

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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. :

DOCUMENT

ORDER GRANTING MOTION TO COMPEL

DOCKETED

FEB 25 2004

On December 19, 2003, Cellco Partnership d/b/a Verizon Wireless (Wireless) served its First Set Of Interrogatories on ALLTEL Pennsylvania, Inc. (ALLTEL) in the above-captioned case. Wireless's First Set Of Interrogatories consisted of Interrogatories I-1 through I-22.

On January 8, 2004, the undersigned presiding Administrative Law Judge (ALJ) issued my Arbitration Proceeding Order. The Arbitration Proceeding Order provided, in relevant part:

2. Pursuant to 52 Pa. Code §5.342(d), the Commission's regulations relating to discovery are modified as follows. It should be noted that when an interrogatory is served on a Friday or the day before a holiday, the appropriate period is deemed to start on the next business day.
 - a) The response period for replying to written interrogatories is three calendar days.
 - b) Objections to interrogatories are to be communicated orally to the propounder of the interrogatory within one business day of receipt of the interrogatory and in writing within twenty-four hours thereafter.
 - c) Motions to dismiss objections and to compel responses shall be filed and served within three business days of receipt of the written objections. Answers to such motions shall be filed within two business days after filing an serving of the motion. Copies of both Motions to

compel and of Answers thereto shall be sent to me via e-mail (wweismande@state.pa.us) at the time of filing.

d) Interrogatories which are objected to but which are not made the subject of a timely motion to compel will be deemed withdrawn.

e) Pursuant to 52 Pa. Code §5.341(b), neither interrogatories nor responses are to be filed with the Commission or served on the presiding officer, although a certificate of service may be filed with the Commission's Secretary.

The parties are expected to resolve discovery issues among themselves. Motions to compel should be filed only after such efforts have failed. Interrogatories are to be provided electronically as well as on paper. In addition, the participants are urged to use alternative means of discovery such as discovery conferences or depositions.

Arbitration Proceeding Order dated January 8, 2004, Order Paragraph 2.

On January 12, 2004, ALLTEL served its Response To Verizon Wireless First Set Of Interrogatories (Response) on Wireless. Wireless' Interrogatory I-13 and ALLTEL's response thereto read as follows:

I-13. For each rate provided in response to Interrogatory I-11 (regarding rates proposed for the transportation and termination of telecommunications traffic exchanged with Verizon Wireless), please identify and provide copies of all cost models, cost inputs, and cost assumptions relating to the rate, including all supporting documentation of any network functionality that ALLTEL uses to terminate a call originated by Verizon Wireless. Please include in your response functioning electronic copies of the cost models, populated with the inputs and assumptions used by ALLTEL, in a format that allows the user to change inputs and assumptions and recalculate results.

RESPONSE: Cost studies have been provided.

On January 14, 2004, Wireless filed and served its Motion To Compel Discovery Responses (Motion To Compel) with the Pennsylvania Public Utility Commission (Commission).--Wireless'-Motion To Compel requests that ALLTEL be ordered to "immediately . . . provide to Verizon Wireless 'functioning electronic copies'

of the cost model(s) purported to support the rates proposed by ALLTEL in this proceeding ‘populated with the inputs and assumptions used by ALLTEL, in a format that allows the user to change inputs and assumptions and recalculate results’” as had been requested in Interrogatory I-13.

On January 20, 2004, ALLTEL filed and served its Answer To Motion To Compel (Answer).

Wireless’ Motion To Compel is procedurally ready to be ruled upon

In accordance with the Commission’s regulation pertaining to written interrogatories to a party, 52 Pa.Code §5.341, the Wireless Set I Interrogatory for which an order compelling production is sought requests copies of a document or documents. 52 Pa.Code §5.341(c). If ALLTEL had an objection to providing the copies as Wireless requested (to include Wireless’ request that it be able “to change inputs and assumptions and recalculate results”), it was incumbent upon ALLTEL to properly make its objection to Wireless’ Interrogatory I-13, not respond that “Cost studies have been provided.” *See*, 52 Pa.Code §§5.349(d), 5.342(c) and (d)(1). Having failed to object, ALLTEL will not now be heard to refuse Wireless’ request without suffering a penalty for that refusal.

It is noted that ALLTEL understood from the beginning that Wireless wanted to be able to use the requested “functioning electronic copies of the cost models” to “play” with different inputs and assumptions. *See*, e-mail on December 22, 2003, from Jimmy Dolan, Manager – ALLTEL Negotiations, to Marc Sterling, Verizon Wireless. By refusing to provide Wireless with all of the necessary passwords to make complete use of the ALLTEL provided cost study, ALLTEL is failing to comply with Wireless Interrogatory I-13 without having timely objected to it. This cannot be allowed without negative consequences to ALLTEL.

ALLTEL will be ordered to provide a full and complete response and

production relating to Wireless' Interrogatory I-13. Because of the abbreviated time schedule involved in this case (written direct testimony is due to be submitted on January 22, 2004), this Order Granting Motion To Compel will be served on the parties electronically as well as by mail and will require ALLTEL's compliance by no later than 12:00 Noon, prevailing local time in Harrisburg, Pennsylvania, on January 21, 2004.

Should ALLTEL fail to comply with this Order Granting Motion To Compel, and upon Wireless' consequent motion, any of the sanctions available under 52 Pa.Code §5.372 may be imposed.

ORDER

THEREFORE,

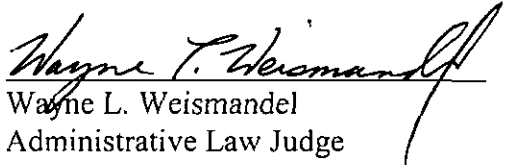
IT IS ORDERED:

1. That the Motion To Compel Discovery Responses filed January 14, 2004, by Cellco Partnership d/b/a Verizon Wireless in the above-captioned case is granted.

2. That not later than 12:00 Noon, prevailing local time in Harrisburg, Pennsylvania, on January 21, 2004, ALLTEL Pennsylvania, Inc. shall serve a full and complete answer and provide the documents requested to Cellco Partnership d/b/a Verizon Wireless as set forth in Cellco Partnership d/b/a Verizon Wireless' Set I Interrogatory I-13. ALLTEL Pennsylvania, Inc. shall take any and all actions necessary, including but not limited to providing all required passwords, to enable Cellco Partnership

d/b/a Verizon Wireless to change inputs and assumptions and recalculate results in the functioning electronic copies of the cost models provided to Celco Partnership d/b/a Verizon Wireless in compliance with this Order Granting Motion To Compel.

Date: January 20, 2004


Wayne L. Weismandel
Administrative Law Judge

A-3104807004 Petition of CELLCO Partnership
d/b/a Verizon Wireless

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