

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

PENNSYLVANIA CARRIERS'
COALITION
v.
VERIZON PENNSYLVANIA, INC.
TELEPHONIC HEARING

Docket No.: C-20065798

Pages: 1 - 13

1400 Spring Garden Street
13th Floor
State Office Building
Philadelphia, PA

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Thursday, May 18, 2006
Commencing at 10:00 a.m.

BEFORE:

MARLANE R. CHESTNUT, Administrative Law Judge

APPEARANCES:

DOCKETED
JUN 7 - 2006

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213 Market Street, 9th Floor
Harrisburg, PA 17101
For the Pennsylvania Carriers Coalition

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JUDGE MARLANE R. CHESTNUT:

This is the pre-hearing conference scheduled at Docket C-20065798, Pennsylvania Carriers' Coalition versus Verizon Pennsylvania, Inc. For the record, let me state that I am Administrative Law Judge Marlane R. Chestnut. I would like each of you to identify yourselves for the record by stating your name, your address, your telephone number and on whose behalf you are appearing. And we'll start with you, Mr. Stewart, please.

ATTORNEY STEWART:

My name is Mark Stewart, S-T-E-W-A-R-T. My address is Wolf Block, 213 Market Street, 9th Floor, Harrisburg, Pennsylvania 17101. And I am representing the Pennsylvania Carriers' Coalition.

JUDGE:

Thank you. Ms. Paiva?

ATTORNEY PAIVA:

My name is Susan Paiva, P-A-I-V-A. My address is 1717 Arch Street, Penn West, Philadelphia, Pennsylvania, 19103. Telephone number is 215-466-4755. And I'm representing Verizon Pennsylvania, Inc.

1 JUDGE:

2 Thank you. I received pre-hearing
3 memoranda from each of you. Thank you. And it seems
4 like you have agreed on a procedural way to deal with
5 this case. I don't disagree with you that there are
6 only legal issues to be addressed at this point. And
7 I like your proposal that we do it through the vehicle
8 of motion for summary judgment. I did want to ask
9 you why did you have such a late filing date for the
10 briefs? Is that because you were trying to resolve
11 this, Mr. Stewart?

12 ATTORNEY STEWART:

13 Those were dates that we worked out
14 together based in part --- I'm not sure it was that
15 motivation. I think it was more based on other
16 proceedings and various other requirements that both
17 Ms. Paiva and I are working under in other cases
18 before the Commission.

19 JUDGE:

20 Okay. Because I would like to urge you
21 to see if you can resolve some or all these issues.
22 One issue that I did want to ask you about was the
23 allegation concerning the access to OSS charge on a
24 per line rather than a per loop basis. That seems
25 very straightforward. It either is compliance with

1 tariff or it isn't. Why can't you just ---?

2 ATTORNEY STEWART:

3 I think it's the fact that they are
4 applying it on a per line basis is something that
5 they've acknowledged and it does say per line in the
6 tariff. Our position is that the proposal that they
7 made back in the generic Unity case was on a per loop
8 basis at least as the Commission described approving
9 it. And therefore, it's being misapplied or being
10 applied inconsistently with what was approved.

11 ATTORNEY PAIVA:

12 This is Ms. Paiva. I think that they are
13 arguing is that it's a certain high-capacity type
14 lines. They are reselling several different phone
15 numbers, being resold. And the way we vision it is
16 over one high-capacity loop. So they're saying we
17 should only be able to apply the charge once and not
18 apply it for each telephone number.

19 ATTORNEY STEWART:

20 Yes. That's pretty much it. Like you
21 said, both types of factual circumstances.

22 JUDGE:

23 Okay. Because I want to make it clear,
24 my position is that this proceeding is not appropriate
25 to challenge the filing of the tariff whether it's in

1 compliance with the Commission's order or not. This
2 proceeding is really only to address the application
3 of the tariff, whether the application is being done
4 in accordance with the tariff.

5 ATTORNEY STEWART:

6 I understand, Your Honor.

7 JUDGE:

8 Okay. Because again, to me, that seems
9 either it is in compliance with the tariff or it
10 isn't. And that's pretty straightforward. And I
11 would think you would be able to resolve that. Be
12 that as it may, one thing I did want to bring up was
13 that what I want you to do is come up with a uniform
14 issue listing, so that you're addressing the same
15 issues in your brief at the same places. Do you
16 understand what I'm asking you to do here, Mr.
17 Stewart?

18 ATTORNEY STEWART:

19 Yes.

20 JUDGE:

21 Ms. Paiva, do you understand?

22 ATTORNEY PAIVA:

23 Yes. Similar to what we've done in other
24 cases where the brief follows.

25 JUDGE:

1 Yes.

2 ATTORNEY PAIVA:

3 Using the same table of contents.

4 JUDGE:

5 Exactly. And I'd like you to have that
6 to me some time prior to filing your brief.

7 ATTORNEY STEWART:

8 Okay. I think the only issue of
9 contention that'll come up there is the issue number
10 two under Verizon's pre-hearing memo. That
11 essentially the motion to dismiss already decided our
12 argument that the rates are not properly tariffed as
13 applied to resale. I mean, certainly I'm aware of
14 what the language was in the order and I'm aware that,
15 you know, what our likely fate is on that issue. My
16 only point would be that the order did not actually
17 --- I mean, the order denied the motion. So I would
18 submit that we should still be able to brief that
19 issue to Your Honor. And you know, maybe we are able
20 to be more persuasive the second time around. But if
21 not, you know, we should still be able to brief it and
22 then it would be included in whatever order was issued
23 on summary judgment.

24 ATTORNEY PAIVA:

25 And Your Honor, on our behalf, we believe

1 you didn't grant the motion to dismiss because you
2 didn't see that every step along the way was decided
3 in a way that will allow you to dismiss the whole
4 case. But in that particular step to do with the
5 tariffing, you did decide that. So it doesn't seem to
6 be economical to brief the whole argument again if you
7 already made the decision. Of course, they would have
8 the opportunity, if it gets to exceptions, to argue it
9 again, but is it really necessary to argue it again
10 before you if you've already decided it?

11 JUDGE:

12 Well, I'm going to let it in. My order
13 was really in the context of the motion. And perhaps
14 I would have been more careful in my language had I
15 been thinking about the precedential value of that. I
16 can't say that my decision would be any different, Mr.
17 Stewart. But ---

18 ATTORNEY STEWART:

19 I understand, Your Honor.

20 JUDGE:

21 --- if you want to try it again, I'm not
22 going to foreclose you from doing that in the brief
23 here.

24 ATTORNEY STEWART:

25 Thank you. With that, I think we'll be

1 able to easily to come up with an agreeable issue.

2 JUDGE:

3 Okay. You want to give me a date that
4 you think you can do this by or shall I just leave it
5 up to your professional discretion?

6 ATTORNEY STEWART:

7 The latter would be fine if that's okay.

8 JUDGE:

9 Okay. What I'll be doing is issuing a
10 pre-hearing order with your schedule on it. And we'll
11 also have my customary language concerning the filing
12 of briefs. Do I need to go over that with you now or
13 are you both familiar with that, number of copies,
14 table of contents, et cetera?

15 ATTORNEY PAIVA:

16 I'm familiar with it and, of course, it's
17 going to be written in your order.

18 JUDGE:

19 Yeah.

20 ATTORNEY STEWART:

21 Yes, Your Honor. We're familiar.

22 JUDGE:

23 I mean, if you want me to read it, I
24 will. But I thought we could save a little time by
25 not bothering with that. Otherwise, I don't think

1 there's any issues that need to be addressed beside
2 that; are there? Mr. Stewart, is there anything else
3 you want to bring up?

4 ATTORNEY STEWART:

5 No, Your Honor.

6 JUDGE:

7 Ms. Paiva?

8 ATTORNEY PAIVA:

9 No, Your Honor. The only thing is if we
10 determine that there are some facts we need to have in
11 the record to do this, we were going to stipulate to
12 that and send that with our briefs.

13 JUDGE:

14 That's fine.

15 ATTORNEY PAIVA:

16 Okay.

17 JUDGE:

18 That's fine. Make sure you think about
19 what it is you want the record to contain, whether
20 it's the answer or a stipulation or something, because
21 there does have to be a factual basis for the
22 Commission's decision.

23 ATTORNEY PAIVA:

24 Right. In the per line issue, some facts
25 might be needed.

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JUDGE:

Yes. But I don't see that there are a lot of contested facts here.

ATTORNEY PAIVA:

Right.

JUDGE:

Okay. Well, thank you very much. And I do want to urge you to see if you can resolve some or all of these issues in a way that you can both live with. I know that there are legal issues that you want to have addressed but sometimes you're better off just working something out yourselves. Okay. Then if there's nothing further then, this pre-hearing conference is adjourned. Thank you both very much.

ATTORNEY STEWART:

Thank you, Your Honor.

ATTORNEY PAIVA:

Thank you.

* * * * *

HEARING CONCLUDED AT 10:08 A.M.

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Court Reporter

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