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BEFORE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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| In the Matter of the Review of: Unbundled Loop and Switching Rates; the Deaveraged Zone Rate Structure; and Unbundled Network Elements, Transport, and Termination | Docket No. UT-023003 |
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OPPOSITION TO MOTION TO STRIKE COST MODEL

Verizon Northwest Inc. ("Verizon NW") respectfully submits this expedited opposition to the "Motion by Commission Staff, AT&T and MCI To Strike Cost Model Filed by Verizon," filed on September 12, 2003.

INTRODUCTION

AT&T/MCI's motion improperly seeks to preempt any debate on whether Verizon NW's UNE rates should be set using the HAI model ("HM") or Verizon NW's new and more robust cost model.¹ If granted, AT&T/MCI's motion would leave the Commission with no choice of cost models with which to analyze Verizon NW's UNE rates, at a time when: 1) AT&T/MCI are refusing to produce the customer location data critical to HM 5.3, despite having been ordered to

¹ The staff has also joined in the AT&T/MCI motion -- even though it was provided access to VzCost long ago. The staff's position is puzzling, because it has never accepted Verizon NW's repeated invitations to provide it with assistance in running VzCost -- and because the only time it chose to use Verizon NW's "help desk" feature its question was answered without any indication of concern. See attached summary of calls to the VzCost help desk.

do so;² 2) they have announced that they plan (at some still unannounced future date) to refile HM 5.3 with new customer location data that they admit they received from Verizon NW four months ago; and 3) the Commission has made clear that Verizon NW has the right to seek to strike any new model submitted by AT&T/MCI. Particularly in these circumstances, the Commission should flatly reject AT&T/MCI's attempt to avoid discovery and cross-examination on the relative merits of each of the parties' cost models. Due process plainly requires that Verizon NW be given a full opportunity to explain and support its cost study, and to rebut AT&T/MCI's study.

Nor should the Commission simply allow AT&T/MCI to avoid its responsibilities as litigants in this proceeding. AT&T/MCI essentially claim that because Verizon NW's model is new, it will require a lot of hard work to understand, and that the Commission should therefore rule now that AT&T/MCI do not have to do this work. While there is no doubt that UNE proceedings are difficult and time consuming, this is an important case that has serious implications for Verizon NW and the consumers in Washington. As it has done in dozens of cases throughout the country, AT&T/MCI must expend the necessary resources and time if they want to challenge Verizon's studies. Indeed, AT&T/MCI have been on notice since October 2002 that Verizon NW intended to file a new cost model in this proceeding. Thus, the Commission should not grant AT&T/MCI's motion and, in effect, adopt the HAI model by default simply because it is old and oversimplified, and therefore doesn't require much effort on AT&T/MCI's part to understand. As Verizon NW will explain in its testimony, the HAI model

² Remarkably, just yesterday, AT&T/MCI filed a motion seeking interlocutory review of the ALJ's ruling that AT&T/MCI must produce the data underlying its model to Verizon NW and Qwest. See Petition by AT&T and MCI for Commission Review of Interlocutory Ruling Compelling AT&T and MCI to Respond to Data Requests (filed Sept. 17, 2003).

omits significant costs, is based on an unrealistic and completely hypothetical network, and lacks critical supporting documentation.

AT&T/MCI, moreover, have so far shown little interest in understanding Verizon NW's cost models, perhaps because they have chosen instead to focus on Qwest in this proceeding. AT&T/MCI have made only *one* call to Verizon NW's help desk (set up to help parties understand Verizon NW's model) and have issued only *three* data requests asking about the mechanics of running Verizon NW's models. And although AT&T/MCI's consultants claim that Verizon NW's model is not "intuitive," they failed even *to attend* the July 8 workshop on VzCost set up by Verizon NW. In any event, these allegations are the classic kinds of disputes -- like Verizon NW's complaints about HM 5.3 -- for which the Commission established a testimony and hearing process. The Commission must therefore reject, particularly at this stage of the proceeding, AT&T's wholly generalized assertions about the alleged difficulties of understanding the new and more sophisticated cost model developed by Verizon NW to address the Commission's modeling requirements.

AT&T/MCI also now allege that they have concerns about Verizon NW's ability to observe their runs of its cost model. These concerns, too, could have been raised and readily put to rest had AT&T/MCI been really serious about them -- either at the July 8 VzCost presentation or subsequently through formal or informal discovery. Had they done so, they would have ascertained that Verizon NW's established password system and written security policy prohibit access to such runs by the Verizon NW experts responsible for this case, and that access to the VzCost databases is limited to three database administrators, who have no role in this proceeding and are responsible only for maintaining the integrity of these and other Verizon databases. To monitor such compliance, Verizon NW has committed to a system of semi-annual (and then

annual) independent audits of the work of these database administrators. AT&T/MCI's concerns are therefore unfounded.

AT&T/MCI's alternative request for a three-month extension further demonstrates that its entire motion is nothing more than a pretext to hide the fact that they are not ready to file testimony about Verizon NW's cost model on October 3, and that they are unhappy with the version of their own model that they submitted on June 26, 2003. AT&T/MCI claim, for example, that an extension is warranted because Verizon NW refused to provide them with access to its model until August 11, 2003. But AT&T/MCI's lack of access was entirely a problem of their own doing. Unlike Covad (which received access immediately), AT&T/MCI refused to sign the third-party confidentiality agreement, even though they signed third-party agreements in similar California proceedings that contained the identical language AT&T/MCI objected to here. Nonetheless, Verizon NW agreed to AT&T/MCI's demands for changes to the agreement, but it took Verizon NW three weeks (from July 8 to August 1) to go back to 36 of its 37 vendors to secure their approvals to those changes. At no time did AT&T/MCI ever seek Commission relief from these confidentiality restrictions -- even when other parties had sought an extension of the schedule for this case. Yet these three and a half weeks required by AT&T/MCI's own actions now form the basis for their request for an additional extension of over two months.

It is clear that AT&T/MCI really want an extension for another reason: AT&T/MCI claim that they cannot comply with the ALJ's ruling that they turn over to Verizon NW and Qwest critical data underlying AT&T/MCI's model.³ And AT&T/MCI have now announced to

³ See Twelfth Supplemental Order: Granting Motion to Compel, Revising Schedule; and Bifurcating Proceeding in WUTC Docket No. UT-023003, ¶¶ 12-13 (Aug. 5, 2003).

Verizon NW that they intend to submit a *new* model using a wholly new customer location database developed from data that Verizon NW provided to them *four months ago*. If the Commission allows such a complete disregard of its processes, and if AT&T/MCI continues to refuse to comply with the ALJ's discovery ruling, then an extension of the schedule will indeed be necessary, but not for the reasons advanced in this regrettable pleading.

ARGUMENT

I. AT&T/MCI CITE NO AUTHORITY FOR THEIR EXTRAORDINARY MOTION.

As an initial matter, AT&T/MCI cite no rule, authority or precedent in support of their extraordinary motion to strike. Perhaps this failure was deliberate, because no authority exists. Although AT&T/MCI's motion appears to be asking for a summary determination that Verizon NW's model should not be used to set UNE rates, their motion fails to meet the applicable legal standard for granting such requests. Rule 480-09-426 provides:

A party may move for summary determination if the pleadings filed in the proceeding, together with any properly admissible evidentiary support, show that there is no genuine issue as to any material fact and the moving party is entitled to summary determination in its favor. In considering a motion made under this subsection, the commission will consider the standards applicable to a motion made under CR 56 of the civil rules for superior court.⁴

As we discuss below, AT&T/MCI's motion plainly does not meet this standard.

AT&T/MCI have failed to set forth any specific, undisputed facts warranting the extraordinary remedy they seek, and instead have made only generalized assertions. Moreover, the parties

⁴ See also *AT&T Communications of the Pacific Northwest, Inc. v. Qwest Corp.*, WUTC Docket No. UT-003120, Second Supplemental Order Granting Motion to Amend Answer, Denying Emergency Relief and Denying Motion for Summary Determination (Westlaw April 5, 2001) at *2.

have not even finished discovery or filed all of their testimony. AT&T/MCI therefore cannot credibly claim that there are “no genuine issues as to any material fact” for the Commission to decide in this proceeding.

II. AT&T/MCI’S CLAIM THAT VzCOST IS NOT “OPEN AND VERIFIABLE” IS INCORRECT AND PREMATURE.

AT&T/MCI make many allegations concerning VzCost, but the spurious nature of their position is best demonstrated by the following example. AT&T/MCI complain that one portion of VzCost (VzLoop) is difficult to understand because the model was written in the Pascal computer language, yet this is virtually the same computer language used to program the FCC’s Universal Service cost model. Even more telling is the fact that, in other UNE proceedings (but apparently not this one),⁵ AT&T and MCI have routinely used an expert that is conversant in Pascal and in fact modified the FCC’s model in Pascal for use in the recent Virginia UNE arbitration.⁶ This apparent lack of enthusiasm for the admittedly hard work in what the FCC has recognized to be “extremely complex” proceedings⁷ is no justification for abdicating a party’s responsibility for doing it.

In any event, AT&T/MCI’s (unsupported) claims are *precisely* the types of criticisms and factual disputes that should be raised and resolved through the traditional process of discovery,

⁵ Verizon NW notes that it appears that AT&T has not chosen to use in this proceeding the same resources it typically uses in other Verizon costs cases.

⁶ See Surrebuttal Testimony of Brian F. Pitkin on Behalf of AT&T Communications of Virginia, Inc. and WorldCom, Inc., at 17-19, *In the Matter of Petition of AT&T Communications of Virginia, Inc., Pursuant to Section 252(e)(5) of the Communications Act, for Preemption of Jurisdiction of the Virginia State Cooperation Commission*, CC Docket No. 00-251 (2001).

⁷ *Review of the Commission’s Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers*, Notice of Proposed Rulemaking, FCC 03-224, WC Docket No. 03-173 (rel. Sept. 15, 2003), at ¶ 6.

testimony, and cross-examination in the crucible of an evidentiary hearing. Nonetheless,

Verizon NW responds as follows to AT&T/MCI's other principal claims:

- AT&T/MCI claim that "there is no way to know whether [the] results [obtained from a model run] are correct" because of the exception log generated by the model whenever it is run.⁸ In fact, as the attached records show, on August 28, 2003, the Verizon "help desk" explained to AT&T how to use the exceptions log -- with no apparent misunderstanding. When understood, that log is a valuable tool that allows users to verify the results of each model run by notifying the user of the absence of certain data in the model run, such as the absence of a particular type of cable in a particular wire center. In other words, this log acts as a "checklist" so that the user may determine if he/she populated all of the appropriate inputs. HM 5.3 does not include any comparable tool, making it more difficult to analyze the results of a model run.
- AT&T/MCI claim that "Verizon has not provided the source code for VzLoop," making it "impossible to determine from the compiled code whether the logic inside the model matches the documentation provided by Verizon."⁹ To the contrary, Verizon NW provided with its initial filing all of the source code used by VzLoop for loop investment calculations.¹⁰ AT&T/MCI have not requested through discovery or otherwise any additional source code that they claim they need to evaluate VzLoop. In contrast, when Verizon NW sought access to HM's clustering source code that was not provided by AT&T/MCI, Verizon NW requested it through discovery. Even after having been compelled by the Commission to provide this source code, AT&T/MCI still refuse to do so.
- AT&T/MCI claim that modifying VzCost "is extremely cumbersome."¹¹ In fact, the VzCost online user interface "allows users to modify *all of the formulae* that VzCost applies to the initial investment elements to develop final costs."¹² In contrast, Verizon NW is *unable* to modify many of the critical assumptions in the HM at all, because of the incorrect way that model configures the network. Thus, while it is true

⁸ Motion at 5.

⁹ *Id.*

¹⁰ See Exhibit RP-17C § 6.03.01 (submitted on CD #2 in Verizon NW's filing).

¹¹ Motion at 5.

¹² VZ NW Recurring Panel Direct at 16 (emphasis added).

that Verizon NW's studies may take more time to modify, they are much more robust (and, we intend to demonstrate, more accurate) than the HM.¹³

- AT&T/MCI argue that “[l]arge portions of VzLoop are based on Verizon’s embedded network,” including the location of serving terminals and serving area interfaces.¹⁴ In fact, VzLoop’s reliance on certain features of the existing network complies with the FCC’s TELRIC pricing standard and, in the section 271 context, the FCC has repeatedly approved the use of cost models that rely on certain features of the existing network.¹⁵ By comparison, HM 5.3 ignores virtually all of the constraints of the real world, such as geographic features and obstructions, and thus models an entirely hypothetical network that could never be built in the real world.
- AT&T/MCI claim that VzCost “takes approximately 7 to 8 hours to generate a model run,” thus prolonging the amount of time required to test the sensitivity of the model to input changes.¹⁶ The length of time required to run the entire model is not a flaw in the model; rather, it is the byproduct of the inherently complex task of accurately modeling the reconstruction of the entire local exchange network, piece by piece, to serve all of Verizon NW’s customers. Moreover, VzCost’s modular design allows users to modify a large number of variables, including depreciation and cost of capital, without having to wait anything near “7 to 8 hours” to view the results. VzCost also allows users to perform sensitivity analyses using the “What If” and “Sensitivity” tools available from the VzCost main menu to test the impact of changing certain inputs without having to re-run all of the VzCost modules from the beginning. And for those inputs that require re-running all of the VzCost modules, VzCost allows users to schedule multiple cost runs simultaneously rather than having to wait for each run to finish before commencing the next one.¹⁷

¹³ Moreover, unlike Verizon NW’s new models, the HM cannot be used to price other types of services, such as retail services. Thus, adopting Verizon NW’s model would have clear benefits to the Commission beyond just this case.

¹⁴ Motion at 6 (citing VA Arbitration Order ¶ 171).

¹⁵ See, e.g., *Joint Application by BellSouth Corp., BellSouth Telecommunications, Inc., And BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, 17 FCC Rcd 9018, ¶ 36 (2002). In any event, the full FCC recently discussed at length its tentative conclusion that it is appropriate to consider the “real-world attributes” of a network when setting UNE rates. See Notice of Proposed Rulemaking, *Review of the Commission’s Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers*, WC Docket No. 03-173, ¶ 52 (Sept. 15, 2003).

¹⁶ Motion at 5.

¹⁷ *Id.* at 8. AT&T/MCI also allege that VzCost “generated errors or froze any time a party attempted to access it.” *Id.* at 4. As noted above, without further inquiry about the nature or

To the extent they are not simply erroneous assertions borne of a lack of attention to Verizon NW's studies, AT&T/MCI's criticisms amount to nothing more than a complaint that understanding Verizon NW's new cost model is a new task. But as the FCC has recently recognized, UNE cases certainly require heavy lifting, and AT&T/MCI have known since at least October 2002 of Verizon NW's intention to file a new cost model in this proceeding.¹⁸ Rejecting a model as new and complex simply because it is more sophisticated makes no sense, and would have the effect of limiting the Commission's ability to improve its analysis of these complex issues -- and render meaningless its prior instructions to the parties to improve their models for use in future cost proceedings.¹⁹ Indeed, over the years, AT&T/MCI frequently have touted the many modifications that they have made to their own cost model. Each time AT&T/MCI make such modifications (as is the case with HM 5.3, which is being filed in a Verizon jurisdiction for the first time in this proceeding), Verizon must conduct a new analysis of the model to understand the impact of these changes on the entire model.

In any event, AT&T/MCI's complaints cannot be taken seriously here, because they have not made *any* reasonable efforts to understand Verizon NW's cost model up to this point. They

extent of these attempts, including the specific functions that AT&T/MCI sought to perform and the specific results or error messages they received, this claim cannot be fairly addressed. Indeed, AT&T/MCI concede that a new model release on August 26 "cured" at least "[s]ome of these problems," and address only one further issue. *Id.* This error was discovered by Verizon NW on Thursday, September 11 and resulted from database maintenance that took place the previous evening. The error was corrected the following Monday morning, and Verizon received no complaints about it during that time. Verizon NW has taken steps to ensure that future database maintenance does not affect a party's ability to run the model.

¹⁸ Tr. of Prehearing Conference at 192 (Oct. 16, 2002).

¹⁹ See, e.g., Eighth Supplemental Order in WUTC Docket Nos. UT-960369, UT-960370, UT-960371, ¶ 38 (May 11, 1998).

have made a total of only *one* call to the help desk²⁰ that Verizon NW has made available to all parties, and have served Verizon NW with only three discovery requests that are in any way related to the criticisms raised in their motion.²¹ AT&T/MCI also made no attempt to schedule an informal meeting with Verizon NW's subject matter experts, similar to the meeting Verizon NW scheduled with AT&T's legal counsel concerning the HM deaveraging optimizer program, to better understand VzCost and/or resolve any problems they were having with the model. Given this history, it is not surprising that the motion is devoid of any specific examples of algorithms or inputs that AT&T/MCI allegedly have been unable to verify or change.

The credibility of AT&T/MCI's complaints about VzCost is further undermined by AT&T/MCI's complete lack of diligence in preparing a version of their own cost model for Verizon NW's service area. First, AT&T/MCI made significant (and unexplained) changes to its June 26 filing on July 31, 2003.²² Second, though Verizon NW provided actual customer location data on May 22, 2003, AT&T and MCI *still* have not incorporated that data into HM 5.3

²⁰ See attached summary of help desk calls.

²¹ See AT&T/XO's Data Request Nos. 3-030, 3-034, and 3-038, and Verizon NW's Responses to AT&T/XO's Third Set of Data Requests on September 3, 2003. The requests asked: 1) how a user could reduce the number of SAIs modeled by VzLoop; 2) what happened to distribution cable costs if the distribution cable sizing factor is reduced; and 3) how to change the maximum copper loop length. Verizon NW's responses explained how each of the changes could be accomplished in VzCost. Moreover, AT&T/MCI did not even file Protective Order Certifications for experts Steven Turner and David Cook until July 18, 2003, which allows them access to the non-third party documentation filed on June 26.

²² Indeed, AT&T/MCI conceded that they did not even complete their customer database before June 26, 2003 because unspecified "problems occurred in the processing of customer location data for Verizon," and would undertake to provide "an update" later. Direct Testimony of Dr. Mark T. Bryant at 29 (June 26, 2003). Then, on or about July 31, AT&T/MCI provided Verizon NW with a new version of HM 5.3 with no explanation of the changes. Among other things, this new version reclassified the default values for a number of inputs to the model, and changed the preprocessing/clustering inputs and assumptions in ways that they have not yet made clear in response to Verizon NW's data requests.

nearly four months later. AT&T/MCI's claims that doing so takes a significant amount of time are simply baffling: those same parties have represented to the California Public Utilities Commission that, from the time they received all of the Verizon customer data that they sought through discovery, they could process that data in less than four weeks.²³ That representation was made in a state where Verizon has roughly five times as many access lines as it has in Washington, and thus involves a much larger customer data set.

Moreover, AT&T represented to Verizon NW on August 20, 2003, that it intended to file, within two to three weeks, a new version of its cost model that incorporated that customer data. Yet, more than three weeks later, counsel for AT&T has now asked for additional information about the data Verizon NW provided in *May 2003* and stated that AT&T "cannot process [Verizon's customer data] . . . without mapping the service types."²⁴ When viewed in this context, the present motion amounts to little more than a last-minute effort to prolong this proceeding after AT&T and MCI spent literally months doing nothing to populate their own cost model with actual customer location data. This lack of diligence may have formed the basis for the present motion. But it is no excuse for it.

Finally, AT&T/MCI's allegations about the openness and verifiability of Verizon NW's cost model ring particularly hollow in light of AT&T/MCI's own actions. As noted above, AT&T/MCI are refusing to comply with the ALJ's ruling that they produce the customer

²³ AT&T and MCI, Motion of Joint Commentors to Shorten Time for Response to Motion to Compel Further Responses to Joint Commentors' First Set of Data Requests Regarding Customer Location Information, *Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks*, Rulemaking 93-04-003, at 1 (July 3, 2003) ("[T]o make the August 8 filing deadline, Joint Commentors must have the information we seek to compel by July 14.").

²⁴ See attached e-mail from Mary Steele (Sept. 15, 2003).

location and clustering data underlying their model. As the Commission recognized, without this data, "it is not clear that the HAI model would meet th[e] [Commission's] test" for transparency and capability of verification.²⁵ Although the Commission need not address these issues at this time, AT&T/MCI's efforts to strike Verizon NW's studies, when there is a real possibility that their own model will be stricken from this proceeding, should be rejected.

III. AS AT&T/MCI COULD EASILY HAVE ASCERTAINED, VERIZON NW WILL NOT HAVE ACCESS TO AT&T/MCI'S WORK PRODUCT.

AT&T/MCI also now complain that "it appears" that Verizon NW "could review any work done by other parties' witnesses or lawyers in analyzing VzCost."²⁶ But they have never taken the opportunity to assess the reality of this perception, which is a litigation-inspired fantasy -- and certainly no basis for preempting a hearing.

On June 24, 2003, counsel for AT&T e-mailed counsel for all parties to express concern about this matter. However, after speaking with counsel for Verizon NW, he e-mailed again to defer his concerns so that the parties could address them at the VZ cost workshop held on July 8 for all parties.²⁷ At that workshop, attended by AT&T and other parties, Verizon's trainers explained that the password system was designed to enable VzCost users to preserve the confidentiality of their runs. AT&T/MCI raised no further questions about this matter -- until filing this motion.

AT&T/MCI could certainly have raised their concerns in any number of ways, informally or through data requests. Had they done so, they would have learned that Verizon had

²⁵ Thirteenth Supplemental Order in WUTC Docket No. UT-023003, ¶ 17 (Sept. 8, 2003).

²⁶ Motion at 7.

²⁷ See attached Letter from William R. Richardson, Jr. to the Commission (June 24, 2003); e-mail from Greg Kopta (July 8, 2003) (in attached e-mail chain to William Richardson).

established a written VzCost Security Policy that fully addresses such issues. As set forth in the attached Declaration of Gerald D. Harris, this policy not only establishes the ground rules for the password system described at the July 8 workshop, but also required the three database administrators responsible for administering this system (who have no responsibilities with respect to UNE pricing) to certify that they will access external user information only when authorized in writing or by email, or only upon notice to such users in the event of an emergency that: "(1) places the system in jeopardy of failure or threatens harm to the system applications or data bases, or (2) prevents access by other system users." And even in such emergency circumstances, these three persons may not disclose any such information "to any other person, except to Verizon employees whose primary responsibility involves the maintenance of VzCost or associated databases, or the enforcement of privacy and security with respect thereto." As Mr. Harris notes, an administrator that violates these rules would be subject to termination for violation of corporate policies under the Verizon Code of Business Conduct.²⁸

In short, AT&T/MCI's work product has been provided clear and enforceable protections. The notion that one of these Verizon NW employees would risk termination by violating clear written policy, simply to preview cost study runs with respect to which he or she has no understanding or responsibility, is so speculative as to warrant little further comment. Nevertheless, to provide even greater assurance, Verizon NW has committed to take the further step of retaining an independent third-party auditor to review compliance with the VzCost

²⁸ Although calls to the help desk are not covered by Verizon NW's non-disclosure policy, AT&T/MCI can protect any alleged work product by asking the help desk person general questions about how the model works or how to run generic inputs. These questions are routinely asked in discovery in UNE cases. Indeed, the fact that Verizon NW has set up a help desk to aid the parties in understanding Verizon NW's studies should be applauded; if a party does not want to use the help desk, it may rely on Verizon NW's detailed user manuals, issue discovery, or ask that a conference call be set up for Verizon NW to answer questions.

Security Policy on a semi-annual basis, and will publicize the results. In these circumstances, there is absolutely no basis for preempting Verizon NW's right to a hearing on the suitability of VzCost to model UNE prices in this case.

IV. AT&T/MCI'S BRIEF DELAY IN OBTAINING ACCESS TO VzCOST WAS ENTIRELY OF THEIR OWN MAKING.

Ultimately, as noted above, this motion comes down to a request for an extension.

AT&T/MCI state that they need more time to analyze the VzCost model, because Verizon NW has failed to provide access to them for a substantial period of time since its filing.²⁹ In light of the failure of AT&T/MCI even to file a complete and comprehensive model on June 26 as described above, there is little credibility to this charge.

Before its June 26, 2003 filing, Verizon NW alerted the parties that its obligations to its vendors (whose price and other information was filed in support of its model) would require the parties to sign an agreement to protect the confidentiality of that vendor information.³⁰ This was hardly the surprising extralegal development AT&T/MCI now suggest. They had agreed to precisely the same terms in California at least twice before -- once in the SBC proceeding and again in the Verizon proceeding. And AT&T also had entered into an agreement with GTE, supplemental to the Commission's protective order, to protect the confidentiality of third-party information in the prior UNE cost proceeding before this Commission (WUTC Docket No. UT-960369).³¹

²⁹ Motion at 9.

³⁰ See e-mail from Robert Strayer (June 23, 2003) (in attached e-mail chain to William Richardson).

³¹ Similar protective agreements for third-party confidential information were entered in the Florida, Hawaii, Michigan, Maryland, and Massachusetts Verizon UNE proceedings.

Covad Communications signed Verizon NW's model agreement immediately, and received prompt access to VzCost and the associated third-party confidential information. Despite having signed the same agreement before, AT&T initially refused to do so. But it suspended those objections following explanation of the foregoing facts by counsel for Verizon NW.³² Not until the VzCost presentation on July 8 did AT&T reassert any objections to the California version that it had previously signed. To allay AT&T's concerns, Verizon NW proposed compromise language -- but informed AT&T that it would take time to obtain approvals from each of Verizon NW's vendors.

Although doing so imposed a substantial burden, Verizon NW then contacted each of the 37 vendors³³ with whom it had agreements protecting the confidentiality of their pricing information to obtain their consent to AT&T/MCI's requested terms. In only three and a half weeks, Verizon NW gained the approval of all but one of the relevant vendors. On August 1, 2003,³⁴ Verizon NW advised the parties that on signing the agreement, they would receive access to VzCost and all but one of the third-party proprietary CDs.³⁵

³² See attached e-mail from Greg Kopta (July 8, 2003) (in attached e-mail chain to William Richardson).

³³ American Pipe, KT-PC, Superior Telecommunications, Belden Wire Products, Corning, Sumitomo, Pirelli, Alcatel, Advanced Fibre Communications North America, Charles Industries, Old Castle, TII Industries, Atlantic Wood, Koppers Industries, For-Tek, Duraline, Pyramid Industries, 3M, Reltec, Tyco, Fujitsu, Lucent, Nortel, Titan, Pulsecom, Westell, Adtran, Conclin, AG Communication Systems, Telcordia, Tekelec, IBM, ADA, Volt Information Sciences, Henkels & McCoy, Hewlett Packard, General Data Communications.

³⁴ The delay from August 1 to August 11 was caused by AT&T/MCI's failure to execute the agreements and apply for passwords in a timely fashion. Verizon NW also notes that AT&T/MCI's experts received access on August 8, though access was not granted to counsel for AT&T until August 11 because of a misdirected email.

³⁵ At that point, Verizon NW was still working to get consent from IBM, whose information is used only in the SS7 study, which receives little attention in UNE cases. While some of the

Thus, had AT&T/MCI agreed to *the same terms* to which they had agreed in California, they could have received the same immediate access to VzCost and this third-party vendor data that Covad received. That they elected to put Verizon NW to this extensive additional burden -- particularly in light of the past and continuing inadequacies of their own cost studies -- certainly does not justify the three-month extension they are now seeking. As noted above, these parties have never suggested the need for any such extension until now, and have demonstrated a complete lack of diligence in doing the work necessary to understand the model that Verizon NW has provided in this case.

In any event, Verizon NW does not oppose extending the schedule in this case, but not for the reasons set forth in AT&T/MCI's motion. As noted above, AT&T/MCI are refusing to produce critical information about the customer data underlying their model, *and* have told Verizon NW that they intend to file a new model with the information provided by Verizon NW in May 2003. The October 3, 2003, deadline for filing rebuttal testimony is therefore clearly not feasible.

CONCLUSION

For the reasons stated above, the foregoing motion to strike should be denied. The Commission should schedule a prehearing conference at the earliest available time to discuss any necessary changes to the filing deadlines in this case. One option would be to bifurcate the Verizon UNE case from the Qwest UNE case, because it is clear that the CLECs (and Staff) have not been able to put forth the effort required to learn and challenge two different cost models at

SS7 model results are used as inputs in the VzCost model, the inability to review those calculations did not prevent parties from changing the inputs in the VzCost model or issuing data requests to ask how changed assumptions would affect results. Thus, the unavailability of this CD did not interfere with access to and running studies in the VzCost model.

the same time. In addition, any ruling on the schedule must set a deadline for AT&T/MCI to file its new model with Verizon NW's customer location data, so that the Commission may assess whether to accept it, and so that Verizon NW will have adequate time to respond to it.

Respectfully submitted,

151 William R. Richardson, Jr. (P091)

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