate information so that she can evaluate and select the best calling plan for her needs and verify adjustments made by AT&T. Further, the complainant alleges that AT&T improperly placed a restriction on her long distance service to prevent her from selecting a new long distance carrier and disconnected her long distance service without notice.

AT&T filed its answer to the complaint on April 20, 1998. AT&T admitted that Ms. Wellman requested information on AT&T's rates and calling plans in writing and that she has the right to make her own choices regarding telephone service. AT&T also admitted that AT&T's rate information is in the public domain and claimed the tariff was available at public libraries throughout out the country. The respondent denied that AT&T instructed Ms. Wellman to look at their tariff to determine the applicable rates. The respondent also admitted that it did not provide to Ms. Wellman the cost of each and every calling plan available to AT&T customers but gave her the toll-free telephone number to access information regarding calling plans and services. AT&T contends that there is not a duty imposed upon AT&T, or any other telephone company, to provide a customer with the calling plans available to all its customers. AT&T contends that the complainant's claim

that information was denied or withheld is untrue given that the rate information is in the public domain by law and that Ms. Wellman was provided with the toll-free telephone number to obtain information about AT&T's calling plans. AT&T states that the complainant was given an adjustment to reflect a retroactive change to the best possible calling plan available. Otherwise, AT&T denies each and every allegation of the complaint or states that it is without sufficient knowledge or information to form a belief as to the truth or falsity of the matter asserted.

AT&T also asserted that Ms. Wellman's complaint failed to state reasonable grounds for a claim against AT&T, as the relief she requested, termination of the relationship with AT&T, has been satisfied. The Attorney Examiner apprised Ms. Wellman of the Commission's policy to conduct a settlement conference in these types of cases. Ms. Wellman, however, believed that a conference would be futile and elected to proceed directly to hearing. By entry issued October 19, 1998, the Attorney Examiner determined that the complaint stated reasonable grounds to sustain a complaint pursuant to Section 4905.25, Revised Code. The October 19, 1998 entry also scheduled this matter for a hearing on December 4, 1998. On November 5, 1998, AT&T filed a motion for a conference to clarify the issues. The Attorney Examiner again spoke with Ms. Wellman about AT&T's request for a conference. The complainant objected to AT&T's request for a conference. Accordingly, the hearing was held, as scheduled, on December 4, 1998.

At the hearing the parties elected to forgo the filing of briefs and reply briefs. However, on January 12, 1999, the complainant filed a statement reiterating and clarifying issues raised at the hearing. On January 19, 1999, respondent filed a reply in regards to the factual assertions and evidentiary corrections made by Ms. Wellman in her correspondence since the statements are unsworn and not subject to cross-examination.

SUMMARY OF THE TESTIMONY:

Ms. Wellman testified that she began to question her long distance telephone bills in 1994. The complainant contends that she contacted AT&T customer service and requested several rate analysis. Subsequently, she requested AT&T provide their rate plans in writing so that she could review all the associated costs and restrictions of each calling plan offered and determine the best service for her calling needs. Ms. Wellman alleges that AT&T refused to provide the plans in writing (Tr. 10-11). The witness claims that she discovered there were plans that AT&T never informed her were available. She alleges AT&T offered or offers two plans specifically that she would have benefited from—a plan for internet service and the Universal Calling/Credit Card (Universal Card). Ms. Wellman believes that the Universal Card is for college students, irrespective of the student's age (Tr. 12-14). It is the witness's understanding that the Universal Card has been available since approximately May 1998 and includes a calling card feature. Ms. Wellman stated that the Universal Card allows the subscriber to make calls for .20 cents/minute. The witness claims she obtained this information during the discovery process in these proceedings. Ms. Wellman believes that the internet plan was initially offered in approximately June of 1997.

Ms. Wellman would like for the available calling plans offered by AT&T to be mailed, or otherwise provided, to a requesting customer or applicant for service in plain easy to read language or possibly even a chart. The complainant contends the

information provided to the customer or applicant should list the associated monthly charges, nonrecurring charges, if any, and the limitations and/or restrictions of each plan offered. Ms. Wellman admits that one of the customer service representatives at AT&T explained the restrictions and limitations of the .10 cents/minute rate plan (Tr. 16-18). By letter dated January 22, 1998, Ms. Wellman wrote Jeremiah Knight of AT&T. The letter made many allegations and complaints about AT&T and local exchange service charges and service problems. Ms. Wellman's letter states that "You [AT&T] then made some refund ... We were promised a list of the rates by month, so we could see if AT&T was telling us the truth concerning the refund. We never received these." (Tr. 50-51). By letter dated January 27, 1998, William W. Carpenter, Customer Care Unit Manager for AT&T responded to Ms. Wellman's letter dated January 22, 1998. Mr. Carpenter stated, among other things, that "AT&T rate information is available in public libraries throughout the country under F.C.C. [Federal Communication Commission] tariff number 27 section 24. This is public information and AT&T has no reason to keep this information from the customer." Ms. Wellman contends, and AT&T does not refute, that AT&T's rate information is not available in the public library (Tr. 52). The complainant further states that since AT&T would not provide her with the calling plans or the detail as to how the refunds were determined, she did not pay the long distance portion of her telephone bill. As a result of her refusal to pay the long distance bill, Ms. Wellman claims her long distance telephone service was disconnected in December 1997 without notice (Tr. 54-55, 61). The complainant does not dispute the charges, other than as otherwise specifically noted herein, but the fact that AT&T would not provide written detailed calling information (Tr. 56).

As part of Complainant Ex. 1, Ms. Wellman recalculated her telephone bills for the period January 1996 to February 1998 for the Internet rate (.09 cents/minute) and the Universal Card rate (.20 cents/minute) based on her understanding of the rate plans. Ms. Wellman's calculations do not include adjustments for February 1996, as she could not locate the bill (Tr. 60-65). Ms. Wellman also reduced her telephone bill for long distance directory assistance charges. She contends that if she had to call directory assistance twice in the same day, she eliminated the charge for one of the directory assistance calls. She also reduced the charge if she was on the line with the directory assistance operator for more than one minute. The complainant also claims that she did not know there was a charge for directory assistance (Tr. 60-65). On cross-examination, the complainant admitted that in her calculations she also used a .10 cents/minute plan and .30 cent/minute for calls charged to the calling card. Ms. Wellman testified that she used these rates because to the best of her knowledge the Universal Card and the Internet rate were not available. As best she could recall the .10 cents/minute and .30 cent/minute rates were the best rates available. She further stated that she did not know when any of the plans she used to recalculate her bill actually commenced (Tr. 71-72).

In regards to the complainant's other allegation that she has been overcharged, Ms. Wellman admits that she was in arrears on her long distance telephone bill and agreed to pay $200 every two weeks.[1] She states that she made a payment but failed to record

[1] Ameritech is the local exchange company serving Ms. Wellman. Ms. Wellman receives one bill for both local and long distance services and makes her payments to Ameritech. Ameritech has a billing and collections agreement with AT&T.

the date the payment was made. To determine the date payment was made Ms. Wellman decided to wait until she received the cancelled check or bank statement to see when the payment had been made before sending in the next payment. Ms. Wellman subsequently determined that payment was made on June 19, 1997. Ms. Wellman's telephone service, both local and long distances, were disconnected on or about July 22, 1997. She contends that she then made the next payment of $200 but Ameritech refused to reconnect her service. Ameritech requested $400 to restore service (Tr. 19-21, 28). According to AT&T, Ms. Wellman's service was reconnected on July 28, 1997 (AT&T Ex. 1 at 13)

On or about August 11, 1997, Ms. Wellman registered an informal complaint with the Commission's Public Interest Center. The complainant admits that on her telephone bill due November 1997 she received refunds from AT&T totaling $1,272.63 for the period July 1996 - September 1997 (See Complainant Ex. 3; Tr. 44-45). Ms. Wellman accepted the credit and is now raising an issue as to the amount of the credit received (Tr. 30).

The complainant also disputes charges on her bill to verify that telephone service is working, to interrupt a telephone call in progress and for long distance directory assistance. The witness states that she was never informed that there is a charge for line verification or to interrupt a conversation in progress. She admits that other family members requested that the line be verified and/or interrupted, and therefore, she would not have direct knowledge of whether they were informed that there was a charge for such services (Tr. 38-39). Ms. Wellman acknowledged that her telephone bill shows numerous charges from AT&T to verify the telephone service is working and to interrupt a telephone conversation in progress since January 1996 (Tr. 74-76).

AT&T presented the testimony of Lila McClelland, Manager in the Regulatory Department, State Government Affairs. Ms. McClelland sponsored AT&T Ex. 1, her prefiled testimony. In her prefiled testimony, the witness observed that Ms. Wellman contacted an AT&T customer representative to review her calling patterns in the fall of 1997. Based on the previous three months calling pattern, AT&T placed Ms. Wellman, at her request, on a calling plan that better reflected her calling needs (AT&T Ex. 1, 9). In addition, the witness states that AT&T, "in the interest of good faith and customer satisfaction" rerated Ms. Wellman's account and processed over $1,000 in adjustments to the account. Ms. Wellman's telephone bill was recalculated and credited as if she had been on AT&T's One Rate plan (AT&T Ex. 1, at 7, 10; Tr. 123). The witness notes that AT&T is not under any obligation to independently and continuously review a customer's long distance calling pattern and place the customer on the best calling plan (AT&T Ex. 1, at 6, 8). Ms. McClelland states that, according to AT&T records, Ms. Wellman was also sent information about AT&T's then current long distance plans offered nationally to AT&T customers, provided with the toll-free number to contact a customer representative about long distance rate plans, and was informed that if she wanted to know all the AT&T plans ever tariffed that such information is publicly available (AT&T Ex. 1, at 10-11; Tr. 100).

Regarding the remaining allegations of the complaint, Ms. McClelland contends that they are misdirected. In regards to the two instances where service was disconnected, the witness notes that only the local exchange carrier, in this case Ameritech, can institute the process by which a customer's long distance carrier can not be changed without written verification (referred to as a "primary interexchange carrier freeze or PIC freeze") and place toll limitations on the customer's long distance service (AT&T Ex. 1, at 6-7).

Similarly, AT&T's witness McClelland explains that Ameritech would have initiated the PIC freeze on Ms. Wellman's account at the customer's request. AT&T has a contract with Ameritech by which Ameritech is the billing agent for AT&T. Ameritech purchases and owns the collectibles of certain AT&T customers and, therefore, institutes disconnection actions against a customer for failure to pay for services (AT&T Ex. 1, at 12-13; Tr. 122). Ms. McClelland contends that Ameritech, not AT&T, would have initiated the service disconnections in July 1997 and December 1997 and the toll block/restriction on the Wellman account (AT&T Ex. 1, at 12). Furthermore, AT&T records indicate that Ms. Wellman presubscribed to a new long distance service provider on December 29, 1997 (AT&T Ex. 1, at 15; Tr. 126).

Ms. McClelland responded to Ms. Wellman's allegation about directory assistance. According to Ms. McClelland, AT&T records indicate that in November 1997, the complainant inquired about such charges and received a $27.00 credit (AT&T Ex. 1, at 15).

On cross-examination, Ms. McClelland explained that when she said tariff information was "publicly available" she meant that the terms and condition of AT&T's services and special promotions are on file with the FCC and/or state commissions and available at public libraries. Ms. McClelland believed that the FCC supplied the public libraries with the tariff (Tr. 89, 96, 124). Ms. McClelland admitted that AT&T service representatives only have access to the current calling plans being offered, not the plans previously available (Tr. 97). The witness states that it is not AT&T's policy to send tariffs to customers because of the size of the tariff, the fact that the tariff is not easy to understand, and because it is publicly available. However, AT&T has developed brochures and other easy to understand materials for marketing purposes (Tr. 100). The witness was not familiar with any internet rate or Universal Card, as referred to by the complainant, offered by AT&T (Tr. 108, 134-135). Finally, Ms. McClelland stated that she is not certain that when a customer requests that AT&T verify that a line is in use or that a conversation in progress be interrupted, that the customer is informed that there is a charge associated with such services (Tr. 134).

DISCUSSION:

The complainant cites Section 4905.22, Revised Code, and the Consumer Sales Practices Act as support for her request that AT&T be required to provide a requesting customer or applicant with the written details of the calling plans available. The Commission notes that public utilities are specifically exempt from compliance with the Consumer Sales Practice Act. However, Section 4905.22, Revised Code, which is applicable to public utilities, states in part:

> Every public utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable....

The record indicates that although Ms. Wellman was not provided with written documentation, to her satisfaction, of the applicable calling plans available, she was provided with adequate information to periodically review and revise her AT&T calling

plan. AT&T sent Ms. Wellman marketing brochures of some of the applicable calling plans and provided her with the toll-free telephone number to AT&T customer service representatives. While the marketing brochures may not provide all the details of any particular calling plan, the brochures provide the customer/applicant with enough information to follow-up with the AT&T customer representative. Long distance telephone service is now a competitive service, thus the calling plans and rates change frequently. Given the highly competitive nature of the long distance market, as well as the multitude of calling plans offered by any interexchange carrier, including AT&T, the Commission believes a requirement to provide detailed calling plan information in writing would be unnecessarily burdensome. Rather, the summary information provided by AT&T in conjunction with a toll-free telephone number to further inquire regarding the terms and condition of a particular calling plan are sufficient to satisfy the Commission that AT&T has provided reasonably adequate service to the complainant. The Commission would expect, however, that upon a request from a customer/applicant as to a limited number of offerings, that AT&T would send the applicable tariff pages to a customer/applicant. Thus, the Commission will not require that AT&T provide a customer or applicant with the then current calling plans in writing, including all the terms, conditions, and restrictions, if any.

Furthermore, AT&T is under no obligation to unilaterally initiate a review of a customer's service. AT&T's practice, however, is that, upon a customer's request, the company will review a customer's past three months of calling history and advise the customer of the best available calling plan at that time. Ms. Wellman admits that her account was reviewed in this manner by AT&T. Furthermore, the evidence shows, as the complainant admits, that she received an adjustment on her long distance bill for the period July 1996 – September 1997 in the amount of $1,272.63. Thus, the Commission finds AT&T's procedure for providing customers/applicants with the available calling plans and rate information to be reasonable in this case.

Nor does the Commission find that Ms. Wellman is entitled to any further credit to her account. As the complainant correctly notes, AT&T offered a plan called the AT&T One Rate Online plan as of August 1998. AT&T's One Rate Online plan quotes a rate "as low as .09 cents/minute." The pages downloaded from AT&T's website, and provided during discovery, states:

> [t]his special offer gives you AT&T state-to-state long distance calls at just .10 cents a minute and a low $1 monthly fee with the convenience of online billing and customer service. Plus, AT&T One Rate Online is available to AT&T WorldNet Service Standard Price Plan members at just 9 cents a minute...With this online offer, all your direct-dialed, state-to-state long distance calls from home will cost just 10 cents a minute with a low $1 monthly fee... 24 hours a day, 7 days a week...

Further, the One Rate Online plan offers AT&T WorldNet Service users a discount, 9 cents/minute. The One Rate Online plan requires online billing and that your monthly charges will be automatically billed to your credit card. The page also states that "[o]ther conditions and restrictions apply." The record does not indicate whether or not this offer was exclusively for online viewers of AT&T's website or the date the plan commenced.

The record of evidence does not establish that the complainant would have been or is eligible for AT&T's One Rate Online plan. Thus, the complainant has not met her burden of proof as to this aspect of her complaint case.

The Universal Card was a credit card offered by AT&T and MasterCard.[2] Like other credit cards, Ms. Wellman would have been required to apply and have been accepted under the credit terms and conditions offered by AT&T/MasterCard. The record clearly does not establish that she was eligible for, and should have received, the Universal Card and the services associated therewith.

The complainant also raises the issue of charges to verify service and/or interrupt a telephone conversation. Ms. Wellman admits that other family members requested that the service be verified or the line be interrupted. Therefore, Ms. Wellman can not say whether or not the other members of her family were informed that there is a charge associated with such services. However, Complainant's Ex. 3, the bill due July 5, 1996, shows charges by AT&T to verify that the Wellman telephone was operating properly and in use.[3] Complainant Ex. 3 lists numerous charges for verifying and/or interrupting Ms. Wellman's telephone service since July 1996. The Commission notes that the only evidence of any wrongdoing by AT&T regarding this claim is the testimony of the complainant. However, Ms. Wellman admits that other members of her family requested this service and, thus, she does not know whether or not AT&T advised her family members that a charge would be assessed for performing the customer-requested verification and interruption. Without some additional evidence substantiating the complainant's claim on this matter, we can not find that AT&T has engaged in providing legally inadequate service. It is our expectation, however, that any time a caller requests to verify service and/or to interrupt an ongoing conversation that the caller is informed that the request will result in a charge for such services.

In regards to directory assistance charges to the Wellman account the Commission likewise finds these claims to be without merit. Complainant Ex. 3 (bill due November 3, 1997) shows, as AT&T records indicate, that Ms. Wellman received a $27.00 credit. Although the bill does not indicate the reason for this credit, it is in addition to and separate from the other credits for the period July 1996 through September 1997 recalculated for the One Rate plan. Ms. Wellman, or any other member of her household, should request that when the caller is not provided with the information requested from directory assistance, that the directory assistance operator not charge for the call.

Ms. Wellman's claims that her service was disconnected without notice and that a toll restriction was improperly placed on her long distance service are misdirected at AT&T. As with the other allegations set forth above, little or no record evidence exists to make a determination that AT&T, or any other entity, unjustly disconnected the complainant's telephone service or unreasonably placed a toll block on Ms. Wellman's account. Nor is there evidence to suggest that Ameritech, as Ms. Wellman's local

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2 The information provided to Ms. Wellman indicates that the card was sold to Citibank Corporation.

3 There are numerous charges shown on Complainant Ex. 3 on the Wellman telephone bills since January 1996 from Ameritech Ohio to verify that the Wellman telephone is operating properly and to interrupt a telephone conversation in progress. However, those charges are not at issue in this case.

accepted under the credit terms and conditions offered by AT&T/MasterCard. The record clearly does not establish that she was eligible for, and should have received, the Universal Card and the services associated therewith.

The complainant also raises the issue of charges to verify service and/or interrupt a telephone conversation. Ms. Wellman admits that other family members requested that the service be verified or the line be interrupted. Therefore, Ms. Wellman can not say whether or not the other members of her family were informed that there is a charge associated with such services. However, Complainant's Ex. 3, the bill due July 5, 1996, shows charges by AT&T to verify that the Wellman telephone was operating properly and in use.[3] Complainant Ex. 3 lists numerous charges for verifying and/or interrupting Ms. Wellman's telephone service since July 1996. The Commission notes that the only evidence of any wrongdoing by AT&T regarding this claim is the testimony of the complainant. However, Ms. Wellman admits that other members of her family requested this service and, thus, she does not know whether or not AT&T advised her family members that a charge would be assessed for performing the customer-requested verification and interruption. Without some additional evidence substantiating the complainant's claim on this matter, we can not find that AT&T has engaged in providing legally inadequate service. It is our expectation, however, that any time a caller requests to verify service and/or to interrupt an ongoing conversation that the caller is informed that the request will result in a charge for such services.

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Ms. Wellman's claims that her service was disconnected without notice and that a toll restriction was improperly placed on her long distance service are misdirected at AT&T. As with the other allegations set forth above, little or no record evidence exists to make a determination that AT&T, or any other entity, unjustly disconnected the complainant's telephone service or unreasonably placed a toll block on Ms. Wellman's account. Nor is there evidence to suggest that Ameritech, as Ms. Wellman's local exchange service provider, engaged in any unlawful activity. In fact, Ms. Wellman did not allege any complaints against Ameritech in her filings in this case. However, the

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3 There are numerous charges shown on Complainant Ex. 3 on the Wellman telephone bills since January 1996 from Ameritech Ohio to verify that the Wellman telephone is operating properly and to interrupt a telephone conversation in progress. However, those charges are not at issue in this case.

record in this matter does establish that in July 1997, Ms. Wellman entered into payment arrangements with Ameritech, not AT&T, to address her overdue account. Likewise, Ms. Wellman does not dispute that during the time frame covered by this complaint that Ameritech, and not AT&T, was billing her for her local and long distance service. It is reasonable to presume, therefore, that Ms. Wellman had some notice that the entity to whom she should address her disconnection and toll restriction allegations were Ameritech and not AT&T.

However, the Commission reminds all local exchange and interexchange carriers that, pursuant to Rule 4901:1-5-19(K), Ohio Administrative Code, customers must be notified in writing at least seven days prior to the disconnection of service. Accordingly, the complainant has not met her burden of proof that AT&T overcharged her for telecommunication services or that AT&T acted unreasonably to her request for information on their available calling plans. Accordingly, this case should be closed of record and dismissed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) On March 27, 1998, Ruth L. Wellman filed a complaint against AT&T Communications of Ohio, Inc. alledging, among other things, that AT&T has overcharged her for telecommunication services and refused to provide her with adequate and accessible rate information. Further, the complainant alleges that AT&T improperly placed toll restrictions on her long distance service to prevent her from selecting a new long distance carrier and disconnected her long distance service without notice.

(2) AT&T timely filed its answer to the complaint on April 20, 1998.

(3) The complainant refused to participate in a settlement conference. A public hearing was held in this matter on December 4, 1998, at the offices of the Commission.

(6) AT&T is a telephone company as defined by Section 4905.03(A)(2), Revised Code, and a public utility by reason of Section 4905.02, Revised Code. Thus, AT&T is subject to the jurisdiction of this Commission under the authority of Sections 4905.04 and 4905.05, Revised Code.

(7) This complaint is properly before this Commission, pursuant to the provisions of Section 4905.26, Revised Code.

(8) In a complaint case, such as this one, the burden of proof is on the complainant. *Grossman v. Public Utilities Commission*, 5 Ohio St. 2d 189, 214 N.E. 2d 666 (1966).

(9) The complainant has failed to sustain her burden of proof in any of the allegations of the complaint.

It is, therefore,

ORDERED, That the complaint is dismissed and closed of record. It is, further,

ORDERED, That a copy of this Opinion and Order be served upon the complainant, Ms. Wellman, AT&T and its counsel, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Craig A. Glazer, Chairman

Jolynn Barry Butler

Ronda Hartman Fergus

Judith A. Jones

Donald L. Mason

GNS/jkg

Entered in the Journal
FEB 17 1999
A True Copy
Gary E. Vigorito
Secretary

Ruth L. Wellman
7744 Cricket Circle N.W.
Massillon, OH 44646-2432
(330) 837-4764

March 18, 1999

Re: In the Matter of the Complaint of Ruth L. Wellman, Complainant v. AT&T Communications of Ohio, Respondent, Docket No. 98-0516-TP-CSS

Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43266-0573

Dear Commission:

The purpose of this letter is to request a rehearing. The Commission found that it is AT&T's duty to provide material on request in a limited basis. On page 6 of Opinion and Order, the Commission states that, "The Commission would expect, however, that upon a request from a customer/applicant as to a limited number of offerings, that AT&T would send the applicable tariff pages to a customer or applicant with the then current calling plans in writing, including all the terms, conditions, and restrictions, if any."

AT&T failed to do this, therefore the finding is incorrect.

Also, it is improper for the testimony of Lila McClelland, Manager in the Regulatory Department, State Government Affairs, to be included. Please refer to the last statement on page one of AT&T's letter dated January 19, 1999 to the P.U.C.O. AT&T's attorney stated, "As this Commission is fully aware, it is common practice for counsel intending to introduce exhibits into the record to present the other parties with copies at the hearing for their review and use during the examination as occurred here."

AT&T's attorney points out the Rule 4901-29(A)(1)(j).

This common practice would violate this rule since its affect would be to put us at such a serious disadvantage and in fact did. I testified to this disadvantage at the hearing. AT&T is aware that I am not represented by an attorney.

This also is a basis for doing this again.

I am therefore, requesting a rehearing.

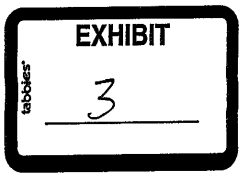
Sincerely,

Ruth Wellman

Ruth L. Wellman

encl.

c. Gregory D. Russell, Attorney for AT&T Communications of Ohio, Inc.



BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Ruth L. Wellman,	)	
Complainant,	)	
v.	)	Case No. 98-516-TP-CSS
AT&T Communications of Ohio, Inc.,	)	
Respondent.	)	

ENTRY ON REHEARING

The Commission finds:

(1) On February 17, 1999, the Commission issued an opinion and order in this matter finding that the complainant, Ms. Ruth Wellman, had not met her burden of proof that AT&T Communications of Ohio, Inc. (AT&T) had overcharged her for telecommunications services or that AT&T acted unreasonably to her request for information on their available calling plans. Accordingly, this matter was dismissed and closed of record.

(2) Section 4903.10, Revised Code, states that any party who has made an appearance in a Commission proceeding may file an application for rehearing within 30 days of the journalization of a Commission decision.

(3) On March 19, 1999, the complainant docketed a letter asserting two assignments of error in the Commission's February 17, 1999 Opinion and Order and requesting a rehearing.

(4) AT&T filed a memorandum contra the complainant's request for rehearing on March 29, 1999.

(5) Complainant's first assignment of error asserts that the Commission found AT&T had a duty to provide a customer/applicant with information, on request, concerning a limited number of offerings. AT&T failed to do this Ms. Wellman claims. AT&T observes that the Commission's statement, on which the complainant relies, is merely dicta. In any event, AT&T maintains that the Commission clearly

referred to a situation where the customer/applicant requests information on only a limited number of offerings.

The Commission finds that this assignment of error should be denied. The statement on which Ms. Wellman relies indicates that the Commission was expecting that "upon a request from a customer/applicant as to a *limited number of offerings*, that AT&T would send the applicable tariff pages to a customer/applicant" (emphasis added). February 17, 1999, Opinion and Order at 6. As the Commission found in the February 17, 1999, Opinion and Order, however, Ms. Wellman's complaint was that she had repeatedly sought information on all of AT&T's then current calling plans which information was never forthcoming from AT&T. Given the highly competitive nature of the long distance market, as well as the multitude of calling plans offered by any interexchange carrier, the Commission found that it was not reasonable to require AT&T to provide detailed calling plan information in writing on each and every calling plan that the company offers. Rather, the Commission found that a more reasonable alternative was for summary information, as AT&T had provided in a brochure, in conjunction with a toll-free telephone number was sufficient for a customer/applicant to seek further information on the terms and conditions of a particular calling plan. The Commission can find nothing in this assignment of error that causes us to rehear our February 17, 1999 decision on this issue.

(6) In her second assignment of error, Ms. Wellman claims that it was improper for the testimony of Lila McClelland, Manager in the Regulatory Department, State Government Affairs for AT&T, to have been accepted as an exhibit as Ms. Wellman did not receive a copy of the direct prefiled testimony in compliance with Rule 4901-29(A)(1)(j), Ohio Administrative Code (O.A.C.). AT&T maintains that the Commission did not err in admitting the testimony of AT&T witness McClelland and that the unsupported allegations of the complainant should not require AT&T to incur the additional expense of defending itself a second time in this matter.

The Commission finds that the complainants' second assignment of error must also be denied. Rule 4901-1-29(A)(1)(j), O.A.C., states, in relevant part, that "... all expert

testimony to be offered in commission proceedings ... shall be reduced to writing, filed with the commission, and served upon all parties ...no later than seven days prior to the commencement of the hearing." Rule 4901-1-05(A), O.A.C., reflects that all pleadings or papers filed with the Commission subsequent to the original filing shall be served on all parties no later than the date of filing with the Commission. Such pleadings must contain a certificate of service indicating that the required service has, in fact, been made. Rule 4901-1-05(C), O.A.C., indicates that service upon a party may be made by mailing a copy to the party's last know address. Furthermore, service by mail is deemed complete upon mailing.

The Commission's record in this matter reflects that the direct testimony of AT&T witness Lila McClelland was served by regular U.S. mail, postage prepaid, on Ms. Ruth Wellman on November 27, 1998, which is the same day the testimony was filed with the Commission. Pursuant to the Commission's procedural rules, set forth above, service of the direct testimony of AT&T's witness Lila McClelland was deemed complete on November 27, 1998. Notwithstanding the above, the Commission also finds that the complainant was afforded ample opportunity to cross-examine AT&T's witness.[1] Recognizing that legal counsel did not represent the complainant, the attorney examiner delayed the start of the hearing to afford the complainant an opportunity to review the testimony of AT&T's witness McClelland. Moreover, as is clear from a review of the record, the attorney examiner actively assisted Ms. Wellman in her cross-examination of the witness as well as conducting the examiner's own examination of AT&T witness McClelland. For the foregoing reasons, the Commission finds that the request for rehearing filed by the complainant, Ms. Ruth Wellman, must be denied.

It is, further,

ORDERED, That the application for rehearing is denied as set forth herein. It is, further,

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1 A review of the transcript reveals that the complainant did not object to the admission of AT&T Exhibit 1, Lila McClelland's direct testimony, although Ms. Wellman did make a statement of opposition as to the admission of certain other AT&T exhibits.

ORDERED, That a copy of this entry on rehearing be served upon the complainant, Ms. Ruth Wellman, AT&T Communications of Ohio, Inc. and its counsel, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Craig A. Glazer, Chairman

Jolynn Barry Butler

Ronda Hartman Fergus

Judith A. Jones

Donald L. Mason

JRJ;geb

Entered in the Journal
APR 0 8 1999
A True Copy
Gary E. Vigorito
Secretary

TC

5

PIC _____

FORMAL COMPLAINT FORM

Ruth L. Wellman

99-770-TP-CSS

AGAINST

AT&T

RECEIVED-DOCKETING DIV
99 JUN 28 AM 9:31
PUCO

MY COMPLAINT IS: Please see attached complaint.

(ADDITIONAL INFORMATION MAY BE ATTACHED)

Ruth Wellman
SIGNATURE

7744 Cricket Circle
STREET ADDRESS

Massillon, Ohio 44646
CITY, STATE, & ZIP

(330) 837-4764
TELEPHONE NUMBER

EXHIBIT
4

MY COMPLAINT IS:

The PUCO stated in its Opinion and Order, dated April 8, 1999 that "upon a request from a customer/applicant as to a *limited number of offerings*, that AT&T would send the applicable tariff pages to a customer/applicant."

However, the PUCO stated that "... the Commission found that it was not reasonable to require AT&T to provide detailed calling plan information in writing on each and every calling plan that the company offers."

I never wanted each and every calling plan that AT&T offers. If AT&T's representative had asked enough detailed questions they would have been able to find out exactly what I wanted. All AT&T asked me was general questions. That means nothing.

How can AT&T find out what a customer needs if they do not ask enough detailed questions? The customer may say what he thinks he needs but may not know his exact needs unless AT&T helps him through the process.

For example, if a customer is starting out a small business, AT&T might ask him how many calls he makes within his own state per day. Are these calls made to other states? To where do his calls (or most of his calls) go? Are the calls made only during business hours? Are they made in the evening? CAN they be made in the

evening? Maybe there are substantial savings to be made if the customer calls in the evening.

But unless AT&T asks these types of questions, the customer might not even know he has an option and can save money on evening calls. Then, AT&T can start to focus in on some limited calling plans (tailored to the customer's business needs and operations) which can save the customer money. At that point, AT&T can provide detailed and limited calling plan information in writing to the prospective customer. This is a reasonable service.

Yet, AT&T never asked me enough detailed questions that focused on my (or my family's) specific and particular needs and calling patterns. No customer wants information on all calling plans. I never did - but I only wanted to know what was available for my particular calling patterns and if I knew what other calling plans were available, I could have even thought about altering my calling patterns to save money.

AT&T could have narrowed down the plans available to my family and me by just asking enough questions to clarify exactly what my needs were. Sometimes the customer does not even know what his or her needs are if AT&T does not "draw out" from the customer what the customer wants or plans to do with his telephone calls.

AT&T asked only general questions. That is not enough to help the customer or to help the customer know how to save money either on residential calls or on business calls. General questions can lead to general answers by the customer and then be taken to mean applying to "each and every calling plan the company offers." Specific questions can lead to specific answers and then be taken to mean "a limited number of offerings."

The PUCO correctly said that AT&T is supposed to send in writing to the customer a "limited number of offerings." The PUCO incorrectly inferred that I wanted information "calling plan information on each and every calling plan the company offers."

If AT&T's customer representatives are supposed to be correctly trained, they are assumed to be trained to ask questions designed to help the customer know exactly what he wants based on what he needs. Again, he may even have to be helped to know what he needs. The customer does not want or need or be expected to "trust" the AT&T customer representative.

What the customer wants at a minimum from the AT&T customer representative are:

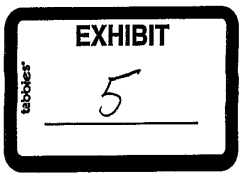
1. Detailed facts presented and questions asked to help him or her know what his business or residential calling needs are.

2. How much money he or she can expect to save by using which limited plan based on his or her own, specific, detailed needs brought out because of these skillful and professional questions and answers by the AT&T customer representative.

I told AT&T over and over again on the phone many times that I wanted plans and facts that were specific and applicable to my own needs. In my letter to AT&T dated March 12, 1998, I told Mr. Jeremiah Knight of AT&T in Item 8:

"we have every right to be concerned and choose the plans that are applicable and available to us."

Therefore, I respectfully request that the Commission state that AT&T should have given me "a limited number of offerings" by sending to us the applicable tariff pages. This is a reasonable service.



BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Ruth L. Wellman,	)	
Complainant,	)	
v.	)	Case No. 99-770-TP-CSS
AT&T Communications of Ohio, Inc.,	)	
Respondent.	)	

ENTRY

The Commission finds:

(1) On June 28, 1999, Ruth L. Wellman filed a complaint against AT&T Communications of Ohio, Inc. (AT&T) in Case No. 99-770-TP-CSS (99-770 case). The complaint alleges that AT&T failed to provide adequate service by not asking the customer enough detailed questions to ascertain which calling plans were appropriate for this customer. According to the complaint, the company should have then provided the complainant with cost information and tariff pages as to a limited number of calling plans.

(2) On July 16, 1999, AT&T filed its answer disputing or denying each of the allegations of the complaint. AT&T offered as further defenses that the complaint should fail due to *res judicata*, collateral estoppel, subject matter jurisdiction, and is an improper appeal of a prior Commission decision. On July 21, 1999, AT&T filed a motion to dismiss on the grounds of *res judicata* and improper appeal. *Res judicata* is a legal doctrine applied in order to bar a litigant from resurrecting a cause of action once it has already been decided by a court or other judicial body of competent jurisdiction.

(3) The complainant filed a reply on August 9, 1999, stating that the complaint raises a new issue and a new cause of action, therefore, *res judicata* and improper appeal do not apply. The complainant does not dispute that the circumstances from which the complaint arose are the same as in Case No. 98-516-TP-CSS, *In the Matter of the Complaint of Ruth*

Wellman v. AT&T (98-516 case). In fact, the complainant refers to the factual context in that case in distinguishing this new claim.

(4) The 98-516 case involved a complaint filed on March 27, 1998, by Ms. Wellman against AT&T alleging, in part, that AT&T had refused to provide her with adequate and accessible rate information so that she could evaluate and select the best calling plan for her needs and verify adjustments made by AT&T. An evidentiary hearing was held on December 4, 1998, at which both parties presented testimony and documentary evidence to support their positions. On February 17, 1999, the Commission dismissed Ms. Wellman's complaint in the 98-516 case. Among other things, the Commission held that AT&T had provided to Ms. Wellman adequate and accessible rate information that allowed her to periodically review and revise her AT&T calling plan.

(5) On March 19, 1999, Ms. Wellman requested a rehearing of the Commission's February 17, 1999 order dismissing her complaint in the 98-516 case. Ms. Wellman assigned as error, in part, the Commission's failure to find that AT&T had violated a duty to provide her with a limited number of applicable tariff materials. The Commission overruled that assignment of error, observing that Ms. Wellman had failed to make the limited request that might otherwise impose such a duty.

(6) In the 99-770 case, Ms. Wellman is complaining that a failure to provide reasonable service occurred because AT&T should have, through training of its customer service representatives and through specific questioning of the complainant, been able to analyze the needs of this customer and provided, on that basis, specific and complete information, including cost documentation, on a narrow range of calling plans targeted to her specific needs. After reciting the Commission's ruling in 98-516, that "it was not reasonable to require AT&T to provide detailed calling plan information in writing on each and every calling plan," Ms. Wellman states, within the 99-770 complaint, that:

> I never wanted each and every calling plan that AT&T offers. If AT&T's representative had asked enough detailed questions they would

have been able to find out exactly what I wanted. All AT&T asked me was general questions. That means nothing.... That is not enough to help the customer or to help the customer know how to save money either on residential calls or on business calls. General questions can lead to general answers by the customer and then be taken to mean applying to each and every calling plan the company offers. Specific questions can lead to specific answers and then be taken to mean a limited number of offering.

The PUCO incorrectly inferred that I wanted ... calling plan information on each and every calling plan the company offers.

...AT&T customer representatives are supposed ... to be trained to ask questions designed to help the customer know exactly what he wants based on what he needs. Again, he may even have to be helped to know what he needs. The customer does not want or need or be expected to trust the AT&T customer representative.

What the customer wants at a minimum from the AT&T customer representative are: (1) detailed facts presented and questions asked to help him or her know what his business or residential calling needs are; and (2) how much money he or she can expect to save by using which limited plan based on his or her own, specific, detailed needs brought out because of these skillful and professional questions and answers by the AT&T customer representative.

I told AT&T ...on the phone many times that I wanted plans and facts that were specific and applicable to my own needs. In my letter to AT&T dated March 12, 1998, I told Mr. Jeremiah Knight of AT&T ..."we have every right to be concerned and choose the plans that are applicable and available to us." Therefore, I respectfully request that the Commission state that AT&T should have given me "a limited

number of offerings" by sending to us the applicable tariff pages. This is a reasonable service. (Emphasis in each instance in the original.)

(7) As noted above, *res judicata* serves as a bar to a subsequent lawsuit where the prior case involved the same claim or cause of action, and the same parties. *Grava v. Parkman Twp.* (1995), 73 Ohio St. 3d 379. A cause of action may be considered the same where the facts creating the claim, the evidence supporting the claim and the timing of the accrual of the claim are the same in both cases. *Norwood v. McDonald* (1943) 142 Ohio St. 299. In this matter, the parties are the same in both proceedings, the accrual of the claims emanated from the same events and the evidence supporting the claims is exactly the same. Both cases, as clearly stated by Ms. Wellman, are based on communications between the complainant and AT&T and the relative obligations of the parties in regard to the selection of a calling plan. In the 98-518 case, the Commission found "AT&T's procedure for providing customers/applicants with the available calling plans and rate information to be reasonable...." In the instant case, the complainant's cause of action is again the adequacy of AT&T's procedure for providing calling plan and rate information. The complainant argues in her reply to the motion to dismiss that this case involves a new cause of action because the first case involved questions asked by the complainant while the second case involves new issues as to questions that should have been asked by AT&T. Although the shifting of the claim as to who has the obligation to ask the questions may be an interesting spin of the cause of action, *res judicata* bars all claims which were or should have been litigated in the first lawsuit. *National Amusements, Inc. v. Springdale* (1990), 53 Ohio St. 3d 60, 62. There was an opportunity in the first case to offer this alternative theory which, in any event, is based on the exact same series of facts. Since the complainant's case is essentially a restatement of her prior case before this Commission, the finality to which the earlier decision is entitled under the doctrine of *res judicata* requires us to decide, now, that this case not be relitigated. Therefore, AT&T's motion to dismiss the complaint on the grounds of *res judicata* should be granted.

(8) It should be noted that, throughout her various pleadings, the complainant has argued repeatedly that she is entitled to a hearing in this case pursuant to the Residential Consumers' Bill of Rights, set forth in Appendix B to Rule 4901:1-5-25, Ohio Administrative Code. In deciding whether to summarily dismiss this case now, at this preliminary stage, the Commission has been careful to consider whether the complainant has been provided with the fair opportunity, to which she is entitled, to fully present her case to the Commission. In this instance, the Commission finds that the complainant did avail herself fully of the Commission's adjudicative process, through the hearing and rehearing which occurred in the prior case. We conclude that she has been given a fair and adequate opportunity, through pleadings and testimony, to fully present her complaint to the Commission for its consideration.

It is, therefore,

ORDERED, That this case be dismissed. It is, further,

ORDERED, That a copy of this entry be served on all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Ronda Hartman Fergus

Craig A. Glazer

Judith A. Jones

Donald L. Mason

SDL;geb

Entered in the Journal
JAN 20 2000
A True Copy
Gary E. Agorito
Secretary

file

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Ruth L. Wellman, PRO SE	:	
Complainant	:	Case No. 99-770-TP-CSS
vs.	:	
AT&T Communications of Ohio, Inc.	:	
Respondent.	:	

APPLICATION FOR REHEARING

The PUCO Decision, dated January 20, 2000, was wrong for the following reasons and therefore I am requesting a rehearing for the following reasons as indicated below:

Reason No.1.

Page 5, No. 8 of the PUCO Decision referred to above states:

> *"In deciding whether to summarily dismiss this case now, at this preliminary stage, the Commission has been careful to consider whether the complainant has been provided with the* ***fair opportunity, to which she is entitled to fully present her case***

to the Commission. In this instance, the Commission finds that the complainant did avail herself fully to the Commission's adjudicative process, through the hearing, and rehearing which occurred in the prior case. We conclude that she has been given a fair and adequate opportunity, through pleadings and testimony, to fully present her complaint to the Commission for its consideration."

THE COMPLAINANT HAS NEVER HAD A FAIR OR ADEQUATE OPPORTUNITY TO PRESENT HER CASE TO THE COMMISSION TO WHICH SHE IS ENTITLED. What happened at the hearing on December 4, 1998, was totally unfair and was an outrage. I was not represented by an attorney. I am a primary school teacher. I presently do substitute teaching. I had never even been to a hearing before. AT&T was clearly aware that I was not represented by an attorney. The PUCO was also clearly aware that I was not represented by an attorney.

When I arrived at the hearing, AT&T's attorney presented me with the testimony of Lila McClelland, to be included into the record. I WAS SHOCKED. I HAD NEVER SEEN THIS 17 PAGE DOCUMENT BEFORE AND I STATED TO EVERYONE THAT I HAD NEVER SEEN IT. I DID NOT KNOW WHAT TO SAY OR DO. I was given about fifteen (15) minutes to read over the document and then the hearing began. The document had so much material in it to digest and there was too much pressure and much too little time to understand or comprehend it. I was in a total state of shock and I did not really know what to do or how to handle this situation. All of this worked totally to my disadvantage and it was totally unfair to me.

Excerpt from PUCO Hearing on December 4, 1998, Pages 3-4.

THE EXAMINER: Okay. At this time I's like to take very brief and direct opening statements.

Would you like to give an opening statement, Mrs. Wellman?

MS. WELLMAN: Well, first of all, is she -- does -- is this being recorded?

THE EXAMINER: It's being recorded.

MS. WELLMAN: Okay.

THE EXAMINER: But it's not testimony. The point is just to say why you're here, what you plan on establishing.

MS. WELLMAN: **FIRST OF ALL, I FEEL THAT I AM UNDER SOME UNDUE PRESSURE. UNDUE PRESSURE HAS BEEN PLACED ON ME DUE TO THE FACT THAT THIS TESTIMONY WAS PLACED IN FRONT OF ME A FEW MINUTES BEFORE THIS HEARING WAS SCHEDULED TO BEGIN. THERE IS NOT TIME TO SYSTEMATICALLY AND THOUGHTFULLY STUDY AND RESPOND TO THIS TESTIMONY. THIS PUTS ME AT A DISADVANTAGE, BUT I WILL ATTEMPT TO RESPOND AS BEST AS I CAN, CONSIDERING THE CIRCUMSTANCES. I NEVER RECEIVED A COPY OF THIS IN THE MAIL.**

THE EXAMINER: Okay. And the testimony that you're referring to is the direct testimony filed by AT&T of Lila McClelland.

MS. WELLMAN: That's right."

Excerpt from PUCO Hearing on December 4, 1998, Page 88, Line 24.

"MR. WELLMAN: **I WOULD LIKE TO POINT OUT AGAIN THAT I HAVEN'T HAD, YOU KNOW, THE TIME AND THE OPPORTUNITY TO REVIEW THIS, INASMUCH IT WAS JUST HANDED TO ME THIS MORNING.**

MS. WELLMAN: **DIDN'T EVEN FINISH READING IT.**

MR. WELLMAN: I JUST WANTED TO SAY THAT."

Reason No. 2.

On Page 1 of a letter, dated January 19, 1999, from Mr. Russell of AT&T to the P.U.C.O., Mr. Russell states:

"As this Commission is fully aware, it is common practice for counsel intending to introduce exhibits into the record to present the other parties with copies at the hearing for their review and use during the examination as occurred here."

Then Mr. Russell goes on to point out Rule 4901-29(A)(1)j):

"All direct expert testimony to be offered in any other commission proceeding shall be filed and served no later than seven days prior to the commencement of the hearing."

This "common practice" for "counsel intending to introduce exhibits into the record to present the other parties with copies at the hearing for their review and use during the examination as occurred here" as Mr. Russell so alleges, would violate this rule since its affect would be to put me at such a serious disadvantage and in fact did. I testified to this disadvantage (as stated above) at the hearing. Again, as also stated above, AT&T was fully aware that I am not represented by an attorney at the hearing.

Reason No. 3.

PUCO CASE NO. 86-12-GA-GCR, ASSISTANT ATTORNEY GENERAL (PUCO), FRANK DARR, Esq., August 14, 1986.

Even the experienced Assistant Attorney General representing the PUCO, not having seen ahead of time the exhibits being introduced, would not allow exhibits to be introduced into the record at a hearing if he was not provided the exhibit ahead of time. For even the experienced PUCO attorney, this is a disadvantage.

Page 12 of PUCO Case No. 86-12-GA-GCR:

"MR. DARR: ...Therefore, we would object to any further demonstration on the record because we just simply don't have an opportunity to respond to it.

MR. GIBSON: That's fine.

EXAMINER REARDON: I BELIEVE MR. DARR IS CORRECT. IT WOULD BE UNFAIR TO THE STAFF."

Reason No. 4.

The Attorney Examiner should have told us of our rights to reschedule our hearing for fairness to us.

Excerpt from PUCO Hearing on December 4, 1998, Page 9, Lines 24-25.

THE EXAMINER: **"I'll pose questions to you, just as if I'm counsel."**

Excerpt from PUCO Hearing on December 4, 1998, Lines 12-14.

THE EXAMINER: **"...I am doing my best to lead Mrs. Wellman to ask questions and that the witness answer them, I'm still going to give her some leeway..."**

The Attorney Examiner has already admitted that she would act as my counsel, inasmuch as she knew that I was not represented by an attorney. Therefore, as her acting as my counsel, she should have asked me, in fairness to me, if I wanted to postpone this hearing to give me more opportunity to review the written testimony of Lila McClelland. Based on the precedent established by the above mentioned PUCO Case 86-12-GA-GCR wherein Mr. Darr was granted his request for rescheduling his PUCO hearing, my Attorney Examiner in my hearing would and should have asked me if I wanted it postponed. I would have, (since I already had mentioned that I felt under so much pressure because I had just been given the Ms. McClelland's written testimony as explained in detail above) definitely stated that I wanted to reschedule a new hearing to "digest" Ms. McClelland's written testimony. Already just stating that she was "acting as my counsel," the Attorney Examiner therefore had an obligation as "my counsel" to question me (as her witness as my counsel) to see if I wanted to reschedule the hearing. She did not do this and she should have done this.

Reason No. 5.

I could not have brought all of these new issues up at the December 4, 1998 hearing because of the undue pressure and worry and I did not know to bring these up, I couldn't think ahead with all of this undue, unnecessary stress.

This not being able to even think ahead because of all the undue unnecessary stress and not-knowing is a new issue in itself.

Reason No. 6.

This is what the law says:

> *"ALL DIRECT EXPERT TESTIMONY TO BE OFFERED IN ANY OTHER COMMISSION PROCEEDING SHALL BE FILED AND SERVED NO LATER THAN SEVEN DAYS PRIOR TO THE COMMENCEMENT OF THE HEARING." RULE 4901-29(A)(1)(j)*

I stated that I never saw this document and I never had a copy. To this day, this has not been mailed to me. **I NEVER GOT THIS DOCUMENT. I SHOULD HAVE HAD THIS AHEAD OF TIME. I STATED BEFORE THE HEARING THAT I NEVER SAW THIS DOCUMENT BEFORE.** Even if this had been mailed to me 7 days before the hearing and even if it would have taken three days in the mail, this would have still given me four days to prepare. This would have been much better than four minutes.

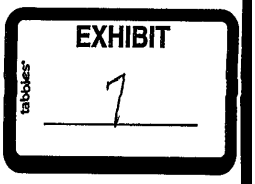
The INTENT of the law is that I should have had this ahead of time. This is the law. I DIDN'T GET A FAIR SHAKE.

Respectfully Submitted,

Ruth L. Wellman

Ruth L. Wellman
7744 Cricket Circle N.W.
Massillon, OH 44646-2432
(330) 837-4764

C - Gregory D. Russell, Esq.



BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Ruth L. Wellman,	)	
Complainant,	)	
	)	Case No. 99-770-TP-CSS
v.	)	
AT&T Communications of Ohio, Inc.,	)	
Respondent.	)	

ENTRY ON REHEARING

The Commission finds:

(1) On January 20, 2000, the Commission issued an Opinion and Order in this matter finding that the case was essentially a restatement of a prior case litigated by the complainant before this Commission. Therefore, the case was dismissed on the grounds of *res judicata.*

(2) Section 4903.10, Revised Code, states that any party who has made an appearance in a Commission proceeding may file an application for rehearing within 30 days of the journalization of a Commission decision.

(3) On January 31, 2000, the complainant docketed a letter asserting six assignments of error in the Commission's January 20, 2000 Opinion and Order and requesting a rehearing.

(4) AT&T filed a memorandum contra the complainant's request for rehearing on February 8, 2000.

(5) Complainant's assignments of error all involve the Commission's finding in the January 20, 2000 Opinion and Order that the complainant had been given a fair and adequate opportunity to fully present her complaint to the Commission for its consideration. In her application for rehearing, Ms. Wellman states that "The complainant has never had a fair or adequate opportunity to present her case to the Commission to which she is entitled." The reasons given

by the complainant all relate to the procedure in her prior case before this Commission, Case No. 98-516-TP-CSS, *In the Matter of the Complaint of Ruth Wellman v. AT&T*. Specifically, the complainant identified the matter of receiving the 15 page direct testimony of the AT&T witness on the day of the hearing and the issue of the attorney examiner assigned to the case failing to question her regarding rescheduling the hearing in order to better review that testimony.

(6) In its Entry On Rehearing in Case No. 98-516-TP-CSS, dated April 8, 1999, this Commission found that the record reflected that the direct testimony of the AT&T witness was served by regular U.S. mail, postage prepaid, on Ms. Ruth Wellman on November 27, 1998, which is the same day the testimony was filed with the Commission. Notwithstanding the above, the Commission also found that the complainant was afforded ample opportunity to cross-examine AT&T's witness as the attorney examiner delayed the start of the hearing to give the complainant an opportunity to review the testimony of the AT&T's witness. Moreover, the Commission concluded that the attorney examiner actively assisted Ms. Wellman in her cross-examination of the witness as well as conducting the examiner's own examination of the AT&T witness. For the foregoing reasons, the Commission denied the request for rehearing.

(7) Inasmuch as this request for rehearing is based solely on findings and decisions made in the prior case, no new issues have been raised for consideration and the request for rehearing should be denied.

It is, further,

ORDERED, That the application for rehearing is denied as set forth herein. It is, further,

ORDERED, That a copy of this entry on rehearing be served upon the complainant, Ms. Ruth Wellman, AT&T Communications of Ohio, Inc. and its counsel, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Ronda Hartman Fergus

Craig A. Glazer

Judith A. Jones

Donald L. Mason

SDL;geb

Entered in the Journal
FEB 2 4 2000
A True Copy
Gary E. Vigorito
Secretary