

PLEASE DOCKET

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Vince Marino

v.

Verizon Pennsylvania Inc.

DOCKETED
AUG 18 2006

C-20055656

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FOLDER

FOURTH INTERIM ORDER
GRANTING RESPONDENT'S
MOTION TO STRIKE

HISTORY OF THE PROCEEDING

The Complainant, Vince Marino, on December 7, 2005, filed a complaint alleging the telephone service that he receives from the Respondent, Verizon Pennsylvania Inc., is inadequate and unreasonable, and as an additional matter, he claims Verizon fails to acknowledge a wiretap problem. Verizon answered the complaint and filed new matter on December 29, 2005. Verizon asserts Marino contacted its repair department 72 times to report wiretaps, static, noise or other problems between January 1, 2004 and December 29, 2005, whereupon Verizon tested its facilities each time and sent someone to his premises 28 times without discovering any illegal connections or other problems. On the same day, Verizon moved to dismiss that portion of the complaint raising an illegal wiretap issue, since issues relating to wiretapping are controlled by the Pennsylvania Wiretapping and Electronic Surveillance Control Act, 18 Pa. C.S. §§5701-5781, and lie exclusively within the jurisdiction of the courts, but not the Commission. McClellan v. Pa. P.U.C., 159 Pa. Cmwlth. 675, 634 A.2d 686 (1993).

On January 3, 2006, Marino replied to the new matter and in apparent response to the motion to dismiss, he petitioned the Commission to transfer that portion of his case dealing with illegal wiretapping to the Office of the Attorney General. Verizon answered Marino's petition on January 18, 2006. On January 19, 2006, a Second Interim Order dismissed that

portion of Marino's complaint raising a wiretap issue and denied his petition to transfer that issue to the Office of the Attorney General.

During the interim, Marino submitted an application for a subpoena dated January 12, 2006 that I received on January 17, 2006. Although the time for a response had not expired, *see* 52 Pa. Code §5.421(b), a First Interim Order on January 18, 2006 denied the application for its near total lack of conformity with the Commission's Rules of Administrative Practice and Procedure. A hearing scheduled for February 14, 2006 was postponed until March 14, 2006 at the request of the parties so they could conduct discovery.

On February 6, 2006, Marino filed a "Motion to Order Verizon to Comply with Request to Produce Pertinent Test List As to Commission PA Code 63.137 Service Monitoring and Related Matters As Requested in 1st Request to Produce." This motion was treated as a motion to compel compliance with a discovery request to produce documents pursuant to 52 Pa. Code §§5.342(e) and 5.349(d). Verizon answered this motion on February 17, 2006. A Third Interim Order denied that motion on February 21, 2006.

Also on February 6, 2006, Marino filed an "Answer to Verizon PA Inc. Response to 1st Request for Production of Documents and Things." On February 17, 2006, Verizon moved to dismiss the Complainant's answer as not being in conformity with the Commission's Rules of Administrative Practice and Procedure. The Complainant responded to this motion on February 23, 2006. For the following reasons, this motion will be granted.

DISCUSSION

On or about January 12, 2006, the Complainant served a document entitled "Notice to Produce" upon Verizon, which treated that document as a request for production of documents and interrogatories pursuant to 52 Pa. Code §§5.321, *et seq.* of the Commission's Rules of Administrative Practice and Procedure. On February 3, 2006, Verizon responded to Marino's discovery request. On February 6, 2006, the Complainant filed with the Commission two documents as noted, *supra*. The document at issue here is the one entitled "Answer to Verizon PA Inc. Response to 1st Request for Production of Documents and Things."

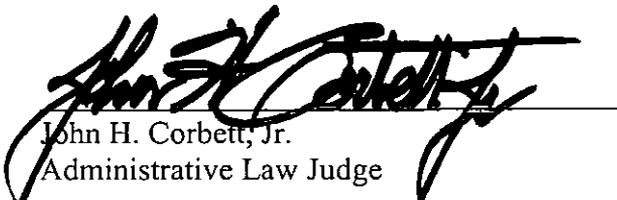
The Commission's Rules of Administrative Practice and Procedure do not contemplate allowing parties to file an answer or reply to a response to a discovery request. The Commission's regulations governing the filing of answers are found at 52 Pa. Code §§5.61-5.66. The only filings a party may answer are: complaints, petitions, motions and amended pleadings. The Complainant's "answer" to Verizon's discovery response is simply an inappropriate pleading that must be stricken.

Furthermore, if the Complainant intends to disagree with or challenge Verizon's discovery responses, then his "answer" must also be stricken. Pursuant to 52 Pa. Code §§5.342 and 5.349 of the Commission's regulations, the only pleading in which the Complainant can challenge the Respondent's discovery responses is in a motion to compel. To the extent the "answer" is a misguided attempt to file a motion to compel additional discovery responses from Verizon, it is redundant and cumulative, since, as noted, *supra*, the Complainant has already filed a motion to compel which appears to raise the same issues as his "answer." As noted, *supra*, a Third Interim Order already has disposed of the Complainant's motion to compel. If the Complainant wishes to challenge that ruling, he can take it up with the Commission after the hearing and a decision has been entered on the merits of his complaint. THEREFORE,

IT IS ORDERED:

That the motion of Verizon Pennsylvania Inc. to strike the Complainant's "Answer to Verizon PA Inc. Response to 1st Request for Production of Documents and Things" is hereby granted and the same is hereby struck as inappropriate and not in conformity with the Commission's Rules of Administrative Practice and Procedure, 52 Pa. Code §§1.1, *et seq.*

Dated: February 23, 2006


John H. Corbett, Jr.
Administrative Law Judge