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September 24, 2003

VIA ELECTRONIC & OVERNIGHT MAIL

Ms. Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive SW
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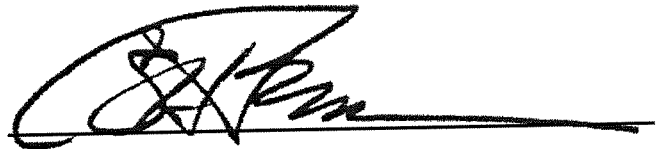
Re: WUTC Docket No. UT-023003

Dear Ms. Washburn:

Enclosed please find an original and seventeen (17) copies of the Response of Verizon Northwest Inc. to Petition by AT&T and MCI for Commission Review of Interlocutory Ruling Compelling AT&T and MCI to Respond to Data Requests. Pursuant to ALJ Mace's authorization, this document was filed electronically with the Commission on September 24, 2003.

Thank you for your attention to this matter. Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Huther", with a long horizontal line extending to the right.

Christopher S. Huther

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION**

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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**RESPONSE OF VERIZON NORTHWEST INC. TO PETITION BY AT&T AND
MCI FOR COMMISSION REVIEW OF INTERLOCUTORY RULING
COMPELLING AT&T AND MCI TO RESPOND TO DATA REQUESTS**

Verizon Northwest Inc. (“Verizon NW”) hereby responds to the Petition by AT&T Communications of the Pacific Northwest, Inc. (“AT&T”) and WorldCom, Inc. (d.b.a. “MCI”) (collectively, “ATT/MCI”) for Commission Review of Interlocutory Ruling Compelling AT&T and MCI to Respond to Data Requests (“Petition for Review”). Verizon NW requests that the Washington Utilities and Transportation Commission (“Commission”) deny the Petition for Review and order AT&T/MCI to respond immediately to the First and Third Sets of Data Requests, filed by Verizon NW over two months ago.¹ Alternatively, Verizon NW requests that if AT&T/MCI do not provide adequate responses, the Commission should strike AT&T/MCI’s cost model (“HM 5.3” or “Model”) in its entirety.

¹ Verizon NW served its first set of data requests on AT&T/MCI on July 10, 2003, and its third set on July 15, 2003. Copies of the requests at issue here, AT&T/MCI’s objections and non-responsive answers thereto (dated July 24, 2003 and July 30, 2003), as well as their so-called supplemental answers (dated August 15, 2003), are attached hereto as Exhibit A.

AT&T/MCI have not presented a single, legitimate basis upon which their Petition for Review should be granted. Driven solely by a desire to shield essential elements of their cost model from discovery, AT&T/MCI distort the truth and ignore well-settled discovery standards in an effort to disguise fundamental failings in their cost model. As discussed more fully herein, AT&T/MCI's regulatory gamesmanship must end.

I. THE DATA SOUGHT BY VERIZON NW IS WITHIN AT&T/MCI'S POSSESSION, CUSTODY AND CONTROL

AT&T/MCI claim that they cannot produce the information requested by Verizon NW because it is not within AT&T/MCI's possession, custody or control.² This is incorrect. AT&T/MCI's ability to produce the requested data is absolutely within their control -- the only reason the allegedly proprietary information cannot be produced is because AT&T/MCI have elected not to make it available. As AT&T/MCI's Petition for Review makes clear, in 1998, AT&T/MCI engaged a consulting company, TNS, to develop the customer location and clustering data used in the HAI Model, including Release 5.3 filed here.³ AT&T/MCI now seek to hide behind the fact that they elected to use allegedly confidential data developed by TNS in their cost model in denying the Commission and all interested parties access to the fundamental underpinnings of their cost model. This is ridiculous. AT&T/MCI knew when they engaged TNS that, to conduct a proper review, regulatory commissions and third parties would be entitled to access, take discovery, and examine fully all of the formulas and algorithms essential to

² Before the Washington Utilities and Transportation Commission, Docket UT-023003, *Petition by AT&T and MCI for Commission Review of Interlocutory Ruling Compelling AT&T and MCI to Respond to Data Requests* (Sept. 17, 2003) pp. 2-4 ("AT&T/MCI Petition for Review"). AT&T/MCI incorrectly list the data request responses compelled by Verizon NW. AT&T/MCI omit from their list Data Request Nos. 1-10, 1-20, and 3-13.

³ AT&T/MCI Petition for Review at pp. 2-3. In fact, the initial version of the HAI Model that used clusters was 5.0, released in December 1997, which suggests that TNS's (then PNR) engagement began in 1997.

the operation of their cost model, including the customer location and clustering data prepared by TNS (as well as all algorithms used to process those data). AT&T/MCI were well aware, as the presiding Administrative Law Judge (“ALJ”) noted, “[t]he Commission has repeatedly stressed that it wants the parties’ cost models to be *transparent and readily capable of verification.*”⁴ AT&T/MCI knew, and the ALJ appropriately recognized, that “[w]ithout the TNS information, it is not clear that the HAI model would meet this test.”⁵

AT&T/MCI could have made arrangements with TNS to have the customer location and clustering data (as well as the algorithms needed to process these data) released pursuant to the protective agreement in place in the instant proceeding. Or, if TNS was unwilling to do so, AT&T/MCI could have used some other vendor or methodology to develop their cost model’s customer location inputs. AT&T/MCI chose to do neither. AT&T/MCI are thus in a predicament of entirely their own making. Having submitted HM 5.3 for evaluation in this proceeding, AT&T/MCI have a fundamental obligation to make essential elements of that cost model available to the

⁴ Before the Washington Utilities and Transportation Commission, Docket UT-023003, *Thirteenth Supplemental Order: Granting, in Part, Motions to Compel* (Sept. 8, 2003) at p. 6 (“Thirteenth Supplemental Order”) (emphasis added). Moreover, it is misleading for AT&T/MCI to suggest that, in the universal service proceeding (Docket No. UT-980311(a)), the Commission accepted the fact that AT&T was unable to produce the HAI Model’s customer location information. AT&T/MCI Petition for Review at p. 8. As ALJ Mace noted in her Thirteenth Supplemental Order, the Commission took issue with the fact that the CLECs had not provided the required discovery and “proceeded to evaluate the HAI model *in light of that fact.*” Thirteenth Supplemental Order at p. 6.

⁵ Thirteenth Supplemental Order at p. 6. AT&T/MCI were certainly aware of the Oregon Public Utilities Commission’s (“Oregon Commission”) recent decision, in which it found that absent the production of HM 5.3’s customer location and clustering data, “the model is little more than a ‘black box,’ and cannot be accorded substantial weight.” Before the Public Utility Commission of Oregon, In the Matter of Qwest Corporation, Investigation to Review Costs and Establish Prices for Certain Unbundled Network Elements Provided by Qwest Corporation, Docket No. UM 1025, *Order* (Aug. 29, 2003) at p. 7 (“Oregon Order”). See also Before the Massachusetts Department of Telecommunications and Energy, D.T.E. 01-20, *Final Order* (July 11, 2002) at pp. 52-53 (“The cumbersome nature of the remote access to the [Hatfield Model’s customer location] database, and most importantly the fact that an essential underlying database is controlled and operated by a third party detracts from the Hatfield Model. A model that relies on a third party proprietary database necessitates unwieldy approaches for obtaining access by interested parties.”)

Commission and other parties for review and analysis.⁶ The fact that AT&T/MCI cannot do this is deliberate and by design, and is in no way excused by the fact, as they now claim, that they are not in “possession, custody or control” of the requested data. AT&T/MCI’s decision to rely on proprietary data, and to forego securing the necessary authorizations from TNS to release this data, does not insulate AT&T/MCI from their duty to disclose critical information about their Model.⁷

In affirming the ruling of an ALJ granting in part Qwest Corporation’s motion to compel the same customer location and clustering information at issue in the instant proceeding,⁸ the Oregon Commission rejected AT&T/MCI’s claims that the requested data was not in AT&T/MCI’s possession, custody or control, stating:

....AT&T and WorldCom’s decision to employ a third party to supply important model inputs should not insulate them from the duty to disclose relevant information about their model ... AT&T and WorldCom should have known that every significant element of the HAI model would be subject to discovery and should have taken this into account when they made arrangements with TNS to develop the customer location data and clustering algorithm. AT&T and WorldCom cannot rely on their arrangement with TNS to shield critical data from discovery and still expect the Commission to accord substantial weight to the results of the cost model.⁹

⁶ Moreover, it is simply wrong for AT&T/MCI to contend that “[u]nlike Qwest and Verizon, AT&T and MCI do not have access to information about Qwest and Verizon’s customers and had no option but to rely upon commercial databases.” AT&T/MCI Petition for Review at p. 7. AT&T/MCI obtained a copy of Verizon NW’s customer location database over four months ago, and, by their own account, had sufficient time to incorporate these data into HM 5.3.

⁷ Indeed, under AT&T/MCI’s logic, they could have employed TNS to develop their entire cost model, and then hid behind the proprietary nature of the model to shield it from inspection. Clearly, such reasoning is absurd. As the Oregon Commission recently recognized, “the Commission has adopted a protective order process designed to safeguard confidential information. There is no reason why AT&T and WorldCom could not have made arrangements with TNS to have the customer location data and clustering algorithm released pursuant to the protective order.” Oregon Order at p. 8.

⁸ See Oregon Order at pp. 7-10.

⁹ Oregon Order at pp. 7-8. The Oregon Commission rejected AT&T/MCI’s analogy to cases interpreting Rule 34 of the Federal Rule of Civil Procedure, stating “In those cases, the federal courts declined to require production of documents possessed by a third party that were prepared, not for use in the litigation, but in the ordinary course of the third party’s business. In this case, by contrast, AT&T and WorldCom retained TNS to develop cost model inputs that are at the very heart of the Commission’s investigation.” Oregon Order at p. 7.

Further, the Oregon Commission was not persuaded by AT&T/MCI's allegation that the production of the TNS customer location and clustering data would constitute undue prejudice, holding:

When [AT&T and WorldCom] retained TNS to develop the customer location/clustering data, they knew that TNS had refused to disclose the same data in other jurisdictions ... AT&T and WorldCom opted to use TNS despite knowledge of its nondisclosure policy. They now blame Qwest for their situation, but, in reality, they made a strategic error by assuming they would not have to divulge the customer location data and clustering algorithm in this proceeding. Any sanctions AT&T and WorldCom incur for failure to comply with the [ALJ's] ruling will not constitute undue prejudice.¹⁰

AT&T/MCI's Petition for Review is devoid of any reason why the Commission should reach a different result here.

AT&T/MCI have made a choice -- they have intentionally developed a cost model that relies heavily on third-party proprietary data, the accuracy of which they have never validated,¹¹ and the authorization for the release of which they refuse to secure.¹²

AT&T/MCI must now live with the results of that decision. They must either: (1) produce the requested data, which (as Verizon has stated all along) forms the basis for all of HM 5.3's cost estimates, or (2) contend with the fact that the Commission has no choice but to strike HM 5.3.¹³

¹⁰ Oregon Order at pp. 8-9.

¹¹ Before the Washington Utilities and Transportation Commission, Docket No. UT-023003, *Joint Responses of AT&T & MCI to Verizon's First Set of Data Requests* (July 24, 2003) at Response Nos. 1-16, 1-17, 1-20, 1-23 ("AT&T/MCI Response to Verizon NW's First Set of Data Requests").

¹² By contrast, Verizon NW has secured the requisite authorizations from its third-party vendors (e.g., Telcordia Technologies, Inc. and Lucent Technologies, Inc.) to release the data underlying its cost model, thereby enabling all parties (including the Commission) to review and analyze all aspects of VzCost.

¹³ Contrary to AT&T/MCI's claims, the fact that AT&T/MCI may file a new version of HM 5.3 "that will rely customer location information obtained from Qwest and Verizon rather than the Metromail and Dunn & Bradstreet databases" (*see* AT&T/MCI's Petition for Review at p. 5), in no way obviates the fact that AT&T/MCI are obligated to make available the methods and algorithms employed by TNS in developing the customer location and clustering data.

II. THERE IS NO TRUTH TO AT&T/MCI'S CLAIM THAT THEY CANNOT PRODUCE THE REQUESTED DATA

AT&T/MCI's claim that the data requested by Verizon NW cannot be produced is directly contradicted by their objections to Verizon NW's data requests, as well as the statement of their own consultant, TNS. AT&T/MCI objected to the vast majority of Verizon NW's data requests on the ground that the information requested was "commercially available,"¹⁴ and presumably Verizon NW could easily obtain the requested data itself. However, if the requested data are commercially available, as AT&T/MCI contend, then AT&T/MCI are certainly mistaken in claiming that "[n]either AT&T nor MCI has access to these materials or any way to obtain the materials from TNS."¹⁵

Similarly, while AT&T/MCI may claim that "TNS refuses to release this information because it is commercially valuable and proprietary,"¹⁶ in a January 1998 letter to US West Communications (now Qwest), AT&T/MCI's own consulting company, PNR (now TNS), indicated that the opposite was true for at least a portion of the requested data.¹⁷ Specifically, PNR stated that information regarding the actual location of each cluster,¹⁸ as well as the number of customers in each cluster that are placed at actual geocoded locations versus the number of customers located by default on

¹⁴ AT&T/MCI Responses to Verizon Data Requests Nos. 1-4, 1-5, 1-9, 1-10, 1-12, 1-13, 1-15, 1-18, 1-20, 1-21, 3-2, 3-6, 3-11, 3-13, and 3-21.

¹⁵ AT&T/MCI Petition for Review at p. 2.

¹⁶ AT&T/MCI Petition for Review at p. 2. While AT&T/MCI claim that TNS has "verbally" stated that it would not produce the requested information (AT&T/MCI Petition for Review at p. 4, n.5), it is unclear why this statement came eight days after ALJ Mace's Order and why TNS' written statement has yet to be produced.

¹⁷ See January 22, 1998 Letter from William M. Newman (Executive Vice-President of PNR) to Peter Copeland (US West Communications) ("1998 PNR Letter"), attached hereto as Exhibit B.

¹⁸ Requested by Verizon NW in Data Request No. 1-10.

census block boundaries,¹⁹ “are proprietary to AT&T and MCI” and cannot be released “without authorization from AT&T and MCI.”²⁰ Verizon NW’s Data Requests Nos. 1-4 and 1-5 seek the very data that PNR claimed was proprietary to AT&T/MCI, and there is thus no reason why AT&T/MCI cannot produce the data in the instant proceeding. Moreover, with respect to a number of the other data requests propounded by Verizon NW, AT&T/MCI have provided the requested information in prior UNE proceedings, and could easily do so here.²¹ Indeed, in the recent California UNE proceeding, counsel for AT&T/MCI represented during a workshop that they had obtained the requisite authorization from TNS to release the source code for the clustering algorithm to the Commission Staff for review.²² Their claimed inability to do so here rings hollow.

III. AT&T/MCI’s PETITION FOR REVIEW IGNORES WELL-SETTLED DISCOVERY STANDARDS

AT&T/MCI’s Petition for Review is also grounded in a baseless claim that AT&T/MCI should not be required to produce the requested information because Verizon NW has “made no showing that [it] *need[s]* the requested materials in order to analyze the HAI Model.”²³ AT&T/MCI ignore the fact that the standard for discovery is not whether a party “needs” the requested information, but rather whether it is *relevant*.²⁴ Although Verizon NW has demonstrated that the information *is* essential to its ability to analyze HM 5.3, it is not for AT&T/MCI (or even the Commission) to determine what

¹⁹ Requested by Verizon NW in Data Request Nos. 1-3, 1-4 and 1-5.

²⁰ 1998 PNR Letter.

²¹ For example, AT&T produced the clustering software in the Massachusetts UNE proceeding, and produced the Fox conversion programs, as well as the clustering software, in the recent California UNE proceeding.

²² Before the California Public Utilities Commission, Application Nos. 01-024, et al., *Workshop Transcript* (June 25, 2003) at p. 665-66.

²³ AT&T/MCI Petition for Review at pp. 6-7 (emphasis added).

²⁴ See WAC 480-09-480(6)(a)(vi) (stating that information is discoverable if it is “reasonably calculated to lead to discovery of admissible evidence”); Rule 26(b)(1) of the Washington Rules of Civil Procedure (“Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.”).

Verizon NW needs in order to conduct its analysis of HM 5.3 -- there is no legal support for applying any standard other than relevance.

The application of the appropriate relevance standard to the information sought by Verizon NW leads to the inescapable conclusion that information about the customer location and clustering data employed in HM 5.3 is relevant and discoverable. As described in Verizon NW's Motion to Compel, each of the data requests at issue here relates directly to the reliability of the cluster database used in HM 5.3.²⁵ The requested data are perhaps the most crucial inputs to the Model. In fact, by AT&T/MCI's own admission, the incorporation of customer location data is the most fundamental change to the HAI Model since it was last reviewed by the Commission.²⁶ Without complete access to the manner in which TNS's customer location and clustering data were developed, it is impossible for Verizon NW (or the Commission) to analyze the results of the Model and evaluate the propriety of the algorithms, inputs, and assumptions used therein. This information is relevant, discoverable, and must be produced immediately.

IV. HM 5.3 CANNOT BE VALIDATED WITHOUT ACCESS TO THE CUSTOMER LOCATION AND CLUSTERING DATA SOUGHT BY VERIZON NW

AT&T/MCI's claims notwithstanding, the data requested by Verizon NW are essential to a thorough and complete analysis of HM 5.3. AT&T/MCI would have the Commission believe that the production of the customer location database and the process that yields HM 5.3's cluster database is not necessary because the only relevant inquiry is "whether there is enough outside plant distribution plant placed by the model in

²⁵ Before the Washington Utilities and Transportation Commission, Docket No. UT-023003, Verizon's Northwest Inc.'s Motion to Compel Discovery With Respect to the HM 5.3 Cluster Database (Aug. 14, 2003) at p. 1.

²⁶ Before the Washington Utilities and Transportation Commission, Docket UT-023003, *Direct Testimony of Dr. Mark T. Bryant on behalf of AT&T Communications of the Pacific Northwest, Inc. and WorldCom, Inc.* (June 26, 2003) at pp. 14-15.

a given geographic area to serve the customers located in that area.”²⁷ However, in order to conduct such an inquiry, a party must determine: (1) where the customers are located, and (2) whether proper engineering principles have been used to determine how the distribution areas that serve Verizon NW’s customers have been chosen. The data sought by Verizon NW is absolutely essential to both determinations.

Understanding the manner in which TNS manipulated the direct marketing mailing list data provided by Dun & Bradstreet and Metromail to produce the customer location data, and analyzing the methods by which TNS derived clusters that ultimately serve as distribution areas for a purportedly forward-looking local telecommunications network, is essential to a thorough analysis and an understanding of why HM 5.3 produces unrealistically low cost estimates for unbundled network elements (“UNEs”). The cluster database and the processes upon which it is based lay the foundation for the network being modeled by HM 5.3, and should have a direct impact on each and every cost component contained therein. While AT&T/MCI’s Petition for Review suggests methods by which Verizon NW can analyze HM 5.3’s outputs (after the TNS data has been input and processed), Verizon NW’s data requests seek to explore the validity of the customer location and clustering inputs, as well as the algorithms and methodologies by which they were developed. How AT&T/MCI can claim that Verizon NW (or any other interested parties) does not need to examine and test the validity of these significant cost drivers is truly astounding, particularly in light of the fact that AT&T/MCI have admitted that they never bothered to do so themselves.²⁸

²⁷ AT&T/MCI Petition for Review at p. 5.

²⁸ AT&T/MCI Response to Verizon NW’s First Set of Data Requests at Response Nos. 1-16, 1-17, 1-20, 1-23.

Moreover, even the analysis suggested by AT&T/MCI (i.e., whether HM 5.3 models enough distribution plant) is predicated the accuracy of customer locations and cluster data used in the Model. If customer locations are wrong, and/or the clusters fail to reflect the real-world constraints with which Verizon NW must contend, the amount of outside plant deployed by HM 5.3 necessarily will be incorrect. Thus, contrary to AT&T/MCI's claims, "[k]nowing where the model precisely locates any particular customer or how TNS goes about creating customer clusters" would not only "add" something to the analysis,²⁹ it is a necessary prerequisite to the very examination AT&T/MCI contend is the "real issue" in the instant proceeding.³⁰ In short, the information requested by Verizon NW is relevant to the issues to be decided by the presiding ALJ, and AT&T/MCI should be ordered to produce the requested data immediately.

Finally, AT&T/MCI's suggestion that Verizon NW could have obtained remote access to the TNS data (either on-site or remotely)³¹ is plainly insufficient. While remote access has enabled Verizon to uncover significant flaws with the HAI Model in the past, it has never allowed Verizon to review the data, source code, software and algorithms that are the subject of Verizon NW's original motion to compel, and that the presiding ALJ has ordered the production of in this case.³²

²⁹ AT&T/MCI Petition for Review at p. 6.

³⁰ AT&T/MCI Petition for Review at p. 5. Equally ridiculous is AT&T/MCI's claim to have provided "both Qwest and Verizon with the precise location of the cluster, its size and approximate shape." AT&T/MCI Petition for Review at p. 6. This is simply untrue as even the most fundamental information, such as the orientation of a cluster, its exact shape and the locations of the customers within a cluster, cannot be determined with this rudimentary information.

³¹ AT&T/MCI Petition for Review at p. 6.

³² Moreover, until the filing of their Petition for Review, that AT&T/MCI even acknowledged that such remote access was available.

CONCLUSION

AT&T/MCI's responses to Verizon NW's data requests are long overdue. For the foregoing reasons, Verizon NW respectfully requests that the Commission deny AT&T/MCI's Petition for Review and order AT&T/MCI to provide prompt and complete responses to Verizon NW's data requests without further delay, or strike AT&T/MCI's cost model in its entirety.

Respectfully submitted,



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September 24, 2003

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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Review of)
Unbundled Loop and Switched Rates)
And Review of Deaveraged Zone)
Rate Structure)
)
)
)

Docket No. UT-023003

CERTIFICATE OF SERVICE

I hereby certify that I have this 24th day of September 2003, served Verizon Northwest Inc.'s Response to the Petition by AT&T and MCI for Commission Review of Interlocutory Ruling Compelling AT&T and MCI to Repsond to Data Requests upon all the following parties of record in this proceeding by Federal Express or First Class Mail and by e-mail:

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