BEFORE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Review of Unbundled Loop and Switching Rates and Review of the Deaveraged Zone Rate Structure	) Docket No. UT-023003)) RESPONSE TO VERIZON'S MOTION) TO COMPEL DISCOVERY)

I. INTRODUCTION

AT&T Communications of the Pacific Northwest, Inc. ("AT&T") and WorldCom, Inc. (now known as "MCI") (collectively the "Joint Parties") respectively submit this Memorandum in Opposition to the Motion by Verizon to Compel Discovery with respect to the HAI Model 5.3 cluster database. The Joint Parties have already produced all of the information required by Verizon to conduct a thorough review of the HAI Model. Verizon's further request for materials that are not within the possession of the Joint Parties must be rejected. The Joint Parties, therefore, request that Verizon's Motion be denied.

II. DISCUSSION

Verizon's Motion seeks information about processes used by a consulting company now known as Taylor, Nelson, Sofres ("TNS") to create clusters of customers that are then used within the HAI Model in calculating the outside plant investment required to provide service on a forward-looking basis. For example, Verizon seeks to have the Joint Parties identify each and every customer location in Verizon's Washington service area and to indicate the geographic coordinates for each location and what type of line is modeled to serve the location. *See* Verizon Motion, Attachment A, Data Request 1-15. Verizon has failed to explain why it needs this information, or what it would do with the information if it obtained data at such a granular level.

As Verizon admits, the Joint Parties have objected to producing some of the information requested because it is not in their possession. Indeed, to the extent that the Joint Parties have the requested data, they have already produced it.[1]

Verizon does not explain how the Joint Parties could be ordered to produce information that they do not have. The Joint Parties have already explained in response to Qwest's Motion to Compel why they cannot be ordered to produce information that is not within their possession, custody or control. Rather than repeating these arguments, the Joint Parties incorporate them here by reference. Instead, the Joint Parties here will explain why Verizon's motion is much ado about nothing. Contrary to Verizon's complaints, the HAI Model is not a "black hole." Verizon has all of the information it needs to evaluate the Model.

In addition, the Joint Parties will address Verizon's specific arguments about information that has been provided in prior cases. The Joint Parties will show that Verizon has everything it has been provided in other proceedings. Finally, the Joint Parties will address Verizon's argument that the Joint Parties should not be entitled to use customer location data provided by Verizon and Qwest. Contrary to Verizon's argument, the Joint Parties did not receive this information in sufficient time to present it with their direct testimony. Moreover, the customer information recently received from Qwest and Verizon would replace the confidential third party customer address databases now used in creating the customer clusters used in the Model, permitting the Joint Parties to provide much of the discovery Verizon seeks here. For all of these reasons, Verizon's Motion must be denied.

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[1] Verizon has clouded this fact by ignoring Supplemental Responses the Joint Parties provided before Verizon filed its motion. To make the record complete, these supplemental responses are attached as Exhibit A.

A. Verizon Can Fully Analyze the HAI Model Without the Information It Seeks Here.

Verizon complains generally that the Joint Parties have objected to certain data requests on the grounds that the information requested is not in their possession, but rather is the intellectual property of TNS. Notwithstanding these objections, the Joint Parties have produced substantial information that is in their possession. For example, in response to Data Request No. 1-4, the Joint Parties were unable to identify the percentage of locations successfully geocoded to the point level by Census Bloc Group as requested. Nevertheless, the Joint Parties have provided that information by wire center, density zone, and cluster. *See* Exhibit A, Supplemental Data Requests Responses 1-2, 1-4. The Joint Parties have also responded in full to Data Request 3-24, providing Verizon with the cluster database developed by TNS and all other information sought by Verizon in that request.

Nevertheless, there is information that the Joint Parties cannot provide. For example, the software, input files and other documents used to cluster customer locations (Data Request 1-10), computer codes and algorithms developed by TNS (Data Requests 1-12, 1-13, 1-20, 1-21, 3-2, 3-11, 3-13, and 3-21), and customer location databases obtained from Metromail and Dunn & Bradstreet (Data Requests 1-18 and 3-2) are not owned or controlled by the Joint Parties. The Joint Parties, therefore, have objected to producing this information.

Verizon's motion provides no argument as to how the data it seeks would be used by it in analyzing the HAI Model or what precise prejudice it suffers if it is not able to obtain access to this data. Instead, Verizon makes a blanket statement that it must have the "ability to access every aspect of the database" or else "HM 5.3 remains a 'black hole'."[2] This statement ignores reality. Verizon has everything it needs to validate the HAI Model.

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[2] Verizon Motion at 5.

The data Verizon seeks with its motion relates to the investment required for outside plant facilities used in determining the cost of an unbundled loop. The principal cost drivers of this investment are the total amount of cable required to serve customers and the manner in which a cost model assumes that the cable is placed. Information regarding customer locations is used in modeling the amount of distribution cable required to provide service to all of an ILEC's customers. In reviewing the customer location data used within a model, therefore, the purpose of the analysis is to determine whether the model includes enough distribution cable to reach all of the ILEC's customers.

Determining how a model precisely locates each specific customer is not necessary for this analysis.[3] The real issue is whether there is enough outside distribution plant placed by the model in a given geographic area to serve the customers located in that area. The Joint Parties have provided both Verizon and Qwest with more than enough information to make this determination with respect to HAI Model.

The information actually processed through the HAI Model is information about clusters of customers. These clusters range in size from a single customer location to up to about 20 square miles, depending on customer density.[4] For each cluster, the Joint Parties have provided Qwest and Verizon with the precise location of the cluster, its size and approximate shape, the number and type of households contained within the cluster, the number of businesses and employees, the total lines broken down by business, residence, public access lines, single line business lines, non-switch DSO equivalent

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[3] In fact, until its most recent iteration, Qwest's RLCAP model filed in prior proceedings did not even attempt to make presumptions as to where any specific customer was located. Instead, RLCAP adopted generic presumptions about the amount of plant that would be required to serve areas with certain customer densities. The Verizon Model presented in this case also makes no use of precise customer locations. The Verizon Model uses the location of pedestals in its present network as a surrogate for customer locations.

[4] The average cluster size for Verizon is approximately 5.6 square miles. The average cluster size for Qwest is approximately 4.6 square miles.

lines, switched and nonswitched DS1 lines, ISDN lines, DS3 loops and high capacity loops. The Joint Parties have also provided Verizon and Qwest with the strand distance for each cluster, showing the amount of plant that the model assumes is required to join the customer locations located within that cluster.

With this information, Verizon and Qwest have everything they need to determine whether the HAI Model as filed within this proceeding includes enough outside plant investment to serve any particular cluster of customers. From that analysis, Verizon and Qwest could determine whether the Model as a whole produces enough investment in outside plant facilities. Knowing where the model precisely locates any particular customer or how TNS goes about creating the customer clusters would add nothing measurable to the analysis. Nevertheless, this is the kind of information Verizon is seeking through its Motion to Compel.

Like Qwest, Verizon is fully aware of how it could go about obtaining additional information if it was really interested in obtaining such information for the purpose of its analysis in this proceeding. Like Qwest, Verizon has, itself, worked with TNS in the past and knows how to go about seeking information from TNS. *See, e.g.,* Attachment B. Verizon's claim that it would cost more than $2,000,000 to obtain information from TNS is specious. The information Verizon cites appears to be a quote from TNS's predecessor, PNR, for purchasing the rights to all of its intellectual property involved in deriving customer clusters. For investment of approximately $4,000 to 5,000 per day, however, Verizon could obtain remote access to TNS's databases, enabling Verizon to manipulate and test the cluster data. Until Verizon makes use of the information already available to it, its complaint that it desires more granular information should be seen for what it is, a ploy for discrediting HAI Model 5.3 rather than a true request based upon a need for the requested materials.

B. **Verizon Already Has Data of the Type Provided by the Joint Parties in Other Proceedings.**

Verizon's claim that the Joint Parties have provided more information in other proceedings than is available here is simply untrue. First, Verizon points to an Order from this Commission in the Universal Service proceeding, Docket No. UT-98031(a). There, the Commission ordered the production of certain of the customer location information Verizon has requested here. In that case, however, AT&T was unable to provide this information for exactly the reason argued here—the information is not within the possession, custody or control of any of the parties. *See In the Matter of Determining Cost for Universal Service,* Docket No. UT-98031(a), 10th Supplemental Order—Order Establishing Costs (released November 20, 1998) at ¶ 180. The Commission noted in its order that input to the HAI Model could be evaluated based on other information provided to the parties. *Id.* at ¶ 182. The Commission, therefore, rejected a motion to strike the model and used the HAI Model in evaluating costs.

Verizon also points to a proceeding in California and claims that additional information was provided to SBC. In that proceeding, however, AT&T was able to produce additional evidence because SBC produced its own customer location data for use in running the model. Here, as well, the Joint Parties will make available to Verizon and Qwest all of the information that was made available to SBC once the Verizon and Qwest customer location data is used as a replacement for the proprietary customer location information now used in the model.

Finally, Verizon points to access to TNS data that parties obtained in a Massachusetts proceeding. The access referenced by the Massachusetts order in that proceeding is precisely the access that Verizon may obtain from TNS upon request, as described above. Nothing was made available in that proceeding which is not also available to Verizon here.

C. **Verizon's Delay in Providing Its Own Customer Location Data Prevented the Joint Parties from Using that Data in Their Direct Testimony.**

Finally, Verizon has made a backhanded argument that the Commission should prevent the Joint Parties from filing the HAI Model in this proceeding using Verizon's customer location data in place of the proprietary data now used. According to Verizon, the customer location data were provided to the Joint Parties in enough time so that that information should have been used as part of the parties' filing in their direct case. Verizon is mistaken. Verizon did not supply that data until May 22, 2003. By that time, AT&T and MCI had already spent approximately $30,000 processing the proprietary customer location data for use in their direct filing and were already in the process of preparing testimony in this proceeding. TNS requires several weeks to prepare customer location data for use in the HAI Model. The Joint Parties simply did not have enough time between the time Verizon supplied the data on May 22, 2003, and the deadline for filing direct testimony on June 26, 2003 to use the Verizon data in their filing.

For all these reasons, Verizon's Motion should be rejected.

Respectfully submitted, this 28th day of August, 2003.

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