

March 1, 2004

VIA OVERNIGHT MAIL

Ms. Carole J. Washburn
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive S.W.
Olympia, WA 98504-7250

Re: WUTC Docket No. UT-023003

Dear Ms. Washburn:

Enclosed please find an original and seventeen copies of Verizon Northwest Inc.'s Motion to Amend the Procedural Schedule for filing in the above referenced docket. Parties of record have been served via regular mail, unless otherwise noted.

Thank you for your attention to this matter. Please feel free to contact me if you have any questions.

Sincerely,



Christopher S. Huther

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION**

In the Matter of the Review of: Unbundled Loop and Switching Rates; the Deaveraged Zone Rate Structure; and Unbundled Network Elements, Transport, and Termination	Docket No. UT-023003
--	----------------------

**VERIZON NORTHWEST INC.'S
MOTION TO AMEND THE PROCEDURAL SCHEDULE**

Verizon Northwest Inc. (“Verizon”), by and through undersigned counsel, hereby moves to amend the procedural schedule and extend the deadline for filing Reply Testimony. AT&T Communications of the Pacific Northwest, Inc. (“AT&T”) and WorldCom, Inc. (d.b.a. “MCI”) (collectively, “AT&T/MCI”) have only recently agreed to provide Verizon with an unknown quantity of TNS data, which is purportedly responsive to data requests Verizon propounded last year. As discussed more fully herein, AT&T/MCI have been ordered *three times* by both Administrative Law Judge Mace (“ALJ Mace”) and the Washington Utilities and Transportation Commission (“Commission”) to produce *all* of the TNS data requested by Verizon,¹ and have avoided having their cost model stricken by promising to produce a small subset of these data

¹ See Before the Washington Utilities and Transportation Commission, Docket UT-023003, *Thirteenth Supplemental Order: Granting, in part, Motions to Compel* (Sept. 8, 2003) at pp. 5-6 (“Thirteenth Supplemental Order”); Before the Washington Utilities and Transportation Commission, Docket UT-023003, *Fourteenth Supplemental Order: Denying Petition for Review of Interlocutory Order; Granting Motions to Compel* (Oct. 14, 2003) at pp. 6-8 (“Fourteenth Supplemental Order”); Before the Washington Utilities and Transportation Commission, Docket UT-023003, *Eighteenth Supplemental Order Denying Motion to Strike Cost Model and Testimony* (Dec. 5, 2003) at pp. 7-8 (“Eighteenth Supplemental Order”).

with their new cost model filing.² Over eight months have passed since Verizon first requested the production of the TNS data, and over a month has passed since AT&T/MCI's filing of a new cost model, yet it is still unclear exactly what AT&T/MCI will produce.³ AT&T/MCI's delay in producing the TNS data has severely compromised Verizon's ability to analyze and validate AT&T/MCI's cost model ("HM 5.3" or "Model"), as well as the cost estimates produced thereby, and requires, at a minimum, that the procedural schedule be amended to allow Verizon eight weeks from the date of AT&T/MCI's production of the TNS data to review, analyze, and prepare responsive testimony regarding HM 5.3, the underlying data, and the processes upon which HM 5.3 relies to estimate UNE costs. Such an extension would afford Verizon the eight weeks contemplated in the existing procedural schedule to comment upon AT&T/MCI's supplemental direct filings.⁴ If AT&T/MCI's supplemental production occurs this week as promised, and includes the seven categories of data promised in their Opposition to Verizon's Motion to Strike, as well as TNS data comparable to those produced in the Verizon-California UNE proceeding, the filing and hearing dates set forth in the existing

² See Before the Washington Utilities and Transportation Commission, Docket UT-023003, *AT&T/MCI Opposition to Verizon Motion to Strike HAI Model* (Nov. 21, 2003) at p. 5 ("AT&T/MCI Opposition to Verizon's Motion to Strike"). The Commission's denial of Verizon's original Motion to Strike was explicitly "*based on the representation of AT&T and MCI that they will provide information from TNS as indicated in their opposition to [Verizon's original Motion to Strike].*" Eighteenth Supplemental Order at p. 8 (emphasis added). The Commission made clear, however, that AT&T/MCI's offer to produce the limited amount of TNS data may, but also may not, "alleviate many, if not all, of the concerns about the transparency of the HAI model...." *Id.* at p. 7. The Commission stated that it was "not able to confirm, prior to submission and review of the new HAI model that AT&T and MCI appear to be proposing, what weight it will accord the evidence." *Id.* at p. 7.

³ See Email correspondence between Christopher S. Huther and Gregory J. Kopta dated Feb. 13-28, 2004, a copy of which is attached hereto as Exhibit 1 ("Feb. 2004 Email") (stating that AT&T is still "verifying whether the data TNS intends to provide is the same as it provided in California or is more limited"). Verizon therefore reserves the right to petition the Commission for an order compelling the production of the full universe of TNS data to which it is entitled, and perhaps for additional time to review any additional data that may be produced, or alternatively, to renew its Motion to Strike HM 5.3 and all associated testimony and exhibits.

⁴ See Before the Washington Utilities and Transportation Commission, Docket UT-023003, *Seventeenth Supplemental Order Granting Motion to Remove Qwest Issues from Cost Dockets, with Qualification; Approving Revised Schedule for Proceedings* (Nov. 25, 2003) at p. 3 ("Seventeenth Supplemental Order").

procedural schedule would only need to be extended by one month. AT&T/MCI have indicated that they “would not oppose a one-month delay.”⁵

I. AN EXTENSION IS WARRANTED GIVEN AT&T/MCI’S DELAY IN PRODUCING THE TNS DATA

Verizon first requested production of the TNS data in July, 2003.⁶ AT&T/MCI refused to produce the requested information, claiming, among other things, that these data were “not in their possession, custody or control.”⁷ Verizon filed a Motion to Compel the TNS data,⁸ which was granted by ALJ Mace. In her Order dated September 8, 2003, ALJ Mace confirmed, “There is no requirement [in the Commission’s discovery rules] that the information must be in the possession or control of the party of whom it is requested.” ALJ Mace recognized that “when a party puts in issue a cost model such as the HAI model, other parties must be entitled to obtain information necessary to validate the accuracy of the model, *no matter whether that information is pre-processed by a third party.*”⁹ ALJ Mace stated:

The Commission has repeatedly stressed that it wants the parties’ cost models to be transparent and readily capable of verification. *Without the TNS information, it is not clear that the HAI model would meet this test.* Since MCI and AT&T are the parties sponsoring the HAI model, they must be the ones to provide information explaining its operation, including the customer location database and algorithms and software programs used to manipulate customer location.¹⁰

⁵ See Feb. 2004 Email.

⁶ See Before the Washington Utilities and Transportation Commission, Docket UT-023003, *Verizon’s First Set of Data Requests to AT&T and MCI* (July 10, 2003); Before the Washington Utilities and Transportation Commission, Docket UT-023003, *Verizon’s Third Set of Data Requests to AT&T and MCI* (July 15, 2003).

⁷ See generally Before the Washington Utilities and Transportation Commission, Docket UT-023003, *Joint Responses of AT&T and MCI to Verizon’s First Set of Data Requests* (July 24, 2003); Before the Washington Utilities and Transportation Commission, Docket UT-023003, *Joint Responses of AT&T and MCI to Verizon’s Third Set of Data Requests* (July 30, 2003).

⁸ See Before the Washington Utilities and Transportation Commission, Docket UT-023003, *Verizon Northwest Inc.’s Motion to Compel Discovery with Respect to the HM 5.3 Cluster Database* (Aug. 19, 2003), a copy of which is attached hereto as Exhibit 2.

⁹ Thirteenth Supplemental Order at pp. 5-6 (emphasis added).

¹⁰ *Id.* at p. 6 (emphasis added).

AT&T/MCI were ordered to produce the requested data “within ten calendar days of the entry of [ALJ Mace’s Order].”¹¹

AT&T/MCI petitioned the Commission for review of ALJ Mace’s ruling.¹² The Commission again denied AT&T/MCI’s efforts to prohibit the production of the TNS data, stating that “[e]ven though [AT&T/MCI] have provided Qwest and Verizon with much information about customer location inputs and results from the HAI model, *this is not sufficient to permit the incumbents an opportunity to explore how the preprocessed inputs operate to create customer location data upon which network costs are based.*”¹³ The Commission found that, “[b]ecause the TNS proprietary information forms a significant basis for the HAI model outputs ... [AT&T/MCI] must answer the Qwest and Verizon discovery requests at issue here within ten calendar days of the entry of [the Commission’s Order].”¹⁴

Rather than comply with ALJ Mace’s and the Commission’s clear directives and produce the TNS data, AT&T/MCI filed Supplemental Joint Responses, which made clear their intent to persist in withholding the TNS data from Verizon.¹⁵ Verizon subsequently filed a Motion to Strike AT&T/MCI’s cost model, and all associated testimony and exhibits.¹⁶ In an attempt to save their cost model, AT&T/MCI promised in

¹¹ *Id.* at p. 6 (mandating production of the TNS data by September 18, 2003).

¹² Before the Washington Utilities and Transportation Commission, Docket UT-023003, *Petition by AT&T/MCI for Commission Review of Interlocutory Ruling Compelling AT&T and MCI to Respond to Data Requests* (Sept. 17, 2003).

¹³ Fourteenth Supplemental Order at p. 7 (emphasis added).

¹⁴ *Id.* at pp. 7-8 (mandating production of the TNS data by October 24, 2003).

¹⁵ See Before the Washington Utilities and Transportation Commission, Docket UT-023003, *Supplemental and Corrected Joint Responses of AT&T and MCI to Verizon’s First Set of Data Requests* (Aug. 15, 2003); Before the Washington Utilities and Transportation Commission, Docket UT-023003, *Supplemental and Corrected Joint Responses of AT&T and MCI to Verizon’s Third Set of Data Requests* (Aug. 15, 2003).

¹⁶ See generally Before the Washington Utilities and Transportation Commission, Docket UT-023003, *Verizon Northwest Inc.’s Motion to Strike the HAI Model, Release 5.3 and all Associated Testimony and Exhibits of AT&T Communications of the Pacific Northwest, Inc., WorldCom, Inc., and Staff, and for Conditions on any Future Filings* (Nov. 17, 2003) (“Verizon’s Motion to Strike”), a copy of which is attached hereto as Exhibit 3, without the accompanying attachments.

their Opposition to Verizon's Motion to Strike that, "if AT&T and MCI use TNS to process the raw customer location data that Verizon has provided in response to discovery, TNS will provide -- and AT&T and MCI will make available to the parties under appropriate safeguards comparable to the conditions Verizon placed on access to its vendors' competitively sensitive information -- the following information:

- (1) an executable of the clustering algorithm used by TNS;
- (2) the inputs for the clustering application;
- (3) the direct output of the clustering process, as well as outputs from each step of the process;
- (4) the Point Code executable;
- (5) databases and the post-clustering input for Point Code;
- (6) demographic data; and
- (7) documentation related to these items."¹⁷

Relying on AT&T/MCI's promise to make the aforementioned data, algorithms and software available to Verizon, the Commission denied Verizon's Motion to Strike, stating "AT&T's and MCI's offer to provide sensitive TNS information for review in this case may alleviate many, if not all, of the concerns about the transparency of the HAI model, but we can't evaluate that at this time."¹⁸ In its ordering clause, the Commission explicitly stated that its denial of Verizon's motion was "*based on the representation of AT&T and MCI that they will provide information from TNS as indicated in their opposition to [Verizon's Motion to Strike].*"¹⁹

¹⁷ Before the Washington Utilities and Transportation Commission, Docket UT-023003, *AT&T/MCI Opposition to Verizon Motion to Strike HAI Model* (Nov. 21, 2003) at p. 5 ("AT&T/MCI Opposition to Verizon Motion to Strike").

¹⁸ Eighteenth Supplemental Order at p. 7. As noted earlier, the Commission reserved judgment on whether AT&T/MCI's production of the limited amount of TNS data would alleviate their concerns regarding the openness of HM 5.3. See *supra* note 2.

¹⁹ Eighteenth Supplemental Order at p. 8 (emphasis added).

On January 26, 2004, AT&T/MCI filed their Supplemental Direct Testimony, along with a replacement version of HM 5.3.²⁰ As previously contemplated in their Opposition to Verizon's Motion to Strike and the Commission's Eighteenth Supplemental Order, AT&T/MCI's new cost model did in fact use TNS to process Verizon's raw customer location data. As such, it was incumbent upon AT&T/MCI, at a minimum, to produce, along with their new cost model, the limited subset of TNS data identified in their Opposition.²¹ Without any explanation, AT&T/MCI failed to do so. Counsel for Verizon reminded AT&T/MCI of their obligation, and promise, to produce the TNS data with their new cost model filing, and requested that the missing data be produced "without further delay."²²

Counsel for Verizon also made clear that, in addition to the limited subset of TNS data promised in their Opposition to Verizon's Motion to Strike, AT&T/MCI were obligated to produce TNS data comparable to the universe of data, files and documentation produced with the updated version of HM 5.3 filed in the Verizon-California UNE proceeding.²³ As that California proceeding made clear, the filing of a new version of HM 5.3 requires, in many instances, that AT&T/MCI's original data request responses be updated and supplemented to reflect the numerous and substantial

²⁰ See Before the Washington Utilities and Transportation Commission, Docket UT-023003, *Supplemental Direct Testimony of Dr. Robert A. Mercer on behalf of AT&T Communications of the Pacific Northwest, Inc.* (Jan. 26, 2004).

²¹ AT&T/MCI Opposition to Verizon's Motion to Strike at p. 5 (stating that, "if AT&T and MCI use TNS to process the raw customer location data that Verizon has provided in response to discovery, *TNS will provide* [the limited amount of TNS data identified above]") (emphasis added).

²² See Letter from Christopher S. Huther to Gregory J. Kopta (Feb. 13, 2004) at p. 1, a copy of which is attached hereto as Exhibit 4, without the accompanying attachments ("Verizon Feb. 13, 2004 Letter") ("Without any explanation or notice, [the TNS data] was omitted from AT&T/MCI's supplemental filing. The failure to produce these data has compromised Verizon's ability to analyze and validate the latest version of HM 5.3, and the cost estimates produced thereby. If this information, as well as the data discussed below, is not produced immediately, Verizon will seek an order from the ALJ compelling its production.").

²³ Attached hereto are three directories, labeled Exhibit 5, which identify the universe of data, files and documentation produced in the Verizon-California UNE proceeding.

changes made to the HM 5.3, which relate in part to the Model's use of Verizon's raw customer location data.²⁴ The data requests contained in Verizon's first and third sets specifically asked AT&T/MCI for a wide variety of data relating to the TNS preprocessing and the HM 5.3 cluster database generally.²⁵ TNS data substantially similar to that produced in the Verizon-California UNE proceeding undoubtedly falls within the scope of these requests.²⁶ Nevertheless, unlike their updated filing in California where this data *was* produced, AT&T/MCI failed to include this larger universe of TNS data -- indeed, they did not include *any* TNS data -- with their new cost model filing in Washington.

Now, over eight months since Verizon first requested the production of the TNS data, and over a month after the filing of their new cost model, counsel for AT&T informs Verizon that TNS has agreed to produce some data, which Verizon can expect to receive some time after March 3, 2004.²⁷ While it is still unclear exactly what "data" TNS will be producing,²⁸ at a minimum, the procedural schedule should be amended to

²⁴ The need to update and supplement their responses to Verizon's discovery requests is demonstrated by the additional data, files, and documentation provided to Verizon in the ongoing California UNE proceeding, where AT&T/MCI's cost model similarly relies upon Verizon's service address data.

²⁵ See e.g., Verizon's First Set of Data Requests at Data Request Nos. 1-8, 1-9, 1-10, 1-11 and 1-12, requesting, among other things, an explanation as to "how HM 5.3 "locates" customers who are not identified through the geocoding process," and documents concerning, referring or relating" thereto (Data Request No. 1-8); "the geocoded data set [in electronic format] for Verizon's Washington service area used to produce the clusters in HM 5.3" (Data Request No. 1-9); "all the software, input files and other documents used to cluster customer locations or related to the clustering of customer locations (including, without limitation, any files that are immediate outputs of, and immediate inputs to, the clustering algorithm), and a detailed description of, and all documents related to, "the method by which AT&T, MCI and/or HAI Consulting, Inc. verified the accuracy of the results of the clustering process" (Data Request No. 1-10); "a detailed description of each user-adjustable input value to the clustering software" (Data Request No. 1-11); and "the computer code(s) or algorithm(s) [in electronic format] used to convert clusters into rectangular serving areas" (Data Request No. 1-12). This list is not exhaustive. There may well be other data requests that should be updated or supplemented based on AT&T/MCI's new filing.

²⁶ See Verizon Feb. 13, 2004 Letter at pp. 2-3.

²⁷ TNS allegedly will be sending the data to counsel for AT&T on Wednesday, March 3, 2004. See Feb. 2004 Email.

²⁸ See Feb. 2004 Email (stating that AT&T is still "verifying whether the data TNS intends to provide is the same as it provided in California or is more limited").

provide Verizon the full eight weeks contemplated in the Commission's existing schedule to analyze HM 5.3 and its underlying data and processes.²⁹

II. CONCLUSION

For the foregoing reasons, the Commission should grant Verizon's Motion to Amend the Procedural Schedule, and thereby extend the filing of Reply Testimony by eight weeks from date AT&T/MCI produce not only the seven categories of TNS data promised in their Opposition to Verizon's Motion to Strike, but also TNS data equivalent to the universe of data, files and documentation produced in the Verizon-California UNE proceeding.

Respectfully submitted,



Christopher S. Huther
Megan H. Troy
Preston Gates Ellis & Rouvelas Meeds LLP
1735 New York Ave., N.W.
Washington, D.C. 20006
Tel: 202- 628-1700
Fax: 202-331-1024

William R. Richardson, Jr.
Catherine Kane Ronis
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037
Tel: 202-663-6000
Fax: 202-663-6363

March 1, 2004

Attorneys for Verizon Northwest Inc.

²⁹ Seventeenth Supplemental Order at p. 3.