

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Review of:	)	DOCKET NO. UT-023003
Unbundled Loop and Switching	)	
Rates; the Deaveraged Zone	)	
Rate Structure; and Unbundled	)	FIFTEENTH SUPPLEMENTAL
Network Elements, Transport,	)	ORDER: DENYING MOTION TO
and Termination (Recurring	)	STRIKE; REJECTING REQUEST TO
Costs)	)	REQUIRE STAND ALONE MODEL;
	)	REQUIRING ADDITIONAL
	)	CONFIDENTIALITY PROTECTION;
	)	VACATING SCHEDULE OF
	)	PROCEEDINGS AND SETTING NEW
.....	)	SCHEDULE OF PROCEEDINGS

**I. INTRODUCTION**

*Synopsis: The Commission denies the motion to strike the Verizon cost model and rejects the request that Verizon be required to provide a stand-alone version of its web-based cost model. The Commission requires additional confidentiality protection associated with Verizon’s administration of the cost model. The Commission vacates the current schedule of proceedings and establishes a new schedule.*

1 **Proceedings.** Docket No. UT-023003 – also referred to as the “new generic cost case” – is a generic proceeding to review recurring costs for unbundled network element (“UNE”) loop and switch rates, including the deaveraged loop zone rate structure, previously established by the Commission in other proceedings.<sup>1</sup>

2 **Background.** On September 12, 2003, Commission Staff, AT&T and MCI filed a motion to strike Verizon’s cost model in this proceeding. The motion requested

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<sup>1</sup> On August 5, 2003, in the Twelfth Supplemental Order in this case, the Commission bifurcated the recurring and nonrecurring cost portions of Docket No. UT-023003. The Commission will now consider nonrecurring costs in Docket No. UT-033034.

that the Commission strike the cost model, or require Verizon to provide a stand-alone model and allow the parties more time to study and test the model. Responses to the motion were filed on September 18, 2003.

3 On October 8, 2003, Verizon submitted a letter addressing whether the Commission could adequately evaluate a cost model even if the model itself were not admitted as evidence. The letter also stated that, if required to do so, Verizon would be able to provide a stand-alone version of the model.

4 AT&T and Commission Staff filed responses to Verizon's letter.

5 **Appearances.** The following parties appeared at the prehearing conference: Qwest Corporation ("Qwest"), by Lisa Anderl, attorney, Seattle, Washington; Verizon Northwest Inc. ("Verizon"), by Catherine Ronis, attorney, Washington, D.C.; Covad Communications Company ("Covad"), by Brooks Harlow, attorney, Denver, Colorado; AT&T of the Pacific Northwest, Inc. ("AT&T"), Pac-West, Inc. ("Pac-West"), and XO Washington, Inc. ("XO"), by Mary Steele, attorney, Seattle, Washington; MCI/WorldCom ("WorldCom") by Michel Singer-Nelson, attorney, Denver, Colorado; WeBTEC, by Arthur Butler, attorney, Seattle, Washington; Eschelon Telecom, Inc. ("Eschelon"), by Dennis Ahlers, Minneapolis, Minnesota; and Commission Staff, by Shannon Smith, Senior Assistant Attorney General.

## II. DISCUSSION AND DECISION

### A. MOTION TO STRIKE VERIZON COST MODEL

6 On June 26, 2003, as part of its direct testimony Verizon filed, in part, its cost model, VZ Cost. VZ Cost is a web-based cost model consisting of several components for the costing of several segments of Verizon's network. Verizon did not, in effect, file the cost model itself with the Commission because that model resides on Verizon's internet website. When Verizon made its

June 26, 2003 filing, the model was not immediately made accessible to the parties because Verizon required each party seeking access to enter into an additional third party confidentiality agreement. The agreement prohibited those signing it from engaging in competitive types of activity, including doing consulting work or providing expert testimony, for three years.

- 7 AT&T and MCI voiced objections to Verizon about the additional confidentiality agreement. The parties negotiated a compromise and Verizon obtained consent to the modification of the agreement, now prohibiting competitive activity for only one year, from all of its thirty or more third party vendors. This process was a lengthy one and did not conclude until early August. By August 11, 2003, AT&T and MCI obtained full access to the model, only to find that when they ran the model it would freeze. Ultimately, on August 26, 2003 after Verizon updated the model, the CLECs were finally able to perform model runs.
- 8 Nevertheless, Staff<sup>2</sup>, AT&T and MCI complain that even with full access, they are hampered in their ability to work with the model. Verifying model outputs or making adjustments to the model can take up to seven or eight hours for each attempt. Moreover the model is extremely complex. Even more troublesome is that the model is web-based.
- 9 Commission Staff, AT&T and MCI argue that there may be problems for the Commission in developing a sufficient record in this proceeding if Verizon's web-based cost model is not capable of actually being filed or made an exhibit in this case. Furthermore, Staff and the CLECs fear that their ability to prepare their cases is severely jeopardized because Verizon controls the website. They argue that every time a party logs on, makes an adjustment or seeks help through the help desk, Verizon has access to the parties' work product. Staff and the CLECs request that the Commission strike the cost model based on the length of time it took for Verizon to give them access to the model; on the difficulties in using it;

and on the potential jeopardy its use creates for the privacy of the parties' work product and case preparation. In the alternative, the parties request that the Commission require Verizon to provide a stand-alone version of the cost model and allow them more time to work with the model.<sup>3</sup>

10 Verizon contends the parties offer no legal basis for granting their motion to strike. If the motion is actually a motion for summary determination under WAC 480-09-426, it does not meet the criteria stated in that provision of the rule. The rule requires a showing that there is no genuine issue as to any material fact. The moving parties have made no such showing.

11 Verizon further contends that the parties' fear of improper observation by Verizon is unfounded. The website is supervised by three administrators who would lose their jobs if it were discovered they were observing and sharing this information with Verizon legal counsel or witnesses in this case. Verizon also points out that it has engaged independent auditors who monitor the website to ensure that it is being used appropriately. As to the possible legal insufficiency of the record in this proceeding if the model cannot be admitted as evidence, Verizon offers several legal citations lending support to the position that a web-based cost model is proper and reasonable, as long as the parties are afforded an opportunity to test its accuracy and results.

12 Moreover, even though Verizon argues that its web-based model is legally sufficient, Verizon indicates that it would be able to provide a stand-alone version of the model. Installation of a stand-alone version would require a computer with sufficient power and memory to act as a "server" for the model. Also required would be approximately \$20,000 of additional software per

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<sup>2</sup> Staff obtained access to the model on July 8, 2003 after persuading Verizon that Staff should not be required to enter into a third party confidentiality agreement.

<sup>3</sup> In its response to Verizon's October 8<sup>th</sup> letter, AT&T contends that even provision of a stand-alone version will not solve the problems associated with the cost model because a stand-alone version would introduce inefficiencies that would make the cost model even more difficult to run than it is now.

installation and a one-time \$46,000 expenditure for extraction of Washington network data. The installation would take approximately 5 weeks.

Verizon does not oppose granting the other parties additional time to gain a better understanding of the model and to test it.

13 **Decision.** The Commission denies the motion to strike Verizon's cost model. The moving parties have not cited the legal basis for their request for relief. The motion was not filed as a motion for summary determination, nor was there any argument to that effect in the motion. The Commission notes that the moving parties waited almost three months to make their concerns about the Verizon cost model known to the Commission. Furthermore, since the Verizon cost model is not in evidence, nor is it even an exhibit *per se*, striking the model would be problematic.

14 It is not clear that the model itself must be made part of the record in a Commission proceeding as long as witnesses can testify about the accuracy of its methodology and outputs. No party has cited any case to the Commission that would preclude reliance on a web-based model as long as the Commission can determine the weight to accord the model, and the results derived from it, based on the evidence taken as a whole.

15 The Commission also denies the request that Verizon be ordered to provide a stand-alone version of its cost model. Installation of a stand-alone version or versions of the cost model would require additional time. Even after the stand-alone versions were installed there would be no guarantee that they would run smoothly. Moreover, presumably Verizon administrators would still have to oversee use of the model to some degree in order to assist in timely troubleshooting for problems that may emerge. Also, the trained Verizon help desk personnel would be hampered in their ability to assist users of the model if it were installed at other sites. Although arguably other parties could train personnel to help with problems using the model, it is not certain how much time it would take to conduct the training or how effective it would be.

- 16 The Commission believes the best use of the Commission's and other parties' resources would be to continue to work with the cost model as it exists on Verizon's website. There is no evidence that the cost model can be tested more effectively by use of a stand-alone version than by use of the web-based version, assuming confidentiality of the parties' work product can be reasonably assured.
- 17 To protect against Verizon taking improper advantage of other parties' use of the website to test the cost model's accuracy and results, the administrators of the model must be immediately identified to the Commission. If the identity of the administrators changes, Verizon must notify the Commission of any replacements. In addition, the moving parties must devise a confidentiality agreement that the administrators must sign associated with their prospective oversight of the cost model. The replacement administrators must also sign the confidentiality agreement. Within ten days of the close of the proceeding, the administrators must make a further sworn statement that they have not improperly divulged any information associated with other parties' use of the website.
- 18 Similarly, Verizon's help desk personnel must also be identified to the Commission and to the parties immediately and must also sign the confidentiality agreement with respect to the content of any information that may be revealed to them while seeking assistance for a technical problem with the model.
- 19 The Commission notes that reliance on a web-based cost model in this case is experimental. That is, the Commission will monitor such factors as the model's reliability, ability to protect outside users work product, transparency and user-friendliness and take these factors into account in determining whether reliance on a web-based model is appropriate for future use.

**B. REQUEST FOR EXTENSION OF THE SCHEDULE**

20 In the event that the Commission denied the motion to strike the Verizon cost model, the parties requested additional time to enable them to verify its outputs and attempt to make adjustments to it. Also, AT&T and MCI stated that they intended to file a revised version of their cost model, HAI 5.3, to incorporate raw customer data provided by Qwest and Verizon pursuant to discovery requests. In light of the difficulties the parties have encountered in accessing and understanding the Verizon cost model, and in light of the CLECs' intent to file a revised cost model, an extension of the schedule is reasonable.

21 The schedule suggested by the parties is modified to accommodate the Commission's calendar:

Filing of proposed confidentiality agreement for administrators and help desk personnel; filing of names of administrators and help desk personnel	October 24, 2003
Filing of objections or proposed changes to the confidentiality agreement	October 29, 2003
Filing of supplemental direct testimony and AT&T/MCI revised cost model	November 18, 2003
Filing of response testimony	February 9, 2004
Filing of rebuttal testimony	April 2, 2004
Prehearing conference	April 22, 2004

Hearings

April 26-30; 2004

May 3-14, 2004

**ORDER**

22 The Commission denies the motion to strike Verizon's cost model; rejects the request to require Verizon to file a stand alone version of the cost model; requires the Verizon cost model administrators and help desk personnel to sign confidentiality agreements and provide post-hearing affidavits; vacates the current schedule, and establishes a new schedule of proceedings in this case.

Dated at Olympia, Washington, and effective this \_\_\_\_ day of October, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner