

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

<p>COMMONWEALTH OF MASSACHUSETTS, <i>et al.</i>,</p> <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>E*TRADE ACCESS, INC., <i>et al.</i>,</p> <p style="text-align: right;">Defendants.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>CASE NO. 03 11206 MEL</p>
--	---	------------------------------

**DEFENDANTS’ SUBMISSION OF SUPPLEMENTAL EVIDENCE IN SUPPORT OF DEFENDANTS’ CROSS-MOTION FOR SUMMARY JUDGMENT**

Defendants E\*TRADE Bank, E\*TRADE Access, Cardtronics LP and

Cardtronics, Inc. respectfully submit the interrogatory responses of Plaintiff Commonwealth of Massachusetts (attached hereto as Exhibit 1) as supplemental evidence in support of Defendants’ Cross-Motion for Summary Judgment. The Commonwealth’s responses also further justify that the Court should deny Plaintiffs’ motion for partial summary judgment This submission of supplemental evidence is timely filed, because Defendants received the Commonwealth’s interrogatory responses only yesterday, December 22, 2005.

The Commonwealth’s responses make one point vividly clear, over and over:

***The only change of Defendants’ ATMs the Commonwealth seeks is voice-guidance technology***, even though the Court expressly held that the Plaintiffs are not entitled to that relief. Despite numerous requests and opportunities to identify any other accommodation that would satisfy the Commonwealth, the Commonwealth refuses to do so. For example:

- When asked to identify the “modifications” to Defendants’ “policies,” the only specific suggestion the Commonwealth makes is that Defendants should use “voice guidance.” Response to Interrogatory No. 11 (page 12).

- When asked to identify how “barriers” can be “removed” at ATMs for blind people, the only specific suggestion the Commonwealth makes is again “voice guidance.” Response to Interrogatory No. 13 (page 13).
- When asked to identify every “aid, device or capability” that other bank’s ATMs use to afford access to blind people, the Commonwealth identified only voice guidance. Response to Interrogatory No. 16 (page 16).
- The Commonwealth generically refers to use of “non-visual formats” or “non-visual translation” of information for blind users of ATMs. See Responses to Interrogatories Nos. 2, 11, 12, 13 & 16. The Commonwealth is already on record that it finds Braille (information formatted for touch) to be completely inadequate. See Third Amended Complaint, ¶ 29. Therefore, unless the Commonwealth believes that ATMs can be operated through the sense of smell, the only other possible “format” to which the Commonwealth can be referring is audio (voice) information.

The Commonwealth’s inability or refusal to identify any other change to ATMs, other than the change that this Court has already ruled is not a permissible remedy, entitles the Defendants to summary judgment, as explained in detail in Defendants’ briefs in support of their Motion.

The Commonwealth’s responses also confirm that the Commonwealth has not satisfied its burden for a claim under ADA § 12182(b)(2)(A)(ii), regarding “reasonable modifications” of “policies, practices and procedures” (Plaintiffs’ Count II). The First Circuit expressly required that any lawsuit under this ADA section must be preceded by a request from the Plaintiffs to the Defendants for a change in their policies -- what Plaintiffs jocularly derided at oral argument as a “pre-filing requirement.” *Dudley v. Hannaford Bros. Co.*, 333 F.3d 299, 307 (1st Cir. 2003). Defendant Cardtronics asked the Commonwealth to identify every request for a change in Defendants’ policies (as opposed to a change in the physical design of the ATMs). The only responsive “request” the Commonwealth identified was a “suggestion” in one of their briefs *during the lawsuit*, filed in the Summer of 2005. See Response to Interrogatory No. 9 (page 10).<sup>1</sup> Obviously, that does not come close to satisfying the First Circuit’s

---

<sup>1</sup> The Commonwealth’s response also identified requests, prior to the lawsuit, for E\*TRADE to change the design of the ATMs. But Plaintiffs previously explained that their claim under ADA § 12182(b)(2)(A)(ii) relates to

requirement. The Commonwealth's inability to identify any request prior to the lawsuit proves that Defendants are entitled to summary judgment on the Commonwealth's claim under ADA § 12182(b)(2)(A)(ii).

Finally, the Commonwealth's responses prove that the Court should deny the Plaintiffs' motion for partial summary judgment. The Commonwealth's interrogatory responses provide no explanation of what changes Defendants could make to their ATMs, other than voice-enabled technology, that would satisfy the Commonwealth's claims. As a result, if the Court issues the broad injunction the Commonwealth demands in the Plaintiffs' motion, Defendants will have no idea how to obey it. For the reasons Defendants argued in their Opposition to the Plaintiffs' motion, the law does not permit such a vague, unenforceable injunction to be issued.

These responses to Cardtronics' interrogatories reveal the Commonwealth's flawed intentions. The Commonwealth is still obstinately determined to force Defendants to implement voice-enabled technology at their ATMs, despite the fact that the Court already held that the Commonwealth is not entitled to that relief under the current regulations implementing the ADA. (The relief the Commonwealth desires is coming, when the Department of Justice finalizes the new implementing regulations that will require exactly what the Commonwealth seeks. The Commonwealth will merely have to wait for these new regulations take effect, and no reason exists that Defendants should be singled out of the entire ATM industry to implement the regulations in advance of their competitors -- especially in an industry with so many competitors and such narrow profit margins.) The Commonwealths' interrogatory responses

---

banking "policies," not to the design of the ATMs. *see* Pl. Opp. to Def. Cross-Mo. for Summ. Judg., at 6-7. Therefore, the requests to which the Commonwealth refers are not evidence that would satisfy the *Dudley* standard for the Commonwealth's claim under § 12182(b)(2)(A)(ii) as the Plaintiffs articulate it.

prove that *this lawsuit is a charade*, devoid of any validity under the current regulations, entitling the Defendants to summary judgment on all counts.

Respectfully submitted,

E\*TRADE ACCESS, INC.,  
E\*TRADE BANK and CARDTRONICS LP

By their attorneys,



---

Douglas P. Lobel (*pro hac vice*)  
David A. Vogel (*pro hac vice*)  
ARNOLD & PORTER LLP  
1600 Tysons Boulevard, Suite 900  
McLean, Virginia 22102  
(703) 720-7000

Joseph L. Kociubes BBO # 276360  
Jenny K. Cooper BBO # 646860  
BINGHAM MCCUTCHEN LLP  
150 Federal Street  
Boston, Massachusetts 02110  
(617) 951-8000

Dated: December 23, 2005

**CERTIFICATE OF SERVICE**

I hereby certify that I have, this 23rd day of December, 2005, served Defendants' Submission Of Supplemental Evidence In Support Of Defendants' Cross-Motion For Summary Judgment by causing copies of the same to be sent via electronic mail and via U.S. first-class mail, postage prepaid, to:

Patricia Correa, BBO No. 560437  
Assistant Attorney General  
Director, Disability Rights Project  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108  
(617) 727-2200, ext. 2919

Anthony Doniger, BBO No. 129420  
Christine M. Netski, BBO No. 546936  
SUGARMAN, ROGERS, BARSHAK & COHEN  
101 Merrimac Street  
Boston, MA 02114-4737  
(617) 227-3030

Daniel F. Goldstein  
Sharon Krevor-Weisbaum  
BROWN, GOLDSTEIN & LEVY LLP  
120 E. Baltimore Street, Suite 1700  
Baltimore, MD 21202  
(410) 962-1030



---

**EXHIBIT 1**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

.....

COMMONWEALTH OF MASSACHUSETTS, .

et al. .

Plaintiffs, .

. Civ. Action No. 03-11206-MEL

v. .

E\*TRADE ACCESS, INC. et al. .

Defendants. .

.....

**COMMONWEALTH'S RESPONSES TO DEFENDANT  
CARDTRONICS'S FIRST SET OF INTERROGATORIES  
TO PLAINTIFF COMMONWEALTH OF MASSACHUSETTS**

In accordance with Fed. R. Civ. P. 26 and 33, the Commonwealth hereby submits its responses to the Defendant Cardtronics's First Set of Interrogatories to Plaintiff Commonwealth of Massachusetts. The Commonwealth reserves its right to supplement these responses.

**DEFINITIONS**

1. "Commonwealth" refers to plaintiff the Commonwealth of Massachusetts.
2. "NFB" refers to the National Federation of the Blind, Inc.
3. "Cardtronics" refers to defendants Cardtronics, Inc. and Cardtronics LP.
4. "Allied lawyer doctrine" refers to the doctrine variously so called or alternatively called the "common interest doctrine" or "joint prosecution doctrine," that extends the protection of the work product doctrine and attorney-client privilege to such information shared between co-plaintiffs or other allied parties.

**GENERAL OBJECTIONS**

The Commonwealth's responses to the Interrogatories are subject to the following

**General Objections:**

1. The Commonwealth objects to the Instructions and Definitions of Defendant Cardtronics' First Set of Interrogatories to Plaintiff Commonwealth of Massachusetts to the extent they purport to create obligations by the Commonwealth that exceed those established by the Federal Rules of Civil Procedure and Local Rules of the District of Massachusetts.

2. The Commonwealth objects to the interrogatories to the extent they seek information within the sole custody and control of Massachusetts state agencies other than the Attorney General's Office as being beyond the scope of permitted discovery, overly broad, and unduly burdensome.

3. The Commonwealth objects to the interrogatories to the extent they seek information concerning ATMs located outside of Massachusetts, or consumer or blind people located outside of Massachusetts.

**INTERROGATORIES AND RESPONSES**

**Interrogatory Number 1:**

Identify every person (other than counsel) who contributed any information or document used to respond to any Interrogatory and/or Document Request, and describe that person's contributions.

**Specific Objection and Response to Interrogatory Number 1:**

The Commonwealth objects to this Interrogatory to the extent that it seeks information protected by the work product and/or allied lawyer doctrine. Subject to and without waiving the foregoing General and Specific Objections, each such person or document is identified in the Commonwealth's responses that follow or identified generally in the Commonwealth's privilege log.



**Interrogatory Number 2:**

For each and every Disputed ATM, identify the reason(s) that you contend it is not "independently usable" by blind people, including whether any aid intended for blind users (such as Braille, voice technology, and so forth) is missing, inoperable, incomplete, or insufficient, and identify all persons with knowledge of the facts you describe in your response.

**Specific Objections and Response to Interrogatory Number 2:**

The Commonwealth objects to this interrogatory on the ground that much of the information needed to answer it continues to lie in the sole custody and/or control of the Defendants, despite the fact that Plaintiffs' have sought information that would be responsive to this interrogatory for an extensive period of time.

Subject to and without waiving the foregoing General and Specific objections, the Commonwealth states that it has conducted testing at three Disputed ATMs in Massachusetts. Its findings are summarized in the Affidavits of Jennifer Bose and Nicholas P. Paras served on the Defendants in connection with the Plaintiffs' Motion for Partial Summary Judgment Against Defendants Cardtronics, LP and Cardtronics, Inc. The Commonwealth incorporates by reference the responsive information contained in those Affidavits as to those Disputed ATMs. It also incorporates by reference the bases for its contention that the Disputed ATMs are not independently useable that are set forth in the Memorandum in Support of Plaintiffs' Motion for Partial Summary Judgment Against Defendants Cardtronics, LP and Cardtronics, Inc. and the Plaintiffs' Memorandum in Reply to Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment. The Commonwealth further states that, as set forth in those pleadings, the tested ATMs were not independently useable by blind people because they communicated critical and essential instructions and information for use through visual screen prompts that

were not, in turn, translated into any non-visual format. Ms. Bose and Mr. Paras are knowledgeable with respect to those three Disputed ATMs. On information and belief, various Cardtronics representatives are knowledgeable about the failure of the Disputed ATMs to translate the critical and essential instructions and information for use contained in visually-discerned screen prompts into a non-visual format. In addition, and as set forth in those pleadings, the Defendants did not come forth with any competent evidence that the Disputed ATMs translate visually-discerned screen prompts containing critical and essential instructions and information for use into any non-visual format in responding to Plaintiffs' Motion for Partial Summary Judgment Against Defendants Cardtronics LP, and Cardtronics, Inc.

In addition, based upon the (incomplete) discovery supplied by the Defendants to the Plaintiffs to date, it appears that in Massachusetts, it was the Defendants' practice to sell to merchants and then operate, or both own and operate, a number of Triton 9500s, Triton Makos, Triton 9100 base models, and early models of the Triton 9600 series. Pursuant to Fed. R. Civ. P. 33(c), see the documents produced by the Commonwealth for a partial inventory of such ATMs, based on information supplied by the Defendants to the Commonwealth to date. According to a representative of Triton's parts and sales department (name unknown) Attorney General's Office Paralegal Bethany Brown reached through the company's 1-800 number and information contained on that company's web-site, these models do not offer audio capability. In addition, it appears, based on the sampling of Disputed ATMs the Plaintiffs have tested to-date (which are described in the Affidavits they submitted in support of their Motion for Partial Summary Judgment now pending before the Court), the Defendants do not engage in any practice of otherwise translating (i.e., at ATMs that are not audio-enabled) critical and essential instructions and information necessary for independent use contained in visually-discerned

screen prompts into any non-visual format, and thus it is reasonable to conclude that the Defendants did not do so with respect to the ATMs identified in the documents produced by the Commonwealth.

Moreover, it appears that Defendants own and/or operate newer model ATMs in Massachusetts that are audio-enabled and could or should have been equipped with adequate audio instructions and information for use to afford blind people independent use, but were not. In December 2005, Attorney General's Office paralegal Bethany Brown visited a Cardtronics ATM located at Terminal C of Boston Logan International Airport (on information and belief, this was an ATM manufactured by NCR). She found that the audio instructions and information for use were limited to the following: the ATM audibly instructed her to enter her "secret number" at the inception of the transaction. At the conclusion, the ATM audibly asked her to wait while it processed her transaction. It then said, "Thank you for banking with us." The ATM did not offer any non-visual translation of any of the other visually-discerned screen instructions and information necessary for use, and she relied exclusively on the visually-discerned screen instructions and information for use to complete a balance inquiry.

**Interrogatory Number 3:**

Identify every Disputed ATM that one or more blind residents of Massachusetts currently uses (whether or not independently).

**Specific Objections and Response to Interrogatory Number 3:**

The Commonwealth objects to this interrogatory on the ground that it is ambiguous, not reasonably calculated to lead to the discovery of admissible evidence, and unduly burdensome. Subject to and without waiving the foregoing General and Specific Objections, the Commonwealth states that the Attorney General's Office does not have custody and/or control of this information. It also states that the Defendants own and/or operate over 700 ATMs in Massachusetts at locations to which potential consumers are likely to go, on a one-time basis or from time-to-time, and where they may wish to obtain cash. These include the restaurants, convenience stores, retail stores, pharmacies, and gas stations of such companies as Amerada Hess, Costco, Duane Reade, CVS, ExxonMobil, Ride Aid, Sunoco, Walgreens, A&P, Bloomingdale's, R.H. Macy and Company, and Sears Roebuck and Company, where Disputed ATMs are found. Blind consumers, like sighted ones, require cash for day-to-day living and would benefit from the convenient access of Defendants' ATMs, were those ATMs to offer instructions and information for use in a non-visual format and thus be accessible to blind consumers.

**Interrogatory Number 4:**

Identify every Disputed ATM that is likely to be used independently by at least one blind resident of Massachusetts if you prevail in this lawsuit, and for each Disputed ATM, identify each blind resident of Massachusetts who is likely to use that Disputed ATM, the frequency of that likely use, all facts supporting the contention that the blind resident of Massachusetts is likely to use that Disputed ATM, and identify all persons with knowledge of the facts you describe in your response.

**Specific Objections and Response to Interrogatory Number 4:**

The Commonwealth objects to this interrogatory on the ground that it is vague, not reasonably calculated to lead to the discovery of admissible evidence, and unduly burdensome. Subject to and without waiving the foregoing General and Specific Objections, the Commonwealth states that the Attorney General's Office does not have custody and/or control over this information. In addition, the Commonwealth incorporates by reference its Response to Interrogatory Number 3.

**Interrogatory Number 5:**

Identify every blind resident of Massachusetts who is likely to use E\*TRADE Bank's banking services if you prevail in this lawsuit, and provide all facts supporting the contention with regard to each blind resident of Massachusetts, and identify all persons with knowledge of the facts you describe in your response.

**Specific Objections and Response to Interrogatory Number 5:**

The Commonwealth objects to this interrogatory on the ground that it is vague, not reasonably calculated to lead to the discovery of admissible evidence, and unduly burdensome. Subject to and without waiving the foregoing General and Specific Objections, the Commonwealth states that the Attorney General's Office does not have custody and/or control over this information. In addition, the Commonwealth states that, on information and belief, E\*TRADE Bank's business model, that is, of existence as a cyberbank that provides consumers its banking services from the convenience of their home computers, is one that blind consumers would enjoy, were the Disputed ATMs to offer instructions and information for use in a non-visual format and therefore be accessible to blind consumers.

**Interrogatory Number 6:**

State every individual fact that supports your contention that the Commonwealth of Massachusetts has organizational standing, including facts that the Commonwealth of Massachusetts has been directly harmed by Cardtronics' and/or E\*TRADE's alleged violations of the ADA, and identify all persons with knowledge of the facts you describe in your response.

**Specific Objection Response to Interrogatory Number 6:**

The Commonwealth objects to this interrogatory on the ground that it is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the forgoing General and Specific Objections, the Commonwealth states that it does not rely on organization standing as the basis for its standing.

**Interrogatory Number 7:**

Describe every bank (or other ATM owner, lessor or operator) with whom the Commonwealth of Massachusetts communicated since January, 2001 seeking to have that entity's ATMs made accessible to blind users, and in your description identify the entity with whom you communicated, the time periods over which the communications occurred, the approximate number of both written and oral (e.g., phone or face to face) communications, and the resolution of the communications (e.g. settlement agreement, lawsuit, etc.), and identify all persons with knowledge of the facts you describe in your response.

**Specific Objections and Response to Interrogatory Number 7:**

The Commonwealth objects to this interrogatory on the ground that it is not reasonably calculated to lead to the discovery of admissible evidence and is overly broad, unduly burdensome, and seeks information beyond the scope of permitted discovery by seeking information that may be within the sole custody or control of Massachusetts state agencies other

than the Attorney General's Office. The Commonwealth also objects to this interrogatory to the extent it seeks information about the Commonwealth's communications with any of the Defendants in this action on the ground that the Defendants are already in possession of such information. Subject to and without waiving the foregoing General and Specific Objections, the Commonwealth states the Attorney General's Office is not aware of any current or former employee of that office who has had communications such as those that are the subject of this interrogatory, based on its reasonably diligent efforts to obtain information responsive to this interrogatory.

**Interrogatory Number 8:**

State every individual fact that supports your contention that the Commonwealth of Massachusetts has representational or *parens patriae* standing, including facts that blind residents of Massachusetts are likely to use the Disputed ATMs if you prevail in this litigation, and identify all persons with knowledge of the facts you describe in your response.

**Specific Objections and Response to Interrogatory Number 8:**

The Commonwealth objects to this interrogatory on the ground that it is not reasonably calculated to lead to the discovery of admissible evidence and that it is vague. Without waiving the foregoing objections and the General Objections, the Commonwealth states that it has representational or *parens patriae* standing to bring this action in the public interest and on behalf of blind consumers in Massachusetts, as a matter of law.

**Interrogatory Number 9:**

Identify every communication you made to E\*TRADE and/or to Cardtronics requesting that E\*TRADE and/or Cardtronics modify their policies, practices or procedures with regard to their public accommodations in order to make them accessible or more accessible to blind

residents of Massachusetts.

**Specific Objections and Response to Interrogatory Number 9:**

The Commonwealth objects to this interrogatory on the ground that it seeks information also within the custody and control of the Defendants and is over broad, unduly burdensome, and seeks information beyond the scope of permitted discovery in seeking information that may be within the sole custody and/or control of Massachusetts state agencies other than the Attorney General's Office. Subject to and without waiving the foregoing General and Specific Objections, the Commonwealth states that the NFB and the Attorney General's Office wrote to E\*TRADE in November 2002 asking it generally to make its ATMs accessible to blind people. In addition, in the Plaintiffs' Opposition to the Defendants' Cross-Motion for Partial Summary Judgment (which motion is now pending with the Court), the Plaintiffs suggested that the E\*TRADE Bank might consider waiving, or the Court might order it to waive, its fee for blind customers who require use of other banks' accessible ATMs, given that the Defendants' ATMs are not accessible to blind consumers.

**Interrogatory Number 10:**

Describe the manner(s) in which E\*TRADE Bank's "policies" can or should be modified to accommodate blind customers, and the reasons that such modifications are both "reasonable" and would not "fundamentally alter" E\*TRADE Bank's services (as those terms are used in § 12182(b)(2)(A)(ii)), and identify all persons with knowledge of the facts you describe in your response.

**Specific Objections and Response to Interrogatory Number 10:**

The Commonwealth objects to this interrogatory to the extent that it calls for a legal conclusion. Subject to and without waiving the foregoing General and Specific Objections, the



Commonwealth states that E\*TRADE Bank's policies, practices and procedures should be modified to afford equal access by blind consumers to the Bank's services, including fee-free banking at any ATM that is as functionally independently useable to blind consumers as to sighted ones. This modification – to provide equal access to E\*TRADE Bank's banking services – would fall squarely within the banking services E\*TRADE Bank offers and would therefore not fundamentally alter the nature of its services. How and whether that can be achieved “reasonably” depends on information now within the sole custody and control of the Defendants.

**Interrogatory Number 11:**

Describe the manner(s) in which Cardtronics' "policies" can or should be modified to accommodate blind customers, and the reasons that such modifications are both "reasonable" and would not "fundamentally alter" Cardtronics' services (as those terms are used in § 12182(b)(2)(A)(ii)), and identify all persons with knowledge of the facts you describe in your response.

**Specific Objections and Response to Interrogatory Number 11:**

The Commonwealth objects to this interrogatory to the extent that it calls for a legal conclusion. Subject to and without waiving the foregoing General and Specific Objections, the Commonwealth states that Cardtronics' policies, practices and procedures should be modified so that blind consumers have access to all ATM instructions and information necessary for independent use in a format that is discernable through means other than visual means. This type of modification – to supply a non-visual translation of instructions and information for use now supplied at its ATMs through visually-discerned screen prompts – would fall squarely within the ATM services Cardtronics offers and would therefore not fundamentally alter the nature of its services. How and whether the modification can be achieved “reasonably” depends

on information now within the sole custody and control of the Defendants. However, on information and belief, factors such as those enumerated in the Commonwealth's Objection and Response to Interrogatory No. 1 of the Commonwealth's Responses to Defendant E\*TRADE Access, Inc.'s Second Set of Interrogatories to Plaintiff Commonwealth of Massachusetts (including, but not limited to, the Defendants' need to upgrade many or all of the Disputed ATMs to become Triple DES compliant and otherwise meet business and regulatory demands) will create, or should have created (to the extent any Disputed ATMs have, since the inception of this lawsuit, been upgraded or replaced), significant efficiencies in equipping many or all of the Disputed ATMs with voice guidance, which is one manner of translating visually-discerned screen prompts containing information and instructions necessary for use into a non-visual format.

**Interrogatory Number 12:**

Describe every type of "auxiliary aid" (as that term is used in § 12182(b)(2)(A)(iii)) that Cardtronics could or should provide at the Disputed ATMs to make them independently usable by blind people, and identify all persons with knowledge of the facts you describe in your response.

**Specific Objection and Response to Interrogatory Number 12:**

The Commonwealth objects to this interrogatory to the extent that it calls for a legal conclusion. Subject to and without waiving the foregoing General and Specific Objections, the Commonwealth states that any translation into a non-visual format of instructions and information necessary for independent use now supplied at the Disputed ATMs through visually-discerned screen prompts would constitute such an auxiliary aid.

**Interrogatory Number 13:**

Identify the "communication barriers structural in nature" at the Disputed ATMs and the method(s) by which Cardtronics could or should "remove" that barrier, and the reasons that at least one of those methods is "readily achievable" (as those terms are used in § 12182(b)(2)(A)(iv)), and identify all persons with knowledge of the facts you describe in your response.

**Specific Objection and Response to Interrogatory Number 13:**

The Commonwealth objects to this interrogatory to the extent that it calls for a legal conclusion. Subject to and without waiving the foregoing General and Specific Objections, the Commonwealth states that the "communication barriers structural in nature" at the Disputed ATMs consist of the ATMs' construction and design to communicate instructions and information necessary for independent use through visually-discerned screen prompts. As Cardtronics upgrades or replaces the Disputed ATMs (or, to the extent it has already done so since the inception of this lawsuit, as Cardtronics has upgraded or replaced the Disputed ATMs) to comply with Triple DES or other business or regulatory demands, or adds (or has, since the inception of this lawsuit, added) new ATMs to its fleet, Cardtronics can and should assure (or could and should have assured) that those Disputed ATMs supply information and instructions for use in a non-visual format, by, for example, equipping the ATMs with voice guidance technology. As to the balance of its ATMs, the extent to which visually-detected screen instructions and information for use can be supplied to blind consumers in a non-visual format without much difficulty or expense currently depends on information within the sole custody and control of the Defendants.

**Interrogatory Number 14:**

For each building in which any Disputed ATM is fixed, state the date of "first

occupancy" of that building (as that term is used in § 12183(a)(1)), and identify all persons with knowledge of the facts you describe in your response.

**Specific Objections and Response to Interrogatory Number 14:**

The Commonwealth objects to this interrogatory on the ground that it is vague and not reasonably calculated to lead to the discovery of admissible evidence, because the Disputed ATMs are "facilities" themselves under the applicable law and regulations. In the event that the Court issues a contrary ruling in connection with the pending motion and cross-motion for partial summary judgment, the Commonwealth will supplement this response as appropriate, subject to and without waiving the foregoing General and Specific Objections.

**Interrogatory Number 15:**

For each building whose date of first occupancy was prior to January 1993 but which was altered to include an Disputed ATM after January 1993, state the date of the alteration (as those terms are used in § 12183(a)(2)), and identify all persons with knowledge of the facts you describe in your response.

**Specific Objections and Response to Interrogatory Number 15:**

The Commonwealth objects to this interrogatory on the ground that it is vague and not reasonably calculated to lead to the discovery of admissible evidence, because the Disputed ATMs are "facilities" themselves under the applicable law and regulations. In the event that the Court issues a contrary ruling in connection with the pending motion and cross-motion for partial summary judgment, the Commonwealth will supplement this response as appropriate, subject to and without waiving the foregoing General and Specific Objections.

**Interrogatory Number 16:**

Identify every aid, device or capability used by ATMs of other banks of which you are

aware that makes these ATMs independently usable by blind people, and identify all persons with knowledge of the facts you describe in your response.

**Response to Interrogatory Number 16:**

To the Commonwealth's knowledge, and on information and belief, all, or virtually all, of the numerous large and small banks with ATMs in Massachusetts that are independently useable by blind people have translated their ATMs' instructions and information for use that are otherwise presented visually into audio instructions and information for use, through utilization of voice guidance technology. A small sampling of these banks includes Bank of America with approximately 888 talking ATMs in Massachusetts (according to a listing Attorney General's Office Paralegal Bethany Brown found on the web-site of the Disability Law Center of Massachusetts ("DLC"), a copy of an excerpt of which is produced), Sovereign Bank with approximately 408 talking ATMs in Massachusetts (according to a listing Ms. Brown found on the DLC's web-site, a copy of an excerpt of which is produced), Citizens Bank with approximately 250 talking ATMs in Massachusetts (according to a press release Ms. Brown found on the Citizens Bank web-site, a copy of which is produced), and TD BankNorth with approximately 99 talking ATMs in Massachusetts (according to information Ms. Brown found on that bank's web-site).

Dated: December 22, 2005

As to objections:

---

Patricia Correa, BBO # 560437  
Assistant Attorney General  
One Ashburton Place  
Boston, MA 02108  
(617) 727-2200, x 2919

I, Patricia Correa, in my capacity as Assistant Attorney General, state that the foregoing interrogatory responses are based upon my personal knowledge, upon information provided to

me by employees of the Attorney General's Office and co-counsel, and upon information contained in documents maintained by the Attorney General's Office. I further state that I am authorized to sign these answers on behalf of Attorney General Reilly, and while I do not have personal knowledge of all the information provided in the answers, I believe that the above answers are true.

Sworn to under the pains and penalties of perjury this 22nd day of December, 2005.

---

Patricia Correa