

May 21, 2004

VIA ELECTRONIC AND OVERNIGHT MAIL

Ms. Carol J. Washburn
Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Drive S.W.
Olympia, Washington 98504-7250

Re: In the Matter of Review of Unbundled Loops and Switched Rates and
Review of Deaveraged Zone Rate Structure
WUTC Docket No. UT-023003

Dear Ms. Washburn:

Pursuant to ALJ Mace's May 18, 2004 Notice of Opportunity to Respond to Motion to Strike, please find enclosed Verizon Northwest Inc.'s Response to AT&T's Motion to Strike or Permit Filing of Additional Response Testimony. Hard copies will follow via overnight mail. Please 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
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**VERIZON NORTHWEST INC.'S RESPONSE TO AT&T MOTION TO STRIKE OR
PERMIT FILING OF ADDITIONAL RESPONSE TESTIMONY**

Pursuant to the May 18, 2004, Notice of Opportunity to Respond to Motion to Strike issued by Administrative Law Judge Mace ("Notice"), Verizon Northwest Inc. ("Verizon NW"), hereby responds to AT&T Communications of the Pacific Northwest, Inc.'s ("AT&T's") Motion to Strike Testimony or Permit Filing of Additional Response Testimony ("Motion"). Not only has AT&T failed to cite any case law or Commission precedent for awarding the relief sought, its Motion mischaracterizes both the content and purpose of Dr. Tardiff's Rebuttal Testimony, and seeks to hide proper and probative evidence from the Commission. Dr. Tardiff's testimony appropriately (and effectively) rebuts: (1) Mr. Turner's overly aggressive and incorrect interpretation of TELRIC, (2) his misapplication of certain cost modeling criteria in an attempt to demonstrate (unsuccessfully) that HM 5.3 is somehow superior to VzLoop, and (3) his inappropriate criticisms of VzLoop's outside plant and input values. Rather than "*purport*[]" to be in response to" Mr. Turner's testimony,¹ as AT&T erroneously claims, Dr. Tardiff's testimony *did* respond -- directly and precisely -- to some of the most fundamentally flawed principles upon which Mr. Turner's critique was based.

¹ Before the Washington Utilities and Transportation Commission, Docket No. UT-023003, *AT&T Motion to Strike*

First, Mr. Turner advocates a legally impermissible interpretation of TELRIC; and Dr. Tardiff's testimony appropriately sets the record straight. Mr. Turner claims (in error) that VzCost's [VzLoop's] linear loading factors are somehow inappropriate because, contrary to TELRIC principles, they allegedly "reflect embedded data."² Mr. Turner contends (again, incorrectly) that "[t]he FCC explicitly prohibits the use of embedded data in developing forward-looking costs."³ As Dr. Tardiff makes clear, and provides ample evidence to support, the FCC "has *never* prohibited the use of an ILEC's actual costs when developing forward-looking UNE costs."⁴ In fact, contrary to Mr. Turner's unsubstantiated allegations, the FCC has repeatedly indicated that the opposite is true.⁵

Mr. Turner's improper interpretation of TELRIC continues with his contention (also in error) that a "properly performed TELRIC study ... assumes the entire network is reconstructed and reconfigured to employ the most efficient, forward-looking technology."⁶ Again, Dr. Tardiff explains the fallacy in such an approach, and explains that "the FCC has repeatedly recognized in the context of end-office switches, ILECs and other carriers do not purchase equipment all at once, and therefore, do not experience the fictitious 'economies' that such purchases putatively

or to Permit Filing of Additional Response Testimony (May 17, 2004) at p. 1 ("Motion to Strike).

² Before the Washington Utilities and Transportation Commission, Docket No. UT-023003, *Rebuttal Testimony of Steven E. Turner on behalf of AT&T Communications of the Pacific Northwest, Inc.* (April 20, 2004, revised May 10, 2004) at p. 25 ("Turner Rebuttal").

³ Turner Rebuttal at p. 25.

⁴ Before the Washington Utilities and Transportation Commission, Docket No. UT-023003, *Rebuttal Testimony of Dr. Timothy J. Tardiff on behalf of Verizon Northwest Inc.* (May 12, 2004) at p. 3 ("Tardiff Rebuttal").

⁵ In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, *First Report and Order*, FCC 96-325 (rel. Aug. 8, 1996) at ¶ 685 (stating that TELRIC is designed to produce "costs that incumbents *actually expect to incur* in making elements available to new entrants.") (emphasis added); Reply Brief for Petitioners Federal Communications Commission and the United States, *Verizon Communications, Inc. v. FCC* (hereinafter, "FCC Reply Brief") at p. 6 ("The costs measured by TELRIC are nonetheless *those of the incumbent itself*. Those costs are based, moreover, on actual prices of equipment that is commercially available today -- equipment that carriers are already using to upgrade and expand their networks.") (emphasis added).

⁶ Turner Rebuttal at p. 25.

entail.”⁷ He cautions the Commission against adopting “HM 5.3’s approach, which attempts to create, instantaneously, a brand-new network that disregards the real-world operations of actual telecommunications carriers.”⁸ To strike Dr. Tardiff’s testimony for appropriately recognizing that Mr. Turner’s interpretation of TELRIC is unnecessarily aggressive and devoid of legal basis would constitute legal error.

Second, Mr. Turner’s testimony was devoted, in large part, to the advocacy of cost modeling criteria against which VzLoop should be judged.⁹ Fundamental fairness requires that Verizon NW be afforded an opportunity to comment on those criteria. In doing so, it is entirely appropriate for Dr. Tardiff to establish that that application of Mr. Turner’s own criteria has indicted the very cost model his clients seek to have adopted here. As explained below, comparing the results of the application of Mr. Turner’s criteria to HM 5.3 demonstrates that “VzLoop produces considerably more realistic estimates of Verizon NW’s UNE costs.”¹⁰ There is thus no merit to AT&T’s claim that it was somehow inappropriate for Dr. Tardiff to criticize HM 5.3 “under the guise of responding to the modeling principles that Mr. Turner uses to evaluate VzCost.”¹¹ Dr. Tardiff’s use of Mr. Turner’s own cost modeling criteria to demonstrate the fundamental failings in HM 5.3 was entirely appropriate.

For example, Mr. Turner defines “open and transparent” to “include the ability to view and modify the inputs and calculations used to compute the TELRIC cost.”¹² He contends (erroneously) that “VzCost fails miserably” in this regard,¹³ and claims that Verizon NW’s cost

⁷ Tardiff Rebuttal at p. 8.

⁸ Tardiff Rebuttal at p. 7.

⁹ Turner Rebuttal, *passim*.

¹⁰ Tardiff Rebuttal at p. 1.

¹¹ Motion to Strike at p. 1.

¹² Turner Rebuttal at p. 13.

¹³ Turner Rebuttal at p. 13.

model is a “black box.”¹⁴ Dr. Tariff responds to these criticisms and shows that, not only is VzCost open and transparent (because Mr. Turner had all “the necessary software and source code to review VzCost or VzLoop”),¹⁵ but also that HM 5.3, when judged against the very cost modeling criteria Mr. Turner sets forth, is the only cost model in this proceeding that can rightly be called a “black box.”¹⁶ As Dr. Tardiff details, in stark contrast to Verizon NW, “AT&T/MCI steadfastly refuse to make certain portions of HM 5.3’s preprocessing available for review;”¹⁷ thereby denying Verizon NW “access to critical portions of HM 5.3 completely.”¹⁸

Mr. Turner also contends, “It is customary when evaluating cost development in UNE proceedings that I have been involved with to be able trace the calculations of all of the investments elements for each UNE.”¹⁹ Having established this “customary” benchmark against which all cost models should be judged, it is only proper that Dr. Tardiff be allowed to comment on this standard, and use it to judge the cost model from which Mr. Turner derives so many of his recommended inputs.²⁰ As Dr. Tardiff demonstrates, unlike VzCost and VzLoop, HM 5.3 “fails Mr. Turner’s preprocessing criterion because “HM 5.3 preprocessing is ‘the result of an enormous amount of unverifiable, largely undocumented, and convoluted preprocessing steps

¹⁴ Turner Rebuttal at p. 22.

¹⁵ Tardiff Rebuttal at p. 10.

¹⁶ Tardiff Rebuttal at pp. 18-19.

¹⁷ Tardiff Rebuttal at p. 10; *see also* Tardiff Rebuttal at p. 18 (“HM 5.3, along with its preprocessing, is highly complex, often convoluted, and insufficiently documented.”).

¹⁸ Tardiff Rebuttal at p. 10.

¹⁹ Turner Rebuttal at p. 12.

²⁰ *See* Turner Rebuttal at p. 22 (claiming that Verizon NW’s material prices for copper cable and drops are “substantially overstated when compared to those found in HM 5.3”); p. 23 (stating that Verizon NW’s “cost for the larger cable counts are dramatically higher than what was used in HM 5.3”); p. 23 (recommending the use of “the material prices in the HM 5.3”); pp. 29-30 (encouraging “the Commission to use the bottom-up inputs that [he has] taken from the HM 5.3 documentation”); p. 49 (stating that he “tru[ed] up” Verizon NW’s “material and placement costs ... to those found in HM 5.3”); p. 54 (stating that “AT&T has proposed a reasonable cable sizing factor of 1.3333 in HM 5.3, which I would recommend”); and p. 65 (recommending the use of, among other things, the “proposed sharing percentages in the HM 5.3 model”).

that are done outside HM 5.3 by TNS and AT&T/MCI.”²¹ Moreover, as Dr. Tardiff discussed, unlike VzLoop, “[t]racing calculations within HM 5.3 ... is extremely difficult in the most simple case and virtually impossible in other more complicated ones.”²² There is thus no merit to AT&T’s claim that “Mr. Turner’s testimony does not address” the tracing of model calculations.²³ Mr. Turner most certainly *did* address the ease with which competing cost models are “able [to] trace the calculations of all of the investments elements for each UNE;”²⁴ and Dr. Tardiff appropriately demonstrated that VzLoop is far superior to HM 5.3 in this regard.²⁵ In short, AT&T cannot use Mr. Turner’s cost modeling criteria as both a sword and a shield -- content to criticize (unsuccessfully) Verizon NW’s cost model for failing to measure up, but then choosing to hide behind those modeling criteria when more significant errors in its own model are exposed.

Third, in yet another attempt to convince the Commission that VzLoop should not be adopted, Mr. Turner criticizes VzLoop’s outside plant design and input values. As Dr. Tardiff demonstrates, however, VzLoop more accurately and realistically models outside plant, especially in comparison to the model sponsored by AT&T/MCI. Thus, “[w]hen compared to the errors and anomalies resident in and produced by HM 5.3, it is clear that VzLoop produces

²¹ Tardiff Rebuttal at pp. 10-11.

²² Tardiff Rebuttal at pp. 11-12. *See also* Tardiff Rebuttal at pp. 12-14 for two concrete illustrations of the difficulties Verizon NW has encountered when applying Mr. Turner’s own criteria and attempting to trace calculations through HM 5.3.

²³ Motion to Strike at pp. 1-2 (emphasis added).

²⁴ Turner Rebuttal at p. 12 (“It is customary when evaluating cost development in UNE proceedings that I have been involved with to be able trace the calculations of all of the investments elements for each UNE.”).

²⁵ Tardiff Rebuttal at pp. 9-17 (also discussing why Mr. Turner’s requirement that input changes be a one-step process ending with the “press [of] a button” is misplaced and serves to further demonstrate the fundamental failings in HM 5.3). Similarly misplaced is AT&T’s claim that “Dr. Tardiff did not ... but could have” demonstrated difficulties (and, in some instances, impossibilities) associated with tracing calculations within HM 5.3 in his Reply Testimony. Whether or not Verizon NW addressed this difficulty in its Reply Testimony is immaterial. As the Washington courts have made clear, true rebuttal evidence frequently will, to some degree, “overlap or coalesce with the evidence in chief.” *State v. Cullum*, 2004 Wash. App. Lexis 177, 4-5 (Wash. App. 2004) (internal citations omitted).

considerably more realistic estimates of Verizon NW's UNE cost."²⁶

Finally, there is no merit to AT&T's claim that it is, alternatively, entitled to file additional testimony. The procedural schedule does not contemplate such a filing, and AT&T has failed to articulate a single reason why it should be modified. Dr. Tardiff's testimony did exactly what it was supposed to do -- rebut the claims presented by AT&T and provide the Commission with alternative (and, in this case, accurate) ways in which to view the so-called evidence AT&T puts forth. AT&T has already been afforded the same opportunity; and the time for filing testimony has come to an end. A procedural schedule becomes meaningless when parties are allowed to supplement and potentially modify their pre-filed testimony *ad nauseum*. Accordingly, AT&T's request to file additional testimony should be rejected outright.

²⁶ Tardiff Rebuttal at p. 1.

For the foregoing reasons, the Commission should deny AT&T's Motion to Strike or to Permit Filing of Additional Response Testimony and the case should proceed according to the schedule adopted on March 11, 2004 by Administrative Law Judge Theodora M. Mace.²⁷

Respectfully submitted,



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²⁷ Before the Washington Utilities and Transportation Commission, Docket No. UT-023003, *Twentieth Supplemental Order: Prehearing Conference Order; Notice of Date for Filing Revised Issues List* (Mar. 11, 2004).

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
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CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of March 2004, served Verizon Northwest Inc.'s Response to AT&T's Motion to Strike of Permit Filing of Additional Response Testimony upon all the following parties of record in this proceeding via electronic and overnight mail:

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