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August 3, 2004

NANCY E. DICKERSON
LEGAL SECRETARY
(206) 340-9381
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VIA FEDERAL EXPRESS

Ms. Carole Washburn
Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
1300 South Evergreen Park Dr. S.W.
Olympia, WA 98504-7250

**Re: Washington Utilities and Transportation Commission v. Verizon Northwest Inc.
Docket No. UT-040788**

Dear Ms. Washburn:

Enclosed please find the original and 15 copies of the Motion of Verizon Northwest Inc. for Modification of Protective Order and Partial Waiver of WAC 480-07-160(3)(b). Please stamp one of the copies and return it to us in the enclosed stamped self-addressed envelope provided for your convenience.

If you should have any questions, please contact me. Thank you.

Sincerely,

GRAHAM & DUNN PC



Nancy E. Dickerson
Assistant to Judith A. Endejan

Enclosure

cc: All Parties
m29664-525080.doc

CERTIFICATE OF SERVICE

I hereby certify that I have this 3rd day of August 2004, served the true and correct original along with the correct number of copies, of the attached document upon the WUTC, via the method(s) noted below, properly addressed as follows:

Ms. Carole Washburn	<input type="checkbox"/>	U.S. Mail, Postage Prepaid
Secretary	<input type="checkbox"/>	Hand Delivered
Washington Utilities and Transportation	<input checked="" type="checkbox"/>	Overnight Mail (Federal Express)
Commission	<input type="checkbox"/>	Facsimile (360) 586-1150
P.O. Box 47250	<input type="checkbox"/>	Email (records@wutc.wa.gov)
1300 South Evergreen Park Dr. S.W.		
Olympia, WA 98504-7250		

I hereby certify that I have this 3rd day of August 2004, served a true and correct copy of the attached document upon parties of record, via the method(s) noted below, properly addressed as follows:

<i>On Behalf of Public Counsel:</i>	<input checked="" type="checkbox"/>	U.S. Mail, Postage Prepaid
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Public Counsel	<input type="checkbox"/>	Facsimile (206) 389-2058
900 4th Avenue, Suite 2000	<input type="checkbox"/>	Email (simonf@atg.wa.gov)
Seattle, WA 98164		

Robert C. Wallis	<input checked="" type="checkbox"/>	U.S. Mail, Postage Prepaid
Administrative Law Judge	<input type="checkbox"/>	Hand Delivered
Washington Utilities and	<input type="checkbox"/>	Overnight Mail
Transportation Commission	<input type="checkbox"/>	Facsimile (360) 586-8203
1300 S. Evergree Park Drive SW	<input type="checkbox"/>	Email (bwallis@wutc.wa.gov)
Olympia, WA 98504-7250		

<i>On Behalf of The Washington Electronic</i>	<input checked="" type="checkbox"/>	U.S. Mail, Postage Prepaid
<i>Business & Telecommunications Coalition</i>	<input type="checkbox"/>	Hand Delivered
<i>("WeBTEC"):</i>	<input type="checkbox"/>	Overnight Mail
Arthur A. Butler	<input type="checkbox"/>	Facsimile (206-467-8406)
Ater Wynne, LLP	<input type="checkbox"/>	Email (aab@aterwynne.com)
601 Union Street		
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Seattle, WA 98101		

On Behalf of AARP:

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On Behalf of Commission Staff:

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Attorney General of Washington
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On Behalf of Integra Telecom of Washington:

Deborah Harwood
Karen J. Johnson
Integra Telecom of Washington, Inc.
1201 NE Lloyd Blvd, Suite 500
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karen.johnson@integratelecom.com)

On Behalf of AT&T Communications of the Pacific Northwest (AT&T):

Gregory J. Kopta
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Letty S.D. Friesen
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Denver, CO 80202

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 Email (lsfriesen@att.com)

*On Behalf of Northwest Public
Communications Council (NPCC):*

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Miller Nash LLP
4400 Two Union Square
601 Union Street
Seattle, WA 98101-2352

David L. Rice
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*On Behalf of Citizens' Utility Alliance of
Washington:*

John O'Rourke
Citizens' Utility Alliance
212 W. Second Avenue, Suite 100
Spokane, WA 99201

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 Overnight Mail
 Facsimile (509-744-3374)
 Email (orourke@snapwa.org)

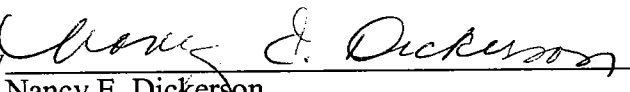
*On Behalf of The United States Department of
Defense:*

Stephen S. Melnikoff
Regulatory Law Office
U.S. Army Litigation Ctr.
Office of the Judge Advocate General
901 N. Stuart Street, Suite 700
Arlington, VA 22203-1837

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 Facsimile (703-696-1643)
 Email (stephen.melnikoff@hqda.army.mil)

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 3rd day of August, 2004, at Seattle, Washington.

By 
Nancy E. Dickerson
Legal Secretary

Judith A. Endejan, Graham & Dunn PC
Pier 70
2801 Alaskan Way, Suite 300
Seattle, WA 98121-1128
Direct: 206-340-9694
Fax: 206-340-9599
email: jendejan@grahamdunn.com)

and to

Gregg E. Diamond
Director Regulatory
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Irving, Texas 75038 MCHQE02E84
Direct: 972-718-3418
Fax: 972-718-4353
email: gregg.diamond@verizon.com

III. AUTHORITY RELIED UPON

3 Verizon brings this motion pursuant to WAC 480-07-110, WAC 480-07-
375(1)(b) and RCW 80.01.040.

IV. RELIEF REQUESTED

4 Verizon requests the modification of the Protective Order (Order No. 2) in the
following respects:

- 5 • Verizon may be allowed to file five CD copies of its public and confidential cost-study
support, instead of 16 copies (an original plus 15 copies) required by Order No. 3 in this
docket;
- 6 • Verizon may be allowed to mark the CDs to be filed that include third-party vendor
information by affixing a label on the CD case that reads “Confidential per Protective
Order in WUTC Docket No. UT-040788” in lieu of this marking being required on each
page of the documents included on the CD as required by paragraph 4 in Order No. 2 and
WAC 480-07-160(3)(b). The documents included in the third-party vendor CDs were
provided to Verizon from its third-party vendors and they cannot be altered to include the
required confidential labeling. The confidential nature of these documents will

nonetheless be evident because each page has some type of confidential marking that indicates that it is confidential.

- 7 • Parties wishing to receive copies of Verizon’s cost-study CDs that contain confidential third-party vendor information will be required to enter into a separate protective agreement for confidential third-party vendor information in the form attached hereto as Exhibit A.

V. STATEMENT OF FACTS

8 Pursuant to Order No. 4 Verizon must file by August 23, 2004 “sufficient supporting information” for the tariffs it filed on July 23, 2004. As part of this filing, Verizon intends to file voluminous cost-study information that is similar, if not identical, to the cost-study filing made by the Company in the UNE Docket case, Docket No. UT-023003.² In the UNE Docket, Verizon requested permission from Administrative Law Judge Mace to accomplish its cost-study filing in both public and confidential form by submitting five CDs in lieu of the original plus 17 copies required in that docket. In that docket, Verizon explained the voluminous nature of its cost filing, with approximately 15 cost manuals of about 1800 pages in length and an additional 10,000 plus pages of supporting documentation.

9 On June 20, 2003 Judge Mace granted Verizon’s request, allowing the Company to file both the original and copies in CD format rather than requiring a hard copy. In addition, Judge Mace allowed Verizon to submit only five copies of the cost-study CDs. *See Exhibit B.*

10 The cost-study information Verizon submitted in Docket No. UT-023003 also contained several (approximately seven) CDs containing sensitive, third-party

² See *In the Matter of the Review of Unbundled Loop and Switching Rates and Review of the D-Averaged Zone Rate Structure*, Docket No. UT-023003. Except as will be explained by Verizon witnesses in testimony in the general rate case, the cost-study documentation to be filed by the Company in Docket No. UT-040788 is identical to that filed in Docket No. UT-023003.

confidential information, subject to existing non-disclosure obligations owed to that third party. Such third-party information includes, for example, specific equipment pricing information. In the UNE Docket, Verizon worked with the parties to reach a Protective Agreement for treatment of this confidential third-party vendor information (Exhibit A hereto). Verizon needs to request that same treatment for the same third-party confidential information in this docket.

VI. ARGUMENT

11 Simply put, Verizon requests the same treatment for the same confidential information submitted by the Company in two Dockets – Nos. UT-023003 and UT-040788. To accomplish this symmetrical treatment, the Protective Order needs modification to reflect the relief granted to Verizon pursuant to this Motion. Verizon’s first request to file five CD’s avoids the need for requiring the filing of its cost-study information in hard copy, which would be a significant waste of material and personnel resources. No party in the UNE Docket was prejudiced by this CD filing and none would be prejudiced here. Because all material contained on CD’s with the confidential designation will be confidential, parties working with data burned on such a CD will be fully advised as to the confidential nature of the data. Therefore, allowing Verizon to satisfy the marking requirements in the manner proposed in paragraph 2 above will prejudice no party. Finally, no party will be prejudiced by requiring additional protection for highly confidential, proprietary third party vendor information. In the UNE docket, Verizon worked through issues associated with protection of highly confidential proprietary third party information with some of the same parties involved in this docket (i.e., AT&T Communications of the Northwest Inc.). The proposed “Agreement for Third Party Confidential Information” reflects a reasonable balance that allows for appropriate additional protection for a narrow category of information.³ If this

³ Verizon will specifically identify those CD’s that contain confidential third party vendor information.

requirement is not added to this docket, parties from the UNE Docket could have access to confidential data they would not have been able to receive in that docket without executing Exhibit A. It is reasonable for Verizon to seek the same protection for the same information in both dockets. Accordingly, Verizon requests the Commission to enter an Order granting the relief specified in Section IV above.

Respectfully submitted this 3rd day of August, 2004.

GRAHAM & DUNN PC

By *Judith A. Endejan*
Judith A. Endejan
WSBA# 11016
Email: jendejan@grahamdunn.com
Attorneys for Verizon Northwest Inc.

EXHIBIT A

RECEIVED
REGISTRATION DIVISION

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STATE OF WASH.
UTILITY AND TRANSPORTATION
COMMISSION

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

VERIZON NORTHWEST INC.,

Respondent.

) Docket No. UT-040788

) PROTECTIVE AGREEMENT FOR THIRD
) PARTY CONFIDENTIAL INFORMATION

PROTECTIVE AGREEMENT FOR THIRD PARTY CONFIDENTIAL INFORMATION

To expedite the disclosure of certain Third-Party Confidential Information, facilitate the prompt resolution of disputes over the confidentiality of such information, adequately protect such information entitled to be kept confidential, and ensure that the protection is afforded to such entitled information, _____ and Verizon Northwest Inc. (collectively herein "the Parties," which includes incorporated affiliates, subsidiaries, controlling interests, partners, successors, and assigns) agree in the above-captioned proceeding that:

1. *Exchange of Third-Party Confidential Information.* The Parties will be bound by the terms of this Agreement and may exchange Third-Party Confidential Information under the terms set forth herein. Any Party,

including Third-Parties (as defined in paragraph 2), shall be entitled to seek enforcement of (or other appropriate relief pertaining to) this Agreement before the Commission, a member of the Commission, or any other authority having competent jurisdiction, for any breach or threatened breach of this Agreement.

2. *Definition of Third-Party Confidential Information.* For purposes of this Agreement "Third-Party Confidential Information" shall mean proprietary or confidential information held by any Party (or non-Party) which belongs to a third party ("Third Party") and which is subject to existing nondisclosure obligations owed to the Third Party. Any Third-Party Confidential Information that is produced in this proceeding may be disclosed pursuant to paragraph 4 below.

3. *Designation of Third-Party Confidential Information.* Materials generated or provided by a Party in this proceeding may be designated as "Third-Party Confidential Information" by that Party if the Party believes in good faith that the materials are confidential or proprietary information belonging to a Third Party, and are subject to existing nondisclosure obligations owed to the Third Party. Any Party asserting confidentiality for such materials shall so indicate by clearly marking such materials, or portions thereof, for which a Third-Party Confidential Information designation is claimed with markings that are reasonably calculated to alert custodians of the material to its confidential or proprietary nature.

Except with the prior written consent of the Party or other person who has

designated a document as Third-Party Confidential Information, no Third-Party Confidential Information may be disclosed to any person except as provided in paragraph 4. For purposes of this Agreement, the term "document" means all written, recorded or graphic material, and non-paginated items such as computer tapes, diskettes, and CD ROMs, whether produced or created by a Party or another person, whether produced pursuant to the Commission's rules, subpoena, by agreement, or otherwise. Interrogatory and document request answers, responses to requests for admission, deposition transcripts and exhibits, pleadings, motions, affidavits, and briefs that quote, summarize, or contain materials entitled to protection are accorded status as a stamped confidential document, and to the extent feasible, shall be prepared in such a manner that the Third-Party Confidential Information is bound separately from any information not entitled to protection.

4. *Permissible Disclosure of Third-Party Confidential Information.*

- (a) Notwithstanding paragraph 3, Third-Party Confidential Information provided pursuant to this Agreement may be disclosed without prior consent only to the following persons, only in prosecuting this proceeding, and only to the extent necessary to assist in prosecuting this proceeding:
- i. Counsel of record representing a Party in this proceeding, and any legal support personnel (e.g., paralegals and clerical employees) employed by such attorneys, and any regulatory support personnel acting at the direction of such attorneys.

- ii. Other designated employees, officers, or directors of a Party, or Independent consultants or experts retained by a Party, who are,
 - 1. not currently involved in the marketing, procurement, manufacturing, pricing, or development of telecommunications equipment, software, or services, for which price and contract data are disclosed (collectively, “Competitive Activities”); or
 - 2. not currently involved in the development of computerized telecommunications costing models that are not designed primarily for litigation support, including arbitration and rulemaking proceedings (also considered “Competitive Activities”); or
 - 3. not currently network planning and operations staff.

For purposes of this Agreement, any version of the HAI Consulting, Inc. costing model filed in this proceeding shall be deemed to be a model designed primarily for litigation support. Individuals who are authorized access to Third-Party Confidential Information under this paragraph may not engage or consult in Competitive Activities relating to software for one (1) year, or Competitive Activities relating to hardware or other equipment for three (3) years, or until such hardware or other equipment is no longer marketed, whichever period is less, following their review of the Third-Party Confidential Information under this Agreement.

- iii. The Commission or its staff.
- iv. The Public Counsel Section or its staff.

- v. Court reporters, stenographers, or persons operating audio or video recording equipment at hearings or depositions.
 - vi. Any person designated by the Commission in the interest of justice, upon such terms as the Commission may deem proper.
 - vii. Persons noticed for depositions or designated as witnesses, to the extent reasonably necessary in preparing to testify or for the purpose of examination in this proceeding.
- (b) Persons obtaining access to Third-Party Confidential Information under this Agreement shall not disclose information designated as Third-Party Confidential Information to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than in prosecuting this proceeding before the Commission or any arbitrator or Administrative Law Judge (“ALJ”) appointed by this Commission. Each individual who is provided access to Third-Party Confidential Information pursuant to subparagraphs 4(a), (i), (ii), (vi), or (vii), must first sign a statement affirmatively stating that the individual has personally reviewed this Agreement and understands and agrees to be bound by the limitations it imposes on the signing party. The form of statement to be used is Appendix A to this Agreement. The Party making disclosure under subparagraphs 4(a)(i), (ii), (vi) or (vii) shall notify the Party producing the Third-Party Confidential Information of such disclosure and, upon request, provide a copy of the signed statement (Appendix A) referenced above.
- (c) No copies or notes of materials marked Third-Party Confidential Information may be made except copies or notes to be used by persons designated in

paragraph (a) of this section. Each Party shall maintain a log recording the number of copies made of all Third-Party Confidential materials and the persons to whom the copies have been provided.

- (d) Within ninety (90) days of termination of this proceeding, including all appeals and petitions, all originals and reproductions of any Third-Party Confidential materials, along with the log recording persons who have received copies of such materials, shall be returned to the producing Party and/or destroyed. In addition, upon such termination, any notes or other work product derived in whole or in part from the Third-Party Confidential materials shall be destroyed, and counsel of record for the receiving Party shall notify counsel for the Party who produced the materials that this destruction has been completed. If materials are destroyed, rather than returned to the producing Party, a sworn statement to that effect by counsel of record for the receiving Party shall be provided to the producing Party.
- (e) Before disclosing Third-Party Confidential Information to any person listed in subparagraphs (a)(vi) or (a)(vii), the Party wishing to make such disclosure shall give at least ten (10) business days advance written notice to the counsel who designated such information as Third-Party Confidential Information, stating the names and addresses of the person(s) to whom the disclosure will be made, identifying with particularity the documents to be disclosed, and stating the purposes of such disclosure. If, within the ten (10) business day period, a motion is filed objecting to the proposed disclosure, such disclosure shall not be permissible unless and until the Commission has denied such motion.
- (f) The number of authorized persons designated by a Party to review confidential information under paragraph 4(a)(ii) may not exceed ten (10) individuals unless (i)

the Party producing the Third-Party Confidential Information, and any Third Party whose Third-Party Confidential Information is being disclosed, consent to additional authorized persons, or (ii) the Commission or a Commissioner or an ALJ denies a motion to bar disclosure of the Third-Party Confidential Information to additional authorized persons. Failure to file such a motion within ten (10) business days after receiving written notice that a reviewing Party intends to designate additional reviewing representative(s) shall constitute consent to the designation. The written notice shall (i) identify the additional authorized persons; (ii) identify the Third-Party Confidential Information that is proposed to be disclosed; and (iii) provide a copy of the resume of the proposed additional reviewing representative(s) containing the individual's up-to-date employment history.

(g) Consistent with the terms of this Agreement, the Parties are responsible for employing reasonable measures to control duplication of, access to, and distribution of Third-Party Confidential Information.

5. *Declassification.* A Party may apply to the Commission and/or ALJ for a ruling that documents, categories of documents, or deposition transcripts, stamped or designated as confidential, are not entitled to such status and protection. The Party or other person that designated the document or testimony Third-Party Confidential shall be given notice of the application and an opportunity to respond. To maintain confidential status, the proponent of confidentiality must show by a preponderance of the evidence that the materials fall within an exemption to disclosure contained in the Freedom of Information Act, 5 U.S.C. §

552(b)(1)–(9), are entitled to protected treatment under Washington Law, or are subject to existing nondisclosure obligations owed to a Third Party.

6. *Third-Party Confidential Information in Depositions.* In the event that depositions are to be taken in this proceeding:
 - (a) A deponent may during the deposition be shown or examined about Third-Party Confidential Information if the deponent already knows the Third-Party Confidential Information contained therein or if the provisions of paragraph 4 above are complied with.
 - (b) Parties (and deponents) may, within fifteen (15) days after receiving a deposition transcript, designate pages of the transcript (and exhibits thereto) as Third-Party Confidential Information. Third-Party Confidential Information within the deposition transcript may be designated by marking the portions of the pages that are confidential and marking such pages with the following legend: "Third-Party Confidential – Subject to Protective Agreement in Docket No. UT-023003 before the Washington Utilities and Transportation Commission." Until expiration of the fifteen (15) day period, the entire deposition will be treated as Confidential Information subject to protection against disclosure under this Agreement. If no Party or deponent timely designates Third-Party Confidential Information in a deposition, then none of the transcript or its exhibits shall be filed (to the extent such filing may be required) under seal separately from the portions and exhibits not so marked.

7. *Third-Party Confidential Information Offered in Evidence or Filed in the Record.* Subject to the Commission's rules, Third-Party Confidential Information may be offered into evidence or in the record made by the

Parties and submitted to the Commission (or to an ALJ appointed by the Commission) in this proceeding, provided that the proponent does so in the manner set forth in this Agreement, consistent with the rules of the Washington Utilities and Transportation Commission. Pursuant to this Agreement, any party may move before the Commission (or an ALJ appointed by the Commission) for an order that the evidence be received in camera or under other conditions to prevent unnecessary disclosure. The Commission or ALJ will then determine whether the proffered evidence should continue to be treated as Third-Party Confidential Information and, if so, what protection, if any, may be afforded to such information at any hearing or other proceeding.

8. *Subpoena by Courts or Other Agencies.* If a court or other administrative agency subpoenas or orders production of Third-Party Confidential Information which a Party has obtained under the terms of this Agreement, such Party shall promptly (within four (4) business days) notify the Party (or other person who designated the document confidential) of the pendency of such subpoena or order to allow that Party time to object to that production or seek a protective order.
9. *Filing.* The Third-Party Confidential Information need not be filed with the Commission's Executive Secretary except when required in connection with motions under the Commission's rules and regulations or other matters pending before the Commission or an ALJ appointed by the Commission. If filed, such information shall be filed under seal and shall

remain sealed while in the Executive Secretary's office or such other office as the Commission may designate so long as they retain their status as Third-Party Confidential Information.

10. *Client Consultation.* Nothing in this Agreement shall prevent or otherwise restrict counsel from rendering advice to their clients and, in the course thereof, relying generally on examination of Third-Party Confidential Information; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure of or reference to any Third-Party Confidential Information except under the procedures of paragraph 4 above.
11. *Use.* Persons obtaining access to Third-Party Confidential Information under this Agreement shall use the information only for preparation of and the conduct of litigation in this proceeding and any related appeals or review proceedings, and shall not use such information for any other purpose, including business or commercial purposes, or governmental or other administrative or judicial proceedings.
12. *Non-Termination.* The provisions of this Agreement shall not terminate at the conclusion of this proceeding.
13. *Modification Permitted.* Nothing in this Agreement shall prevent any Party from objecting to discovery of Third-Party Confidential Information that it believes to be otherwise improper.

14. The terms of this Agreement shall be broadly and liberally construed so as to protect Third-Party Confidential Information from disclosure while expanding the flow of available discovery materials and testimony.

Dated: _____

By: _____

VERIZON NORTHWEST INC.

Dated: _____

By: _____

APPENDIX A
CERTIFICATION

I certify my understanding that I have been given a copy of an Agreement Regarding Disclosure and Use of Third-Party Confidential Information, and have read said Agreement, and agree to comply with and be bound by this Agreement.

I further certify that I am not currently involved in the marketing, procurement, manufacturing, pricing, or development of telecommunications equipment, software or services, or the development of computerized telecommunications costing models that are not designed primarily for litigation support, including arbitration and rulemaking proceedings, within the meaning of this Agreement, or employed in a network planning or operations staff capacity.

SIGNATURE:

EMPLOYER:

REPRESENTING:

DATE:

EXHIBIT B

June 20, 2003

**NOTICE OF FILING REQUIREMENTS FOR COST STUDIES
(June 26, 2003)**

RE: In the Matter of the Review of Unbundled Loop and Switching Rates and
Review of the Deaveraged Zone Rate Structure
Docket No. UT-023003

TO THE PARTIES:

On June 18, 2003, Verizon requested clarification of the number of copies of testimony and exhibits required to be filed on June 26, 2003 and the manner in which they may be filed, especially as the filings pertain to cost studies.

In the Fifth Supplemental Order in this docket, the parties were advised to file an original and 17 copies of all pleadings, testimony and exhibits.

On June 18, 2003, the parties were notified that for cost study exhibits and documents supporting the cost studies, the parties may file an original in hard copy with four compact discs (CDs) containing the same information as the original.

On June 19, 2003, Verizon submitted a letter explaining the voluminous nature of its cost filing. Verizon indicated that it anticipated filing fifteen cost manuals about 1800 pages in length, as well as an additional approximately 10,000 pages of supporting documentation. Verizon pointed out that since part of this information was classified as confidential, Verizon would need to provide both confidential and public versions. Verizon suggested that for the cost studies, it would be more reasonable to require filing both the original and copies in CD format only, rather than requiring the filing of confidential and public originals in hard copy, so as to avoid significant wasted material and personnel resources.

In light of Verizon's representations regarding the anticipated length and physical volume of its cost studies, and the need to file them in both public and confidential form, it is reasonable to allow Verizon, and any other party that expects to make such a voluminous cost study filing, to file those studies and supporting documents in CD format only. All other testimony and exhibits must be filed in original hard copy with seventeen additional copies, as required in the Fifth Supplemental Order.

Parties may file cost study exhibits and supporting documents in CD format by filing five CDs with the Commission. Public and confidential versions must be filed as separate CDs, with confidential versions properly designated as required under the protective order currently in place.

Sincerely,

THEODORA M. MACE
Administrative Law judge