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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKETED
FEB 23 2004

Petition of Cellco Partnership d/b/a Verizon	:	
Wireless For Arbitration Pursuant to	:	
Section 252 Of the Telecommunications	:	A-310489F7004
Act of 1996 to Establish an Interconnection	:	
Agreement With ALLTEL Pennsylvania, Inc.	:	

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO COMPEL

On January 20, 2004, ALLTEL Pennsylvania, Inc. (ALLTEL) served its First Set of Interrogatories on Cellco Partnership d/b/a Verizon Wireless (Wireless) in the above-captioned case.

Pursuant to the Arbitration Proceeding Order dated January 8, 2004, as modified, on January 22, 2004, Wireless served its written Objections to ALLTEL's First Set of Interrogatories.

On January 27, 2004, ALLTEL filed its Motion To Dismiss Objections And Compel Responses (Motion).

On January 30, 2004, Wireless filed its Answer to ALLTEL's Motion.

ALLTEL's Motion is procedurally ready to be ruled upon.

ALLTEL requests that Wireless' three "General Objections" (General Objection 1, 2, and 3) be dismissed as not being in accordance with the Pennsylvania Public Utility Commission's (Commission's) Rules of Practice and Procedure pertaining to discovery, 52 Pa.Code §§5.321 through 5.373. ALLTEL is correct ["An objection shall restate the interrogatory or part thereof deemed objectionable and the specific ground for the objection.", 52 Pa.Code §5.342(c), emphasis added]. The Commission's Rules of Practice and Procedure make

no provision for “General Objections”. However, as Wireless has now withdrawn two of the three “General Objections”, *see*, Wireless’ Answer to ALLTEL’s Motion at 7, and specifically raised the same grounds as those contained in General Objection 1, this issue has been rendered moot.

Setting aside the “General Objections”, ALLTEL’s Motion requests, in its entirety, the following additional relief:

Wireless should be compelled to respond to all Interrogatories as originally requested except as follows:

- Interrogatories 1, and 2 shall be answered for the geographic area limited to Pennsylvania, California, Oklahoma, New York, New Jersey, Ohio, Delaware, Virginia and West Virginia.
- Interrogatory 3 shall be answered as initially requested, but only where a third party handles the traffic, and a copy of the interconnection agreement provided. (i.e. Interrogatory No. I-3 should now read as follows:

“With respect to each local exchange carrier with which you have exchanged traffic indirectly, please identify how and pursuant to what terms and conditions or paragraph or section of any applicable agreement, transport and other costs associated with transport of Verizon Wireless originated telecommunications traffic or local exchange carrier originated traffic through a third party are billed, processed and paid.”

- Interrogatories 4 and 5 shall be answered with respect to each local exchange carrier and situation referenced in response to Interrogatory No. I-3.
- Interrogatories I-6 through I-8 shall be answered for each agreement or rate identified or provided in response to Interrogatory I-2 and/or I-3.
- Interrogatory I-11 as clarified by ALLTEL should be answered.
- Interrogatory I-18 shall be answered as refined by ALLTEL.
- Interrogatories I-20 through 24 shall be answered as initially requested.

Wireless, on the other hand, proposes:

ALLTEL's motion should be denied in its entirety. In the alternative, should the presiding officer be inclined to grant any of the discovery demanded by ALLTEL, Verizon Wireless respectfully requests that it be limited to the materials set forth in Verizon Wireless's last offer to ALLTEL to resolve this discovery dispute:

a. A list of the more than 300 carriers with whom Verizon Wireless exchanges traffic across the United States (in response to Interrogatory I-1) (this list is in fact attached hereto as Exhibit B); and

b. Copies of the interconnection agreements requested by Interrogatory I-2 with respect to the states identified at page 15 of ALLTEL's motion to compel: Pennsylvania (already provided to ALLTEL), California, Oklahoma, New York, New Jersey, Ohio, Delaware, Virginia and West Virginia.

Verizon Wireless believes that much if not all of the information sought by the remaining interrogatories at issue (at least with respect to the states listed above) is contained in the agreements. With the agreements in hand, ALLTEL will be in as good a position as Verizon Wireless to analyze the agreements, and to require Verizon Wireless to do so would go far beyond the limits on discovery imposed by the Commission's rules. Given the extremely late date of the requests and the looming hearing dates in this case (February 10 and 11, 2004), ALLTEL's demand that Verizon Wireless perform this investigation for ALLTEL is manifestly unjust and unreasonable. Furthermore, to countenance such demands would make a mockery of the Commission's discovery rules and severely disrupt this arbitration.

I find some merit in the positions of both ALLTEL and Wireless, and will order that Wireless provide some of the information and documents sought by ALLTEL.

The applicable Commission Regulations are set forth in 52 Pa. Code §§5.321(a)(1), (c), and (f)(2), 5.342(c), and 5.361(a). These Regulations provide:

§5.321. Scope.

(a) *Applicability.* This subchapter applies to a proceeding in which:

(1) A complaint, protest or other adverse pleading has been filed.

(c) *Scope.* Subject to this subchapter, a participant may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party or participant, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(f) *Purpose and methods.* A participant may obtain discovery for the purpose of preparation of pleadings, or for preparation or trial of a case, or for use at a proceeding initiated by petition or motion, or for any combination of these purposes, by one or more of the following methods:

(2) Written interrogatories to a participant.

§ 5.342. Answers or objections to written interrogatories by a participant.

(c) If objected to, the reasons for the objection to an interrogatory shall be stated in lieu of an answer. An objection shall be prepared, filed and served in the same manner provided for an answer, except that an objection shall be contained in a document separate from an answer as required by the time provisions of subsection (d). An objection shall restate the interrogatory or part thereof deemed objectionable and the specific ground for the objection. The objection shall include a description of the facts and circumstances purporting to justify the objection. The objection shall be signed by the attorney making it. An interrogatory otherwise proper is not objectionable solely because an answer will involve an opinion or contention that is related to a fact or the application of law to fact. The statement of an objection does not excuse the answering participant from answering the remaining interrogatories or subparts of interrogatories to which no objection is stated.

§5.361. Limitation of scope of discovery and deposition.

(a) No discovery or deposition is permitted which:

- (1) Is sought in bad faith.
- (2) Would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or participant.
- (3) Relates to matter which is privileged.
- (4) Would require the making of an unreasonable investigation by the deponent, a participant or witness.

The touchstone as to a discoverable matter under the Commission's Regulations is that it be relevant to the subject matter involved in the pending action and not privileged.

ALLTEL and Wireless have agreed that ALLTEL Interrogatories I-1 and I-2 shall be limited to the following geographic area: Pennsylvania, California, Oklahoma, New York, New Jersey, Ohio, Delaware, Virginia and West Virginia.

All of ALLTEL's remaining Interrogatories should be likewise limited if they are not to be found unreasonably annoying, oppressive, burdensome or expensive to answer. Consequently, Wireless will be ordered to respond to ALLTEL Interrogatory I-3, but limited to the following geographic area: Pennsylvania, California, Oklahoma, New York, New Jersey, Ohio, Delaware, Virginia and West Virginia. Similarly, Wireless will be ordered to answer ALLTEL Interrogatories I-4 through I-8 and I-20 through I-24 limited to the following geographic area: Pennsylvania, California, Oklahoma, New York, New Jersey, Ohio, Delaware, Virginia and West Virginia.

Finally, wireless is correct with respect to ALLTEL Interrogatories I-11 and I-18. ALLTEL may not use its Motion to propound what is essentially a new Interrogatory in the guise of "clarifying" or "refining" a previously presented Interrogatory. Wireless, to the extent that it has not already done so, shall answer ALLTEL Interrogatories I-11 and I-18 as originally

presented, but limited to the following geographic area: Pennsylvania, California, Oklahoma, New York, New Jersey, Ohio, Delaware, Virginia and West Virginia.

THEREFORE,

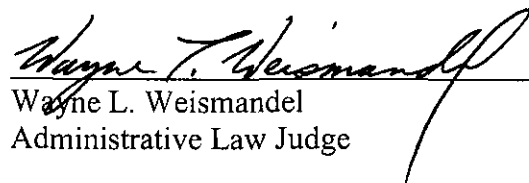
IT IS ORDERED:

1. That not later than February 5, 2004, Cellco Partnership d/b/a Verizon Wireless shall provide a full and complete answers to ALLTEL Pennsylvania, Inc.'s First Set Interrogatories I-1, I-2, I-3, I-4, I-5, I-6, I-7, I-8, I-20, I-21, I-22, I-23, and I-24 limited to the following geographic area: Pennsylvania, California, Oklahoma, New York, New Jersey, Ohio, Delaware, Virginia and West Virginia.

2. That not later than February 5, 2004, to the extent that it has not already done so, Cellco Partnership d/b/a Verizon Wireless shall provide full and complete answers to ALLTEL Pennsylvania, Inc.'s First Set Interrogatories I-11 and I-18 as originally presented, but limited to the following geographic area: Pennsylvania, California, Oklahoma, New York, New Jersey, Ohio, Delaware, Virginia and West Virginia.

2. That except as set forth in Order Paragraphs 1 and 2, above, ALLTEL Pennsylvania, Inc.'s Motion To Dismiss Objections And Compel Responses is denied.

Date: February 2, 2004


Wayne L. Weismandel
Administrative Law Judge

A-31048617004 Petition of CELLCO Partnership
d/b/a Verizon Wireless

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