

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Review of:)
Unbundled Loop and Switching) DOCKET NO. UT-023003
Rates; the Deaveraged Zone)
Rate Structure; and Unbundled) TENTH SUPPLEMENTAL ORDER
Network Elements, Transport,) DENYING, IN PART, VERIZON’S
and Termination) MOTION FOR DECLARATORY
) RULING
.....)

Synopsis: The Commission denies, in part, Verizon’s motion for a declaratory ruling that the company need not conduct time and motion studies five unbundled network elements. The Commission clarifies the type of supporting information required for cost studies in this case.

I. INTRODUCTION

- 1 **Proceeding.** Docket No. UT-023003 – also referred to as the “new generic cost case” – is a generic proceeding to review unbundled network element (“UNE”) loop and switch rates, including the deaveraged loop zone rate structure, previously established by the Commission in other proceedings. The Commission has also decided to consider numerous other related issues.

- 2 **Background.** On May 14, 2003, Verizon filed a Motion for Declaratory Ruling. In its motion, Verizon seeks Commission dispensation from the requirement that the company file time and motion studies to support non-recurring costs associated with the ordering of five elements whose volumes would not be sufficient to provide statistically valid sample sizes. The five elements are dark fiber, Signaling System 7 (“SS7”), transport, dedicated transit service (“DTS”), and enhanced extended loops (“EELS”).

- 3 On May 15, 2003, the parties were notified that answers to Verizon’s and Staff’s motions must be filed on or before May 23, 2003.

4 On May 23, 2003, Commission Staff and WorldCom filed answers in opposition to Verizon's motion.

5 On May 30, 2003, Verizon filed its Motion for Leave to File a Reply and its Reply to Responses to Motion for Declaratory Ruling¹.

6 **Appearances.** The following parties have entered appearances in this proceeding: Qwest Corporation ("Qwest"), by Lisa Anderl and Adam Sherr, attorneys, Seattle; Verizon Northwest Inc. ("Verizon"), by Jeff Edwards and Meredith Miles, attorneys, Richmond, Virginia; Covad Communications Company ("Covad"), by Megan Doberneck, attorney, Denver, CO; AT&T of the Pacific Northwest, Inc. ("AT&T"), Pac-West, Inc. ("Pac-West"), and XO Washington, Inc. ("XO"), by Gregory Kopta, attorney, Seattle; MCI/WorldCom ("WorldCom") by Michel Singer Nelson, attorney, Denver, Colorado; TRACER, by Lisa Rackner, attorney, Portland, Oregon; Eschelon Telecom, Inc. ("Eschelon"), by Dennis D. Ahlers, Minneapolis, MN; Allegiance Telecom of Washington, Inc. ("Allegiance"), by Dale Dixon, attorney, Portland, Oregon; and Commission Staff, by Shannon Smith and Mary Tennyson, Assistant Attorneys General, Olympia.

II. MEMORANDUM

7 In its motion for a declaratory ruling, Verizon seeks confirmation that it need not perform time and motion studies to support non-recurring costs associated with the ordering of five elements whose volumes would be insufficient to provide statistically valid sample sizes. The elements at issue are dark fiber, SS7, transport, dedicated transit service ("DTS"), and enhanced extended links ("EELs"). Verizon asserts that it would rely on Subject Matter Expert ("SME") opinions to support costs for these elements and will identify the experts it relies upon.

¹ The notification to the parties of their opportunity to file answers to Verizon's motion for declaratory ruling made no provision for further reply. In this instance, no further response is called for and Verizon's motion for leave to file a response is denied.

- 8 Verizon contends that with the exception of these five elements, and the virtual collocation elements that the Commission already exempted from the time and motion study requirement,² the company will otherwise be able to rely on actual measurements for work times for ordering or provisioning any element at issue in this case. Such service orders are processed at Verizon's National Access Customer Center ("NACC"). Verizon claims that for the entire twelve-month period ending March 31, 2003, the NACC processed no orders for dark fiber or SS7 in the state of Washington. The NACC received only ten orders for transport and only 74 individually input orders for EELs. Verizon contends that order volumes of this magnitude would be insufficient or provide a reliable statistical sample.
- 9 Verizon points out that in the Eighth Supplemental Order, the Commission recognized that there were similar extraordinary or exceptional circumstances that made performing time and motion studies impossible or impractical for virtual collocation elements.
- 10 Both WorldCom³ and Commission Staff request that the Commission deny Verizon's motion. They argue that if Verizon intends to use SME opinions as cost support, several problems arise. One is that, if there is insufficient information to provide a valid time and motion study for the elements at issue here, there would also be insufficient information to support reliable SME opinion on the elements. Another is that in the Eighth Supplemental Order, the Commission rejected Qwest's request to exempt services experiencing a low volume of orders from the requirement that they be supported by time and motion studies. The Commission also rejected the use of SME information as support for non-recurring costs in several prior cost docket orders.

² In the Eighth Supplemental Order in this docket, the Commission granted Verizon an exemption from the time and motion study requirement for the following virtual collocation elements: (1) engineering/major augment with entrance facilities; (2) engineering major augment without entrance facilities; (3) virtual equipment installation; (4) virtual software upgrades; (5) virtual card installation; (6) fiber optic patchcord pull; and (7) fiber optic patchcord termination.

³ WorldCom designates itself as "MCI" in its response to Verizon's motion. To date, WorldCom has not submitted any notification of a name change for WorldCom or any clarification of the status of the name WorldCom for purposes of this proceeding. For purposes of this Order, MCI/WorldCom is designated WorldCom, as has been the practice in previous Orders entered in this docket.

- 11 In addition, both Staff and WorldCom identify several ways that the Commission could modify Verizon's proposed time and motion study methodology so as to provide the required verifiable and objective support for network element costs. These include using a different statistical test to attempt to deal with the small sample size; using a pseudo-CLEC to generate orders; lengthening the observation period; using analogous retail or access services as proxies for the elements in question; using a longer time framework for obtaining information; using information from similar order processing that occurs in other states; or, otherwise validating the reasonableness of the simple average time spent to process an order based on the small sample size available.
- 12 **Decision:** The Commission denies in part Verizon's Motion for Declaratory Ruling. Verizon's motion, brought under WAC 480-09-230, is not the appropriate procedural vehicle for resolving issues that arise in the midst of a contested hearing.⁴ In the Eighth Supplemental Order in this docket, the Commission treated a similar Motion for a Declaratory Order filed by Verizon as a request for clarification of Commission cost orders. In this instance, the Commission denies the request for a declaratory ruling and treats Verizon's motion as a request for clarification of Commission orders as they apply to the performance of time and motion studies in this cost docket.
- 13 Second, the Commission clarifies the type of cost support Verizon must provide for the five named elements. The Commission has been very clear that absent a showing of exceptional circumstances, Verizon and Qwest must provide measured time intervals, subject to validation, in support of the cost studies they submit in this cost docket. In the Eighth Supplemental Order, the Commission granted an exemption from this requirement because no party objected to the requested exemption, and because with regard to the identified virtual collocation elements, no orders had been placed during the past five years.
- 14 With regard to Verizon's current request, some orders have been received during the past year and both Commission Staff and WorldCom have filed objections to Verizon's request. In this context, the Commission clarifies that the requirement for performance of time and motion studies is based on the

⁴ RCW 34.05.240(1)(b).

underlying concern that costs be supported by objective, measurable and verifiable data. Just because there are less orders for the elements at issue here does not mean that it is impossible or even impractical for Verizon to provide objective, measurable and verifiable support for its costs for these elements.

- 15 The Commission regards SME support for costs as unacceptable barring extraordinary circumstances. Thus, Verizon should regard SME support as a last resort, appropriate, for example, in instances when no orders have been received for an element for the last five years. However, in the instance that no orders have been received for the last year, or very few orders have been received, there may be other methodologies that would provide more measurable, objective and verifiable information than SME opinion. Commission Staff and WorldCom have suggested several ways Verizon could obtain valid ordering and processing data in such circumstances. There may be others. The Commission will not dictate to Verizon exactly what methodology it should use other than to reiterate that SME-based opinions are a last resort. Should the company elect to rely on SME opinion for any of the elements in question here, Verizon must provide a knowledgeable subject matter witness to testify regarding time estimates for those elements.

III. ORDER

- 16 THE COMMISSION ORDERS That Verizon must provide objective, measurable and verifiable support for the costs for dark fiber, SS7, transport, DTS and EELs.

DATED at Olympia, Washington and effective this 2nd day of June 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

THEODORA M. MACE
Administrative Law Judge