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November 17, 2003

Ms. Carole J. Washburn
Executive Secretary
Washington Utilities & Transportation Commission
1300 Evergreen Park Drive SW
Olympia, Washington 98504-7250

Re: Docket No. UT-023003
Verizon Northwest Inc.'s Motion to Strike

Dear Ms. Washburn:

Enclosed please find an original and seventeen copies of Verizon Northwest Inc.'s Motion to Strike. Thank you for your consideration of this matter. Please contact me if you have any questions.

Sincerely,



Christopher S. Huther

cc: All Parties

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION**

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| 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 |
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**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**

Pursuant to Section 480-09-480 of the Washington Administrative Code ("WAC"), Verizon Northwest Inc. ("Verizon NW") hereby moves the Washington Utilities and Transportation Commission ("Commission") to strike AT&T Communications of the Pacific Northwest, Inc.'s ("AT&T") and WorldCom, Inc.'s (d.b.a. "MCI") (collectively, "AT&T/MCI") HAI Model, Release 5.3 ("HM 5.3" or "Model"), along with AT&T/MCI's and Staff's pre-filed testimony and exhibits pertaining to the Model, from the record in this proceeding, and requests that the Commission also order that any cost model subsequently filed by AT&T/MCI must be open and verifiable, and must not rely on data, algorithms or software that cannot be made available to all parties in this proceeding free of charge.

For over three months, AT&T/MCI have denied Verizon NW access to the critical data and software necessary to evaluate HM 5.3 fully and meaningfully. AT&T/MCI's responses and supplemental responses to the data requests at issue here fail completely to provide the information requested by Verizon NW.¹ Moreover, AT&T/MCI's pleadings, as well as their counsel's explicit statements on the matter, make clear that AT&T/MCI do not intend to produce responsive information, despite having been ordered to do so by both Administrative Law Judge Theodora Mace ("ALJ Mace") and the Commission.² AT&T/MCI's persistent defiance of these Orders has not only wasted the time and resources of all parties involved, but comes at considerable expense to Verizon NW. The only fair and reasonable outcome, and the one fully justified under Washington law, is for the Commission to strike HM 5.3 -- a model that AT&T acknowledges is no longer viable given the Commission's recent rulings³ -- as well as all associated testimony and exhibits. In addition, since AT&T/MCI say they will file a new cost model, to avoid such problems in the future, the Commission should order

¹ Specifically, Verizon NW is seeking responses to sixteen data requests -- Data Request Nos. 1-4, 1-5, 1-9, 1-10, 1-12, 1-13, 1-15, 1-18, 1-20, 1-21, 3-2, 3-6, 3-11, 3-13, 3-21 and 3-24. See *Verizon Northwest Inc.'s Motion to Compel Discovery With Respect to the HM 5.3 Cluster Database* (Aug. 14, 2003); *Verizon's Second Motion to Compel* (Oct. 30, 2003). These data requests were propounded in Verizon NW's First and Third Sets of Data Requests, filed on July 10, 2003 and July 15, 2003 respectively. See *Joint Responses of AT&T & MCI to Verizon's First Set of Data Requests* (July 24, 2003); *Supplemental and Corrected Joint Responses of AT&T & MCI to Verizon's First Set of Data Requests* (Aug. 15, 2003); *Joint Responses of AT&T & MCI to Verizon's Third Set of Data Requests* (July 30, 2003); *Supplemental and Corrected Joint Responses of AT&T and MCI to Verizon's Third Set of Data Requests* (Aug. 15, 2003); *Supplemental Joint Responses of AT&T & MCI to Verizon's First and Third Sets of Data Requests Pursuant to Fourteenth Supplemental Order* (Oct. 24, 2003) ("AT&T/MCI's Supplemental Responses to Verizon NW's First and Third Sets of Data Requests").

² See *Thirteenth Supplemental Order: Granting, in Part, Motions to Compel* (Sept. 8, 2003) ("Thirteenth Supplemental Order"); *Fourteenth Supplemental Order: Denying Petition for Review of Interlocutory Order; Granting Motions to Compel* (Oct. 14, 2003) ("Fourteenth Supplemental Order").

³ See *AT&T Opposition to Verizon Second Motion to Compel Discovery* (Nov. 5, 2003) at p. 5 ("The Commission, however, has effectively precluded AT&T and MCI from using TNS to process the Verizon customer location data by requiring AT&T and MCI to produce proprietary processing data that they do not possess and that TNS refuses to provide. AT&T and MCI are continuing to explore other means of obtaining customer location data that the Commission will find acceptable, but in the meantime, AT&T and MCI do not know and cannot determine the UNEs for which they will propose their own cost estimates, the cost estimates themselves, or how those estimates will be developed.").

that any cost model subsequently used to support testimony filed by AT&T/MCI and Staff must be fully open to inspection and review, and must not rely on data, algorithms or software that cannot be made available to all parties in this proceeding without charge.

I. BACKGROUND.

By Order dated September 8, 2003, ALJ Mace granted Verizon NW's Motion to Compel the preprocessed geocode and cluster data used by HM 5.3 to "locate" customers and create customer serving areas. 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.*"⁴ She acknowledged the "key role" of the third-party data, algorithms, and software used by HM 5.3,⁵ and noted that "[t]he Commission has repeatedly stressed that it wants the parties' cost models to be transparent and readily capable of verification."⁶ ALJ Mace rightly concluded:

*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.*⁷

ALJ Mace ordered AT&T/MCI to respond fully to Verizon NW's data requests by September 18, 2003.⁸

AT&T/MCI petitioned the Commission for review of ALJ Mace's ruling.⁹ The Commission again denied AT&T/MCI's efforts to maintain the secrecy of the requested

⁴ Thirteenth Supplemental Order at pp. 5-6 (emphasis added).

⁵ Thirteenth Supplemental Order at p. 5.

⁶ Thirteenth Supplemental Order at p. 6. *See also* Before the Federal Communications Commission, CC Docket Nos. 00-218, -251, *Memorandum Opinion and Order* (rel. Aug. 29, 2003) at ¶ 38 ("[A] cost model must be transparent and verifiable.").

⁷ Thirteenth Supplemental Order at p. 6 (emphasis added).

⁸ Thirteenth Supplemental Order at p. 6.

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.*”¹⁰

Because the TNS data, algorithms and software requested by Verizon NW “form[] a significant basis for the HAI model outputs,” the Commission directed AT&T/MCI to answer Verizon NW’s discovery requests by October 24, 2003.¹¹

Rather than produce the data as ordered by the Commission, AT&T/MCI filed Supplemental Joint Responses, which made clear their intent to persist in withholding most all of the requested information from Verizon NW, and suggested that Verizon NW must pay for certain, limited data that AT&T/MCI have produced in other UNE proceedings free of charge.¹² For example, AT&T/MCI claim not to have access to the clustering software used by HM 5.3, and claim that such software is only available from TNS for a “per use charge of \$10,000.”¹³ However, in the California and Massachusetts UNE proceedings, AT&T/MCI provided the clustering software to the incumbents without charge.¹⁴ It is time for AT&T/MCI’s stall tactics to end.

⁹ *Petition by AT&T/MCI for Commission Review of Interlocutory Ruling Compelling AT&T and MCI to Respond to Data Requests* (Sept. 17, 2003) (“AT&T/MCI Petition for Review”).

¹⁰ Fourteenth Supplemental Order at p. 7 (emphasis added).

¹¹ Fourteenth Supplemental Order at pp. 7-8.

¹² Although AT&T/MCI suggest that some limited data may be made available, their production would only come at considerable cost. The TNS letter, appended to AT&T/MCI’s Supplemental Joint Responses as Attachment B, clearly states that the production of any reports, or the gathering of any information (to the extent TNS is willing to supply it) will only be done at a cost of \$250/hour — an expense that AT&T/MCI have not indicated they are willing to incur. Moreover, no estimates are given regarding how long it will take to produce the requested data.

¹³ AT&T/MCI’s Supplemental Responses to Verizon NW’s First and Third Sets of Data Requests at Attachment B, p. 4 (emphasis added).

¹⁴ Importantly, AT&T/MCI never produced the source code for the clustering program in either the Massachusetts or California UNE proceeding, and, as discussed herein, completely ignored Verizon NW’s data request seeking the production of such source code in the instant proceeding.

II. AT&T/MCI COMPLETELY FAIL TO COMPLY WITH THE COMMISSION'S UNAMBIGUOUS DIRECTIVE TO PRODUCE THE REQUESTED DATA.

AT&T/MCI have steadfastly refused to produce the customer location databases, computer programs and clustering algorithms incorporated into HM 5.3. They effectively leave the Commission with no other choice but to strike their cost model, as well as all associated pre-filed testimony and exhibits pertaining to HM 5.3,¹⁵ pursuant to WAC Section 480-09-475.¹⁶

As both ALJ Mace and the Commission recognize, information regarding the customer location data and operation of HM 5.3's clustering algorithms is critical to understanding the accuracy and reliability of HM 5.3. To verify AT&T/MCI's claims regarding the alleged accuracy of HM 5.3 and to analyze HM 5.3's extensive pre-processing of the customer location and clustering data, Verizon NW must have complete and unrestricted access to all raw data, software, algorithms, source code, and intermediate results that form HM 5.3's cluster databases. This is so regardless of whether HM 5.3's cost estimates are predicated on the Dun & Bradstreet and Metromail direct marketing mailing list data (used in the version of HM 5.3 filed on June 26, 2003) or the service address data provided by Verizon NW (presumably to be used in any new version of HM 5.3 filed by AT&T/MCI).¹⁷ Counsel for AT&T admitted this reality in response to questioning from ALJ Mace:

¹⁵ This testimony includes the pre-filed testimony, and all associated exhibits, of AT&T/MCI witnesses Mark T. Bryant and John C. Donovan, as well as selected portions of the pre-filed testimony of Staff witness Thomas L. Spinks, a redlined version of which is appended hereto as Attachment A, and all associated exhibits and workpapers (with the exception of Mr. Spink's curriculum vitae).

¹⁶ WAC Section 480-09-475 provides, "If a party fails or refuses to comply with a commission order ... the commission may impose sanctions including but not limited to dismissal, striking of testimony, evidence, or cross-examination, or monetary penalties as provided by law."

¹⁷ As counsel for Verizon NW explained, "[W]hether the starting point is ... Dun & Bradstreet or Metromail addresses from a mailing list or Verizon's customer location service addresses, there is still a

JUDGE MACE: So that even when you've used the information you've received from Verizon and Qwest, you're still going to be relying on what's proprietary information from TNS?

MS. STEELE: We would no longer have one set of proprietary information, but there would still be TNS's software. Its intellectual property would be involved in creating the clusters that go into the model, yes.

JUDGE MACE: So that this problem, in quotes, that Verizon and Qwest raise would also append itself to any new filing that you would make?

MS. STEELE: *That particular aspect of it would remain, yes.*¹⁸

Rather than obtain the requisite authorizations from TNS to make the customer location and clustering process (including all data and algorithms used therein) available for review, AT&T/MCI have hid behind the alleged "confidential" nature of the TNS data. Ignoring completely ALJ Mace's Order to produce the TNS customer location and clustering data, counsel for AT&T stated unequivocally at the prehearing conference that production of the requested data would not be forthcoming:

MS. STEELE: What is not available from TNS ... [is] their intellectual property, which would be the algorithms and their customer location algorithms and their software.

* * * * *

ALJ MACE: But you agree that the TNS [sic] would not be providing access to the Dun & Bradstreet data, the source codes or the algorithms?

MS. STEELE: Right....¹⁹

very complicated process that TNS performs that results in inputs to the cost model. And so while using Verizon's service addresses does eliminate some of the problem, it doesn't eliminate the most significant of the problems." *Prehearing Conference Transcript, Volume VII* (Sept. 25, 2003) at p. 355 ("Prehearing Conference Tr.").

¹⁸ Prehearing Conference Tr. at pp. 354-55 (emphasis added). The Commission has noted its concern that "the CLECs' soon-to-be filed revised HAI model will rely, to some extent, on TNS data, computer programs and algorithms." Fourteenth Supplemental Order at p. 7.

¹⁹ Prehearing Conference Tr. at pp. 350, 354. Counsel for AT&T went on to acknowledge that "the [clustering] source codes -- what TNS does is it takes the addresses and turns them into customer clusters, and that process, the algorithms, that's what would cost us the two to \$2.5 million to purchase...." Prehearing Conference Tr. at p. 354.

Not persuaded by AT&T/MCI's claims regarding the unavailability of the data requested by Verizon NW, the Commission ordered AT&T/MCI to answer *all of the* "discovery requests at issue here within ten calendar days of the entry of [its] order."²⁰ Despite this explicit and unambiguous directive, AT&T/MCI persist in concealing HM 5.3's preprocessing data, algorithms and software from Verizon NW's and the Commission's review. In their Supplemental Joint Responses, filed on October 24, 2003 pursuant to the Commission's Order, AT&T/MCI claim, with respect to each and every data request they were compelled to answer, that:

While TNS is willing to provide some additional information for a substantial fee, TNS continues to refuse to provide other requested information. Accordingly, *AT&T and MCI cannot provide any further substantive response to this Request at this time.*²¹

Indeed, AT&T/MCI did not even bother to include Data Request No. 3-13 -- the request that seeks "a copy of the complete clustering source code" -- in either their request for information from TNS²² or their final "responses" provided to Verizon NW.²³

The TNS letter attached to AT&T/MCI's Supplemental Joint Responses makes clear that the vast majority of the requested data will not be forthcoming and, with respect to the limited information that can be supplied (most of it in aggregate form only), the data will only be produced at considerable expense -- a cost that AT&T/MCI seem to expect should be borne by Verizon NW.²⁴ AT&T/MCI were not free, however, to pick

²⁰ Fourteenth Supplemental Order at p. 8.

²¹ See AT&T/MCI's Supplemental Responses to Verizon NW's First and Third Sets of Data Requests, *passim*. See also *Supplemental Joint Responses of AT&T & MCI to Verizon's First and Fifth Sets of Data Requests* (October 24, 2003) at Data Request No. 1-34.

²² See AT&T/MCI's Supplemental Responses to Verizon NW's First and Third Sets of Data Requests at Exhibit A.

²³ See AT&T/MCI's Supplemental Responses to Verizon NW's First and Third Sets of Data Requests, *passim*.

²⁴ See AT&T/MCI's Supplemental Responses to Verizon NW's First and Third Sets of Data Requests at Exhibit B (stating that the cost to produce the "aggregate level reports" is \$250/hour).

and choose the data requests to which they would respond. They were ordered to respond fully to all of the data requests at issue in Verizon NW's First and Third Sets. They have failed to do so, despite having produced at least some of the data, at no cost, in recent UNE proceedings.²⁵

There is no excuse for AT&T/MCI's noncompliance. AT&T/MCI have put HM 5.3 at issue in this proceeding. While they may claim that the data requested by Verizon NW is the proprietary intellectual property of third-parties and thus cannot be produced, they knew when they engaged TNS that, to conduct a proper review, Verizon NW, the Commission, and other parties would need to have access to, obtain discovery about, and examine fully the data developed by TNS. As Verizon NW has done with its own third-party vendors,²⁶ AT&T/MCI could have made arrangements with TNS to have the customer location and clustering data released pursuant to the protective agreement in place in the instant proceeding. Indeed, it is telling that it took a Commission order for AT&T/MCI to even inquire of TNS as to the availability of the customer location and clustering data.²⁷ AT&T/MCI's predicament is thus entirely of their own making, and certainly does not justify their failure to comply with ALJ Mace's and the Commission's clear directives on this point.²⁸

²⁵ AT&T produced the clustering software to Verizon in the Massachusetts UNE proceeding; and AT&T/MCI produced the Fox conversion programs to SBC, as well as the clustering software, in the recent California UNE proceeding.

²⁶ Verizon NW has secured the requisite authorizations from its third-party vendors to release the data underlying its cost model, thereby enabling AT&T/MCI, as well as the Commission, to examine and analyze all aspects of VzCost.

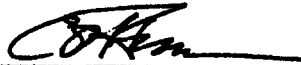
²⁷ See AT&T/MCI's Supplemental Responses to Verizon NW's First and Third Sets of Data Requests at Attachment A.

²⁸ AT&T/MCI's clear violation of ALJ Mace and the Commission's commands is in no way alleviated by AT&T/MCI's claim that they "continue to evaluate their options under these circumstances in light of the Order, including developing or using customer location data that does not require proprietary development or processing by TNS, and will update or revise this response consistent with the requirements of the [Fourteenth Supplemental] Order." AT&T/MCI's Supplemental Responses to Verizon NW's First and

III. CONCLUSION

For the foregoing reasons, Verizon NW's Motion to Strike HM 5.3 and its accompanying testimony and exhibits should be granted. The Commission should also order that any cost model subsequently filed by AT&T/MCI must be open and verifiable, and must not rely on data, algorithms or software that cannot be made available to all parties in this proceeding free of charge.

Respectfully submitted,



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November 17, 2003

Attorneys for Verizon Northwest Inc.

Third Sets of Data Requests, *passim* (emphasis added). The time for AT&T/MCI to "evaluate their options" has passed -- their production of the requested data is long overdue.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Review of)
Unbundled Loop and Switched Rates)
And Review of Deaveraged Zone) Docket No. UT-023003
Rate Structure)
)
)
)

CERTIFICATE OF SERVICE

I hereby certify that I have this 17th day of November 2003, served Verizon Northwest Inc.'s Motion to Strike upon all the following parties of record in this proceeding by US Mail (*indicates parties that were served via electronic and US Mail):

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