

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**RESPONSE OF VERIZON NORTHWEST INC. TO AT&T MOTION TO STRIKE
PORTIONS OF VERIZON REPORT OR TO PERMIT RESPONSE**

Verizon Northwest Inc. (“Verizon NW”) submits this response to AT&T’s Motion to Strike Portions of Verizon Report or to Permit Response, filed with the Commission on June 18, 2004. As explained below, the Report that is the subject of AT&T’s motion^{1/} responded to AT&T’s post-hearing evidentiary submission and was therefore entirely proper. The Report makes clear that the central conclusions of AT&T’s revised cost of capital testimony (set forth in the *Affidavit of Lee L. Selwyn* and accompanying papers filed with the Commission on June 1, 2004) are based on manufactured data and other serious data errors that Dr. Selwyn could have corrected had he seen fit to do so. Verizon NW strongly maintains that the *Vander Weide Report* is a fair response to Dr. Selwyn’s revised testimony. Nevertheless, in the interest of ensuring a complete evidentiary record in this proceeding, Verizon NW does not object to AT&T’s request that its Response (filed with the Commission on June 18, 2004) be allowed into the record, provided that Verizon NW’s *entire* Report remains in the record.

^{1/} Expert Report of Dr. James H. Vander Weide Regarding Dr. Selwyn’s Response to Bench Request No. 3 (filed June 11, 2004) (“*Vander Weide Report*”).

At the hearing in this matter, AT&T's cost of capital witness, Dr. Selwyn, admitted on cross-examination that the statistical analysis underlying his pre-filed testimony was plagued by data errors. *See, e.g.*, Transcript at 736-741. Dr. Selwyn also admitted that in certain other instances, he had not used actual data as his written testimony clearly indicated, but instead used "extrapolations" based on data for earlier periods. *See* Transcript at 749-750. Verizon NW's cost of capital expert, Dr. Vander Weide, had previously explained that Dr. Selwyn's use of certain data for Qwest and US West was inappropriate and skewed the results of Dr. Selwyn's analysis. *See* Exhibit 106TC at 39-41 (Vander Weide Rebuttal). At the end of Dr. Selwyn's testimony at the hearing, the Commission elected to allow him to re-run his flawed regression analysis with corrected data (rather than accept the record as it then stood), and to allow Verizon NW an opportunity to respond to Dr. Selwyn's revised testimony and analysis. *See* Transcript at 790-792.

In his "corrected" testimony (filed with the Commission on June 1, 2004), Dr. Selwyn uses seven-year-old data with respect to SBC Communications, Inc. to "estimate" data for later periods because, as Verizon NW predicted at the hearing, there was no actual data available for the time periods under study. *See* Response of Dr. Lee L. Selwyn to Bench Request No. 3, at BR3-1 to BR3-3; Transcript at 790-791. Thus, rather than admit that his hypothesis was untestable due to the absence of the required data, Dr. Selwyn forged ahead with still more "extrapolated" data in an effort to resurrect his conclusions. Equally important, Dr. Selwyn repeated in his "corrected" testimony errors that had appeared in his initial testimony by continuing to include flawed data for Qwest and US West. For example, in his "corrected" testimony (as in his initial testimony), Dr. Selwyn used inaccurate balance sheet entries for Qwest that the company's new management had already publicly disavowed *at the time Dr.*

Selwyn submitted that testimony. See Vander Weide Report, at 10-13. Dr. Selwyn's revised report thus remains badly flawed and continues to mislead the Commission. The *Vander Weide Report* does no more than explain and comment on the many flaws that continue to plague Dr. Selwyn's analysis.

Though Dr. Selwyn's proffered response to Dr. Vander Weide does not take issue with the fact that Qwest corrected and restated the very numbers used in his analysis,^{2/} AT&T would have the Commission turn a blind eye to this important evidence. The Commission should reject AT&T's motion insofar as it requests that portions of the *Vander Weide Report* be stricken from the record. The Commission charitably provided Dr. Selwyn a "second bite at the apple" so he could attempt to save his flawed analysis, and he fumbled the effort by repeating many of the same errors again. The Commission should not bail Dr. Selwyn out for a second time. Instead, the Commission should allow the *Vander Weide Report* to remain in the record in its entirety, allow Dr. Selwyn's response into the record, and judge the respective arguments on their merits.

Respectfully submitted,
Verizon Northwest Inc.

By: _____

Bradford Berry
Catherine Kane Ronis
Wilmer Cutler Pickering Hale and Dorr LLP
2445 M Street, N.W.
Washington, D.C. 20037
(202) 663-6000

June 28, 2004

^{2/} See Response of Dr. Lee L. Selwyn to the Expert Report of Dr. James A. Vander Weide Regarding Dr. Selwyn's Response to Bench Request No. 3, at 1-2.