

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Determining Costs)	DOCKET NO. UT-980311(a)
)	
for Universal Service)	SEVENTH SUPPLEMENTAL ORDER
)	GRANTING AND DENYING, IN PART,
)	GTE'S MOTION TO COMPEL, AND
)	DENYING U S WEST'S MOTION TO
)	REMOVE TESTIMONY
.....)	

This proceeding addresses the cost-related matters for providing universal service throughout the State of Washington. GTE Northwest Incorporated (GTE) has filed a motion to compel production of documents and data from AT&T Communications of the Pacific Northwest, Inc. (AT&T). In addition to production of the requested discovery, GTE requests a reasonable amount of time to supplement its prefiled testimony. U S WEST Communications, Inc. has filed a motion to remove portions of the testimony filed by AT&T and NEXTLINK Washington, Inc. (NEXTLINK) from the adjudication to the rule making phase of this docket.

GTE'S MOTION TO COMPEL

GTE requests the Commission to order AT&T to produce documents and data concerning: (1) inputs to AT&T's Transport Incremental Cost Model (TICM); (2) the underlying geocoding information, databases, and software used in the HAI Model; (3) the documents AT&T used in costing out local loops in connection with its normal business operations; (4) two illustrations of clusters fitting certain criteria; (5) the documentation relied upon for certain claims in the HAI Model Documentation; (6) the engineering criteria and service levels modeled, as well as any validation tests performed on the Model. According to GTE, neither it nor this Commission can effectively evaluate the HAI Model without this information. GTE represents that it has conferred with AT&T regarding the required discovery and has been unable to resolve the matter. AT&T filed a response in opposition to the production of the data requested.

A. The TICM Data Request (Data Request No. 2)

GTE explains that TICM is the forward-looking incremental cost model that AT&T has used for making business and financial decisions concerning its long distance network. GTE asserts that it is seeking the TICM input values as a means of testing the reasonableness of the HAI Model's inputs for similar network components. It argues that this Commission previously ordered AT&T to produce thirteen TICM inputs in the Sixth Supplemental Order, Docket Nos. UT-960369, et al.

It further argues that since the Washington Generic Cost Proceeding, GTE has received TICM -related information in California, New Mexico, and Hawaii, which includes information that AT&T claimed was unavailable in Washington. GTE has offered to tender the requested information to AT&T in order for it to be reproduced to GTE to alleviate any potential burden.

AT&T responds that it no longer maintains an operable version of TICM and thus there are no current input values for Washington. To the extent that GTE seeks inputs used historically, AT&T argues that those are not relevant to the purpose of this proceeding. AT&T points out that the inputs GTE apparently obtained are specific to the geographic region for which the model was run. AT&T also argues that GTE did not include California in its Request No. 2 so there are no grounds for ordering production of that information.

The Commission agrees with GTE that the information it seeks in this request may be useful as a means of testing the reasonableness of the HAI Model's inputs for similar network components. The Commission is not persuaded by AT&T's relevancy argument. Relevancy applies to the admissibility of this material, not its discoverability. Moreover, GTE has offered to tender the requested information so that it can be reproduced to GTE, thus alleviating any potential burden on AT&T. The Commission orders AT&T to produce the information requested in Data Request No. 2, except for California, since it was not included in the original request.

B. Underlying Geocoding Information, Databases and Software Used in the HAI Model (Data Request Nos. 10, 15, 16, 17, 18, 21, 32, 33, 34, 35, 39, 48, and 66)

GTE asserts that despite AT&T's contention that theirs is an "open" model, GTE does not have access to the critical pre-processed geocoding and clustering data contained in the HAI Model that AT&T used to "geocode" customers and create the customer serving areas. GTE contends that the underlying information is critical to its ability to evaluate the HAI Model's database and software. GTE indicates that it is willing to enter into an appropriate protective agreement to ensure the confidentiality of the data is not compromised.

In addition, GTE requests that AT&T be compelled to provide supplemental responses to Data Request Nos. 32, 33, 34, 35, 36, 37, and 38 pertaining to GTE's query as to what validation efforts AT&T has undertaken to assure the accuracy of the databases and data from which the HAI Model databases and data were derived. According to GTE, AT&T provided no response. GTE argues that it is seeking AT&T's validation efforts, not its vendors efforts, so there cannot be any third-party proprietary claim for this information.

Furthermore, in Data Requests 10 and 66, GTE requests information and data relating to the HAI Model's success rates for geocoding with respect to business customers, pay phones, and special access phones. GTE contends that

this information is critical in evaluating whether there really is significant "geocoding" with respect to these services. GTE acknowledges that AT&T provided success rates for residential customers and all customers, but it did not provide the other information specifically requested.

AT&T responds that in these sixteen requests, GTE seeks access to databases that GTE acknowledges are commercially available. According to AT&T, these vendors, the information that they have provided to PNR and Associates and the relationship that exists among those parties are explained in the Affidavit of Richard Clarke, attached to Response to Request No. 16. Based on this explanation, AT&T contends that GTE is demanding something that AT&T does not possess and does not have the right to provide. AT&T maintains that GTE's offer to execute a protective agreement does not address this fact and will not resolve the situation.

In response to GTE's requests that AT&T list all validation efforts that were undertaken to assure the accuracy of this data, AT&T asserts that it does not know what validation efforts were undertaken. AT&T represents that it did not conduct any such efforts. It indicates that this statement can be used to supplement its responses, if that will clarify the matter.

AT&T asserts that Data Request Nos. 12, 15, 42, 48, 51, 56, 58, 59, 60, 61, and 66 were all repetitive in seeking the number of customer locations that are actually geocoded in Washington. AT&T indicates that it provided a copy of this information in response to Public Counsel Request No. 8, and that a copy of this response was provided to GTE. AT&T represents that it has no other information, and indicates that this statement can be used to supplement AT&T's responses, if that will clarify the matter.

The Commission agrees with GTE that access to the pre-processed geocoding and clustering data used to "geocode" customers and create the customer serving areas is critical to evaluate the HAI Model's database and software. The Commission is also sensitive to the concerns of AT&T with respect to this information. However, AT&T's position leaves the parties and the Commission in a totally unacceptable "black hole" with respect to evaluating this information. Accordingly, the Commission orders AT&T to provide the information.

We order additional restrictive protective provisions to preclude GTE and any other party from sharing this information, or using it except for the purposes of this proceeding. The information must be sent to GTE's lead attorney, or to the attorney that the lead assigned. It may be viewed by only one additional person, who may evaluate it for the purposes specified. GTE must specify the recipient and the staff person or consultant no later than August 28, 1998, at 5 p.m. Eastern daylight time. Data may not be copied. It must be returned immediately upon use unless permission to retain it longer is granted by the presiding officer based upon a showing you need and of appropriate security. Except when being used, the data must be locked in the attorney's office or another place subject to entry only by the

attorney. With respect to the validation request and success rates for geocoding business customers, pay phones, and special access phones, AT&T is directed to provide responses to GTE.

C. Documents AT&T Used in Costing Out Local Loops in Connection With its Normal Business Operations (Data Request Nos. 3, 4, 5, 6, 7)

The documents GTE seeks in these requests are those that AT&T witness, Mr. James Wells, reviewed in developing cost estimates for AT&T for building local networks and testified about in the Kentucky Universal Service Proceeding. GTE asserts that these documents concern price quotes obtained by AT&T in order to develop cost estimates for building local facilities. It argues that these documents, collected in the 1996 time frame, will allow GTE and the Commission to test the "expert opinion" of the HAI engineering team, upon which the HAI Model Developers so heavily rely.

In response, AT&T argues that the information on costs would be voluminous and widely-scattered. AT&T further argues that such information has no relevance to the issue in this proceeding: determining the costs to the incumbents of providing local exchange service. Additionally, AT&T points out that these requests seek information within the mind of an individual no longer employed by AT&T. AT&T asserts that if GTE has requests of Mr. Wells, it can ask him. Finally, AT&T maintains that none of the information sought by GTE in these requests was used to establish the inputs for HAI 5.0a.

The Commission agrees with GTE that these documents may be helpful to test the expert opinion of the HAI engineering team. Again, AT&T's relevancy argument applies to the admissibility of this material, not its discoverability. AT&T is directed to respond to these requests.

D. Illustration of Clusters (Data Requests No. 40 and 41)

In these data requests, GTE asks AT&T to illustrate in a figure a cluster containing an odd number of branch cable and a cluster containing fifty-two customer locations. GTE contends that it cannot illustrate either cluster because the HAI Model Description does not contain sufficient information for GTE to do so. According to GTE, because these requests refer to a location algorithm, a visual illustration is of utmost importance if GTE and this Commission are to estimate the size of various cable and conduit required and fully evaluate the HAI Model.

In response, AT&T argues that GTE asks for drawings that do not exist. It cites WAC 480-09-480(2)(c), which provides that data requests seek "extant documents." AT&T asserts that it should not be required to expend time and money to create material for GTE.

In light of WAC 480-09-480(2)(c) the Commission will not compel AT&T to respond to these requests. However, AT&T is encouraged to respond since this may enhance understanding of its model and expedite the hearing.

E. Documents Relied Upon for Certain Claims in the HAI Model Documentation (Data Request Nos. 20 and 30)

In these requests, GTE seeks all documents relied upon by AT&T for two claims made in the HAI Model Documentation: (i) its geocoded locations are accurate to within six decimal places to a degree; and (ii) the HAI Model identifies actual locations accurate to within 50 feet of most telephone customers. GTE argues that the Centrus Desktop software, to which it was referred by AT&T, is used to geocode locations and could not possibly speak to the results of the process.

AT&T responds that the geocoded locations are provided by PNR which has represented their accuracy. In addition, AT&T argues because the intellectual property of third-party vendors is involved, it is not able to provide further documentation.

The Commission finds these requests to be reasonable ones. The HAI Model Documentation makes specific statements of accuracy and GTE should be allowed to look at the documentation which supports those claims. AT&T's response places the parties and the Commission back in a "black hole" situation. As we stated in (B) above, the information should be provided subject to the same restrictive protective provisions order.

F. Information Concerning the Engineering Criteria and Service Levels in the HAI Model as well as Documents Concerning Validation Tests (Data Request Nos. 8 and 47)

These requests seek information concerning the engineering criteria and service levels modeled by the HAI Model, as well as documents relating to any external validation tests performed on the Model. GTE notes that it did not limit its request to the public information in the many state proceedings to which AT&T has referred GTE. GTE requests any external validity tests performed by AT&T that are not in the public domain. Similarly, the section of the Model Documentation to which AT&T refers GTE does not discuss the engineering criteria or the service levels modeled by the HAI Model.

AT&T responds that it referred GTE to the HAI Model Documentation. AT&T maintains that all information relied upon by the model sponsors and model developers as support for HAI 5.0a is set forth in that document.

The Commission finds that these requests are reasonable and that the

information sought is likely to lead to facts which bear upon the validity of the HAI Model. AT&T must provide the required information.

U S WEST'S MOTION TO REMOVE TESTIMONY TO THE RULE MAKING

U S WEST requests removal of certain testimony filed by NEXTLINK and AT&T from the adjudicative phase to the rule making phase of this proceeding. In support of its position, U S WEST asserts that, through a series of prehearing orders, the Commission has delineated and specified the types of issues that will be resolved in this adjudicative proceeding. According to U S WEST, those issues concern the determination of the appropriate methodology for ascertaining the cost of providing basic local service, and other cost-related issues concerning Universal Service. It contends that NEXTLINK and AT&T have submitted evidence which is outside the scope of this proceeding.

Specifically, U S WEST objects to the testimony of NEXTLINK witness, Rex Knowles. According to U S WEST, this testimony consists primarily of argument about why the Commission's refusal to deaverage loop costs in Docket Nos. UT-960369 et al. (Costing Docket), allegedly impedes the development of effective local exchange competition and perpetuates implicit geographic subsidies. Likewise, U S WEST objects to the testimony of AT&T witness, Natalie Baker. U S WEST argues that the first two sections of this testimony are completely unrelated to the determination of cost, and instead are focused on the issues in the rule making phase of the docket. Specifically, Ms. Baker discusses implementation timing issues, and the delay of the FCC's universal service supports.

In response, NEXTLINK argues that the challenged portions of Mr. Knowles testimony explain that by deciding not to deaverage unbundled network element rates, the Commission perpetuates implicit subsidies that, among other effects, will result in an overstated universal service fund estimate. Citing the Fifth Supplemental Order in this docket, NEXTLINK asserts that the Commission has already recognized that the effect of geographic deaveraging on cost estimates is an appropriate issue for consideration in the adjudicative phase of this docket. NEXTLINK maintains it is not challenging the Commission's Eighth Supplemental Order in the Costing Docket. According to NEXTLINK, the Commission in that docket declined to geographically deaverage unbundled loop prices "at this time" and expressly provided that the issue of geographic deaveraging should be considered in the context of "universal service reform." NEXTLINK agrees that geographic averaging of unbundled network element costs and prices raises policy issues that should be considered in the rule making phase of this docket, but also maintains that the portions of the NEXTLINK testimony addressing that issue also raise cost quantification issues.

AT&T responds that U S WEST's motion apparently was prepared before the Commission's Fifth Supplemental Order was issued. According to AT&T, Ms. Baker's

testimony is completely consistent with the Commission's statements in that order. AT&T argues that Ms. Baker's testimony concerns the fundamental issue of this phase: selection of a cost model and estimation of the size of the fund. AT&T points out that the testimony then discusses reconciling the state-wide averaged costs for UNEs with the determination of costs in this proceeding. AT&T maintains that this discussion relates to geographic deaveraging, a topic that the Commission explicitly stated would be considered in this phase.

The Commission clarified the scope of this proceeding in the Fifth Supplemental Order, issued on August 14, 1998, which is also the filing date of U S WEST's motion. Our discussion in that Order would clearly allow in the adjudicative phase the testimony that U S WEST requests be moved to the rule making phase. Consistent with that Order, we deny the motion of U S WEST.



ORDER

THE COMMISSION ORDERS:

1. The motion of GTE to compel production of documents and data from AT&T, is granted in part and denied in part as set forth herein;
2. AT&T must produce the requested documents and data by August 31, 1998; GTE may file supplemental testimony by September 4, 1998; and
3. The motion of U S WEST to remove testimony to the rule making phase is denied.

DATED at Olympia, Washington, and effective this 26th day of August 1998.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION


 ANNE LEVINSON, Chair

 RICHARD HEMSTAD, Commissioner