

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of WeShare, )  
Inc., )  
 )  
Complainant, )  
 )  
v. ) Case No. 96-770-TP-CSS  
 )  
Ameritech Ohio, )  
 )  
Respondent. )

ENTRY

The Commission finds:

- (1) On August 6, 1996, Robert P. Woodman, Carl N. Woodman, and Thomas Warholic, trustees of WeShare, Inc., filed a complaint against Ameritech Ohio, formerly known as Ohio Bell Telephone Company. The trustees allege that WeShare is a not-for-profit corporation operating exclusively within Ohio.
- (2) On August 29, 1996, Ameritech filed its answer to the complaint and a motion to dismiss the complaint.
- (3) The record herein also sets forth that the Commission has previously scheduled two settlement conferences in this case. The first, scheduled for September 24, 1996, was rescheduled at the request of WeShare but with the concurrence of Ameritech. The second, scheduled for October 10, 1996, with the date being consented to by the parties, was not held because the trustees informed the attorney examiner that they would not travel to Columbus for the conference.
- (4) On November 18, 1996, Ameritech filed a Motion to Compel Discovery. Ameritech alleged that it served the trustees of WeShare with a "Set of Interrogatories, Request for Production of Documents and Request for Admission" on September 17, 1996. The discovery request was mailed to the address given by the trustees of WeShare when the complaint was filed. On October 1, 1996, Ameritech stated that the discovery request was returned with a handwritten note on the envelop that read, "Moved Please Return to Sender". Ameritech states that, on October 1, 1996, it served its discovery requests again

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 SW Date Processed 10-10-97

to the trustees individually at separate addresses. Ameritech states that no response was received to the October 1 mailing.

- (5) On August 14, 1997, the legal director issued an entry finding that reasonable grounds for complaint have been stated and scheduled a public hearing in this matter. In addition another prehearing conference was scheduled prior to the hearing to provide the parties with one additional opportunity to resolve the issues prior to hearing.
- (6) Commission Rule 4901-1-16, O.A.C., provides that any party to a Commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding. Rule 4901-1-19, O.A.C., provides that responses to interrogatories shall be served within 20 days of service of the discovery request. The Commission's Legal Department contacted WeShare on August 12, 1997, to determine if WeShare has experienced any unreported change of address. Mr. James Woodman informed the Commission's legal director that WeShare's street address is 3202 Lorain Avenue, Cleveland, Ohio 44113. (The complaint filed in this case listed the ZIP Code for this address as 44107.) However, Mr. James Woodman suggested that service for WeShare should be made to P.O. Box 94990, Cleveland, Ohio 44101-4990. Mr. James Woodman was not aware of why Ameritech's initial discovery address sent to the 3202 Lorain Avenue address was marked, "Moved Return to Sender". In his August 14 entry, the legal director found that Ameritech should serve its discovery request upon WeShare again at the following address:

WeShare, Inc.  
3202 Lorain Avenue  
P.O. Box 94990  
Cleveland OH 44101-4990

Finally, the legal director pointed out to complainant that pursuant to Rule 4901-1-20, O.A.C., WeShare shall have 20 days to respond to the discovery request. Pursuant to Rule 4901-1-23, O.A.C., failure to respond timely to a discovery request could result in dismissal of the complaint by the Commission or other action deemed appropriate by the Commission.

- (7) On September 16, 1997, respondent filed a second motion to dismiss or, in the alternative, motion to compel discovery and request for an expedited ruling. Respondent's basis for an order to dismiss this case is for failure of complainant to prosecute its case. In its memorandum in support of its motion, respondent states that on August 18, 1997, respondent served the same set of discovery for a third time, pursuant to the Legal Director's Entry dated August 14, 1997. Respondent argues that any litigant, whether before a court or this Commission, must answer the interrogatories so that the respondent is able to properly prepare its case. Ameritech argues that a complainant's failure to comply with the rules of discovery is failure by complainant to prosecute its case and justifies dismissal of the complaint. Respondent notes that prior complaint cases have been dismissed for lack of action or failure to follow Commission directives. *James P. Woodman as WeShare, Inc. v. Ameritech Ohio*, Case No. 95-1017-TP-CSS, Entry, May 23, 1996; *Thomas Robinson v. The Ohio Bell Telephone Company*, Case No. 92-2237-TP-CSS, Entry, September 9, 1993; *E&J Mobile Radio Service, Inc. v. The Ohio Bell Telephone Company*, Case No. 90-566-TP-CSS. Respondent also cites case law that points out that the decision by complainant to respond to discovery is not optional but mandatory. See *Dorough v. Muillikin*, 563 F.2d 187, 191 (5th Cir. 1977), cert. denied, 439 U.S. 845 (1978) ("When interrogatories are filed, the type of response available is set out. A candid, full answer must be made or the party must, candidly, state an objection to making answer and the grounds of the objection") and *Milner v. National School of Health Technology*, 73 F.R.D. 628, 632 (E.D. Pa. 1977) ("Answers must be complete, explicit and responsive. If a party cannot furnish details, he should say so under oath, say why and set forth the efforts he sued to obtain the information ... If a party is a corporation, information in the hands of its agents and others within its control must be supplied.") (Respondent's motion at 3.) Complainant did not respond to the motion.
- (8) In view of complainant's failure to respond to the interrogatories or motions to dismiss filed by respondent, respondent's motion filed September 16, 1997 to dismiss for failure to prosecute its case should be granted. Complainant has failed three times to respond to the same set of interrogatories. Rule 4901-1-19, O.A.C., provides that responses to interrogatories shall be served within 20 days of service of the discovery request. Complainant not only had one opportunity, but three

opportunities to respond to the same discovery request and has failed to do so. Rather than requiring respondent to vainly attempt to prepare its case without the benefit of discovery, the Commission finds that the appropriate procedure at this point in this proceeding is to grant respondent's motion to dismiss due to complainant's failure to prosecute its complaint. With dismissal of the complaint, the settlement conference and hearing in this matter set for October 21, 1997, should be canceled.

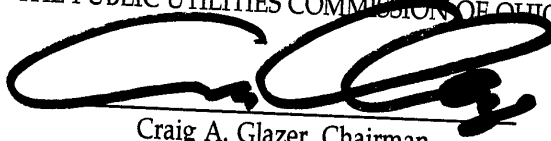
It is, therefore,

ORDERED, That a Ameritech Ohio's motion of September 16, 1997, to dismiss this complaint is granted. It is, further,

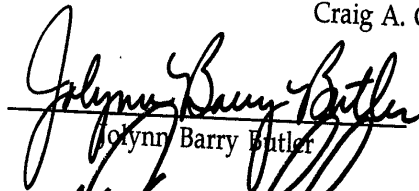
ORDERED, That the settlement conference and hearing in this matter set for October 21, 1997, are canceled. It is, further,

ORDERED, That a copy of this entry be served upon each party of record.

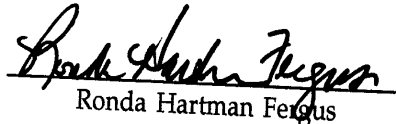
THE PUBLIC UTILITIES COMMISSION OF OHIO



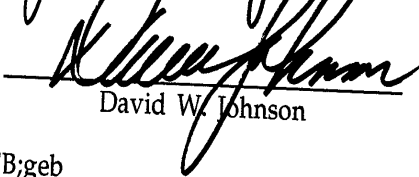
Craig A. Glazer, Chairman



Jolynn Barry Butler



Ronda Hartman Ferguson



David W. Johnson



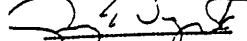
Judith A. Jones

WFB;geb

Entered in the Journal

OCT 09 1997

A True Copy



Gary E. Vigorito  
Secretary

SERVICE NOTICE  
-----

PAGE 1 .

CASE NUMBER 96-770-TP-CSS  
CASE DESCRIPTION ROBERT P. WOODMAN/AMERITECH OHIO  
DOCUMENT SIGNED ON October 9, 1997  
DATE OF SERVICE 10-10-97

PERSONS SERVED  
-----

PARTIES OF RECORD

ATTORNEYS

COMPLAINANT

ROBERT P. WOODMAN  
WE SHARE, INC. C/O TRUSTEES  
3202 LORAIN AVE. P.O. BOX 94990  
CLEVELAND, OH 44101-4990

NONE

RESPONDENT

AMERITECH OHIO  
JON F. KELLY  
150 E. GAY STREET ROOM 4-C  
COLUMBUS, OH 43215

NONE

MICHAEL T. MULCAHY  
ATTORNEY AT LAW  
OHIO BELL TELEPHONE COMPANY  
45 ERIEVIEW PLAZA, SUITE 1400  
CLEVELAND, OH 441147