

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCUMENT  
FOLDER

Investigation Regarding Intrastate Access :  
Charges and IntraLATA Toll Rates of Rural :  
Carriers and the Pennsylvania Universal : I-00040105  
Service Fund :

D ORIGIN

**ORDER DENYING REQUEST TO DISREGARD THE PTA AND EMBARQ  
ANSWERS TO VERIZON'S JULY 24, 2008 MOTION TO COMPEL**

The purpose of this Order is to set forth the plan of presentation for the hearing scheduled for August 12, 2008, for the argument on the Motions to Compel discovery responses against the Pennsylvania Telephone Association (PTA) and the United Telephone Company of Pennsylvania LLC d/b/a Embarq Pennsylvania (Embarq) filed on July 24, 2008 by Verizon Pennsylvania Inc., Verizon North Inc. and MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services (Verizon), and the Office of Consumer Advocate (OCA) Motions to Compel discovery responses against the same parties.

On July 24, 2008, Verizon sent an e-mail to the undersigned and the following: Bradford Stern (T-Mobile), Joel Cheskis and Cammie Shoen (OCA), Martin C. Rothfelder (T-Mobile), Michelle Painter (AT&T), Pamela Polacek (BCAP) and Zsuzsanna Benedek (Embarq). The first e-mail was sent at 3:59 pm.

On July 24, 2008, Verizon sent another e-mail at 6:36 pm, directed to the above persons as well as the rest of the parties to the case, which stated: The electronic copies of the Verizon Companies' motions to dismiss the objections of the PTA's and Embarq's objections and to compel answers to discovery sent earlier today were incomplete and had production problems. Please discard and replace them with the attached copies of the final documents. I apologize for any inconvenience."

On July 29, 2008, AT&T filed its Answer in support of Verizon motions to compel, and on July 31, 2008, OCA filed its own Motions to Compel Embarq and PTA to file responses to discovery requests.

On August 1, 2008 Embarq filed its Response to the Verizon motion to compel, and on that same date, PTA filed its Answer to Verizon's motion to compel.

On August 4, 2008, AT&T filed a letter requesting that the PTA and Embarq Answers be dismissed as untimely. On August 6, 2008, PTA filed both a letter explaining the timing and its Answer to OCA's Motion to Compel. Embarq also filed its Answer to the OCA Motion to Compel on August 6, 2008, and included a note supporting the PTA explanation of the timing of answers.

**1. AT&T's Request to Disregard PTA and Embarq Answers as Untimely**

AT&T states correctly that 52 Pa. Code § 5.342(g) requires a party to answer a motion to compel within five days of service. AT&T counted five days from the date of the electronic mailing, July 24, 2008 and filed its own response in support of the motions to compel on July 29, 2008. AT&T states that PTA and Embarq "took advantage of their self-granted extensions by responding to AT&T's timely filed arguments. Thus, in addition to granting themselves extensions of the filing deadline without seeking authority from Your Honor, both the PTA and Embarq have gained additional advantages not permitted under the Commission's rules."

PTA, joined by Embarq, reply that "AT&T is not a third party observer in the matter Verizon Set I discovery, rather AT&T is a participating party aligned with Verizon," thus negating any additional advantages claimed.

The key to this dispute is the computation of time under the Commission's rules. The due date for an answer to a motion to compel is five days after service, 52 Pa. Code § 5.342(g). Therefore, the date of service of the motion to compel is the trigger.

Service by a party falls under a specific regulation:

**§ 1.54. Service by a party.**

\* \* \*

(b) Service may be made by one of the following methods:

(1) *First class mail.* Service may be made by mailing the requisite number of copies to each party as provided in § 1.59 (relating to number of copies to be served), properly addressed with postage prepaid.

(2) *Personal.* Service may be made personally.

(3) *Electronic.* Service may be made electronically, to those parties who have agreed to accept service in that manner. Documents served electronically need not be followed by service of a hard copy to the parties if the parties have so agreed. A final version in hard copy shall be stamped on the date due for filing with the Secretary regardless of any agreement among the parties. Any subsequent corrected version not otherwise substantively altering the final version in hard copy may be filed upon approval of the administrative law judge.

(4) *Telefacsimile.* Service may be made by telefacsimile to those parties who have agreed to accept service in that manner. Documents served electronically need not be followed by service of a hard copy if the parties have so agreed.

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52 Pa. Code § 1.54(b).

A parallel regulation confirms that the date of service is determined the same way. 52 Pa. Code § 1.56.

The parties had agreed to electronic service, and their agreement was memorialized in the Scheduling Order:

8. That due dates are in-hand, service of discovery requests, testimony, exhibits and briefs may be by electronic means on the due date if transmission occurs before 4:00 pm and hard copies follow. Oversize exhibits or photos or attachments may be served by hard copy only but must be sent by overnight mail if the submission is sent

electronically on the due date. Discovery served after 4:00 pm shall be deemed to be served the following business day.  
Amended Scheduling Order of June 24, 2008.

Here the parties have agreed to electronic service of discovery, so Section 1.54(b)(3) is available. However, understood in the regulation is that the *earliest* date meeting one of the criteria is the date of service. Verizon tried to serve the motion to compel through electronic means, as evidenced by the e-mail sent at 3:59 pm on July 24, 2008. When Verizon nullified the July 24, 2008 date by its 6:36 pm e-mail which was to take the place of the earlier missive, it moved the electronic service date to July 25, 2008.

Attached to the motions to compel is a certificate of service, which indicates that the parties were served by first class mail on July 24, 2008. As this is the earlier of the two available service dates, it is the appropriate date to use. In conjunction with service by first class mail, the responding party is afforded three additional days under the mailbox rule in which to file a response. 52 Pa. Code § 1.56(b).

Therefore, the due date for the responses to the Verizon motions to compel is August 1, 2008, eight days after the service of the motions. The answers of PTA and Embarq were filed on August 1, 2008, and are timely.

### **Verizon's Motions to Compel Against PTA and Embarq**

Proponents of the OCA motions to compel will present oral argument first, and those parties opposing the motions will follow. Rebuttal will be permitted where necessary and if time allows. Following argument of the OCA motions, the Verizon motions will be considered.

Although no specific time limitation will be set, parties may be asked to cut arguments short if they present argument which is not relevant or which is repetitive, especially if it exceeds ten minutes in length. Parties are encouraged to state support for others' argument rather than repeating those arguments.

WHEREFORE,

IT IS ORDERED:

1. That the request made by AT&T to disregard the Answers of the Pennsylvania Telephone Association and the United to Telephone Company of Pennsylvania LLC d/b/a Embarq Pennsylvania filed to Verizon's July 24, 2008 Motions to Compel Answers to Discovery is denied.

2. That the Motions to Compel Answers to Discovery filed on July 24, 2008 by Verizon and on July 31, 2008 by the Office of Consumer Advocate are set for oral argument on Tuesday, August 12, 2008 at 1:00 pm in Hearing Room 1 of the Commonwealth Keystone Building, Harrisburg.

Dated: August 8, 2008

  
Susan D. Colwell  
Administrative Law Judge