

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Vince Marino

v.

Verizon Pennsylvania Inc.

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FOLDER

C-20055656

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SECRETARY'S BUREAU

FIRST INTERIM ORDER  
DENYING APPLICATION  
FOR SUBPOENA

**DOCKETED**  
APR 7 2006

HISTORY OF THE PROCEEDING

The Complainant, Vince Marino, submitted an application for a subpoena dated January 12, 2006 that I received on January 17, 2006. Although the time for a response has not yet expired, *see* 52 Pa. Code §5.421(b), the application must be denied for its near total lack of conformity with the Commission's Rules of Administrative Practice and Procedure.

This proceeding commenced on December 7, 2005, when Marino filed a complaint alleging the telephone service that he receives from the Respondent, Verizon Pennsylvania Inc., is inadequate and unreasonable. 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.

Cmwth. 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 forward that portion of his case dealing with illegal wiretapping to the Office of the Attorney General. No response to this petition has yet been received.

As pertinent to this Order, Marino submitted an application for a subpoena of Ralph S. Giglio, whom the Complainant apparently wants to call as an expert witness during a hearing scheduled for 10:00 a.m. on February 14, 2006 in the Commission's Pittsburgh office. The Complainant's application is attached hereto as Appendix A and incorporated herein by reference.

### DISCUSSION

Section 5.421 of the Commission's Rules of Administrative Practice and Procedure, 52 Pa. Code §5.421, provides in pertinent part:

(a). *Issuance.* A subpoena for the attendance of witnesses or for the production of documentary evidence, unless directed by the Commission upon its own motion, will issue only upon application in writing to the presiding officer, except that during a hearing in a proceeding, the application may be made orally on the record before the presiding officer, who will determine the necessity of issuing the subpoena. The written application shall specify as nearly as possible the general relevance, materiality and scope of the testimony or documentary evidence sought, including, as to documentary evidence, specification as nearly as possible of the documents desired and the facts to be proved by the documents in sufficient detail to indicate the necessity of the documents. The proposed subpoena may be attached to the application

(b). *Notice.* An application for a subpoena shall be filed with the Commission and copies served by the petitioner upon the affected participant, the presiding officer, active participants of record, and if the subpoena is directed to a Commission employee, to the Commission's Law Bureau. The application shall contain a notice that an answer or objection thereto shall be filed with the Commission and presiding officer within 10 days of service of the application. When the person for whom a subpoena is sought is not a participant to the case, a copy of the subpoena application shall be served on the person. When the person for whom a

subpoena is sought is not a party to the case, the application shall identify the persons—names and addresses—including the Secretary [for the Commission] and presiding officer, to whom the answer or objection shall be sent.

The Complainant's application fails to meet the bare minimum requirements for issuance of a subpoena.

While it identifies Ralph S. Giglio, vice president of Americom, Inc., as a witness that the Complainant intends to call for the scheduled hearing, the application fails to state what testimony or documentary evidence this witness will present that is relevant or material to this proceeding. 52 Pa. Code §5.421(a). Only by reading the complaint and related pleadings can one surmise that the proposed witness performed some type of testing that Marino believes may be helpful in proving that Verizon provided inadequate or unreasonable telephone service. *See*, 66 Pa. C.S. §1501. Of a more serious nature are the application's other omissions.

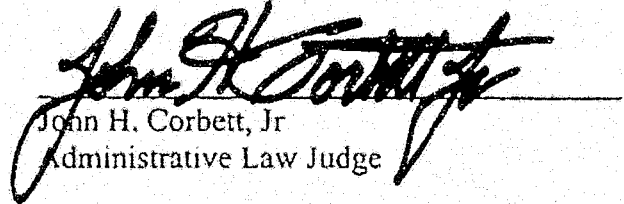
Nowhere is there any indication that the application was filed with the Secretary for the Commission. 52 Pa. Code §5.421(b). The attached certificate of service fails to show that the application was served on Verizon or the person for whom the subpoena was sought. *Id.* To reiterate, when the person for whom a subpoena is sought is not a participant to the case, a copy of the application must be served on that person. *Id.* Since it apparently was not served on either Verizon or the person for whom the subpoena is sought, the application likewise does not contain a notice that either of these respondents must answer or object to it within 10 days. *Id.* Finally, since Ralph S. Giglio is not a party to this case, the application fails to identify the persons—names and addresses—including the Secretary for the Commission and presiding officer, to whom the answer or objection must be sent. *Id.*

These procedures for applying for a subpoena are not meant to trap the unwary, but are in place to protect those individuals and entities who may have no knowledge of or interest in this litigation. Since this application fails to meet the minimum requirements for issuance of a subpoena, it must be denied. THEREFORE,

IT IS ORDERED:

That the Complainant's application for issuance of a subpoena for the attendance of Ralph S. Giglio, vice president of Americom, Inc., at a hearing scheduled for 10:00 a.m. on February 14, 2006 is hereby denied.

Date: January 18, 2006

  
John H. Corbett, Jr  
Administrative Law Judge