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October 14, 2003

By Email and Federal Express

Ms. Carole J. Washburn  
Washington Utilities & Transportation Commission  
1300 S. Evergreen Park Drive SW  
Olympia, WA 98504

Re: Docket No. UT-023033

Dear Ms. Washburn:

This letter responds to issues raised by Verizon NW in its letter of October 8, 2003, opposing the motion by Staff, AT&T and MCI to strike its VzCost model. Verizon has failed to address the concerns that have been raised regarding its model. Staff, AT&T and MCI renew their request that VzCost be stricken.

**I. Verizon Attacks a Straw Man by Arguing that Information Derived from a Website or Computer Program is Admissible.**

Verizon's letter argues that evidence derived from a computer program or website is admissible if it meets the standards for foundation and authenticity provided in the Rules of Evidence. The point of this argument appears to be a contention by Verizon that costs and results derived from VzCost should be admissible in this proceeding even though the model, as Verizon admits, "is not itself part of the record." Verizon Letter, page 1.

Verizon's response misses the point. In this proceeding, the Commission will be evaluating not just the results of the various models, but also the models themselves. In the prior generic cost proceeding, for example, the Commission analyzed both "the degree to which each models' cost algorithms accurately estimate[d] the economic impact of the primary cost drivers in a network", as well as the openness, reliability and economic soundness of the models.<sup>1</sup> The

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<sup>1</sup> *In the Matter of Pricing Proceeding for Interconnection, Unbundled Elements, Transport and Termination, and Resale*, Docket No. UT-960369, et al., 8<sup>th</sup> Supplemental Order – Interim Order Establishing Costs for Determining Prices in Phase II (May 8, 1998), at ¶¶ 14, 38.

Commission has also indicated a desire that any “cost model should be open in order for the public to have the opportunity to evaluate the information which is used to set rates.”<sup>2</sup>

For an open evaluation of Verizon’s VzCost model to take place, it is not enough to simply place the results of a VzCost model run into the record. Open review by the Commission, the parties and the public can be accomplished only if the model itself is part of the record in this proceeding. Verizon has made no proposal here as to how its web-based model could be included in the record.

None of the case law Verizon cites in its letter addresses this issue. For the most part, the cases simply stand for the proposition that the results of the computer program or other system can be introduced into a record even where the underlying system is not submitted, if the results meet the authenticity and reliability requirements for admissibility.

For example, Verizon cites two cases holding that police traffic radar results can be admissible if qualified by testimony that the particular radar device used to obtain the results has been tested and checked for accuracy.<sup>3</sup> In the cases cited, the issue was whether the defendants had been properly convicted of speeding based upon radar evidence. The courts were not asked to decide anything about the devices themselves, but rather were simply asked to determine what foundation was required before the results could be admitted in a traffic prosecution.

These cases do not inform the Commission’s decision regarding whether it can evaluate VzCost without including the model in its record. This is not a case where the only issue is whether the model produces accurate results. Rather, the Commission will evaluate VzCost against other models on a variety of factors to determine the best model to use in calculating forward-looking costs. In a case like this, all models should be in the Commission’s record to allow a review of the Commission’s determination and replication of the Commission’s results by the public and others at the conclusion of this proceeding.

## **II. Verizon’s Proposal for a Standalone Version of VzCost Model Does Not Solve the Parties’ Concerns.**

Verizon’s new proposal for a stand-alone version of VzCost creates more problems than it solves. As Verizon itself indicates, because its VzCost model was designed as a web-based application, moving that application to a stand-alone system is likely to introduce inefficiencies that may make the model even more difficult to run than it is now. For example, one of the most significant problems the parties have today in working with VzCost is the fact that it takes seven to eight hours to perform a model run. The system is currently configured to be deployed over

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<sup>2</sup> Id, ¶ 24.

<sup>3</sup> See Verizon Letter at 3, citing *City of Bellevue v. Lightfoot*, 75 Wn. App. 855, 877 P.2d 247 (1994), *City of Bellevue v. Mociulski*, 51 Wn. App. 214, 756 P.2d 1320 (1988).

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several computers. It is likely that the systems have been tuned to optimize performance. Moving the system to one computer may slow processing time even further, hampering all parties in their review of the model.

Verizon also has failed to address the substantial problems the parties have raised concerning the difficulties of using VzCost. It appears that Verizon intends that the stand-alone versions of the model will mirror the web-based version. Verizon proposes no revisions to the model to allow users a greater ability to test and change the model's algorithms and assumptions.

It is also unclear whether Verizon intends to limit the availability of a stand-alone version of VzCost to the Commission, or whether it would permit the parties and their experts to also obtain access. All of the concerns raised in the motion by Staff, AT&T and MCI regarding application of the work-product doctrine remain unless the parties have some access to VzCost which is not subject to monitoring by Verizon.

Finally, it is unclear from Verizon's letter whether Verizon agrees that it should be responsible for the costs of making a stand-alone version of its model available to all parties. Because these costs result from Verizon's model design, the costs are properly placed upon Verizon.

For these reasons, the Commission should grant the motion by Staff, AT&T and MCI to strike Verizon's VzCost model.

Very truly yours,

Davis Wright Tremaine LLP

Mary E. Steele

MES:mkg  
cc: Service List