

BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Joint Application	)	DOCKET NO. UT-050814
of	)	
	)	ORDER NO. 04
VERIZON COMMUNICATIONS,	)	
INC. and MCI, INC.	)	
	)	ORDER GRANTING, IN PART,
For Approval of Agreement and Plan	)	MOTION TO COMPEL
of Merger	)	PRODUCTION OF DISCOVERY
	)	INFORMATION
.....	)	

1 **SYNOPSIS:** *The Commission grants, in part, Integra Telecom’s motion to compel Verizon to produce certain information in response to discovery requests.*

2 This proceeding involves an application by Verizon Communications, Inc., and MCI, Inc., for approval of an Agreement and Plan of Merger between the two companies.

3 The Commission engaged the discovery rules, WAC 480-07-400 through -425, at the parties’ request. The parties have engaged in discovery, and two motions have been filed to compel Verizon to produce information sought in discovery requests. One, filed by Public Counsel and Commission Staff, is held in abeyance at the request of the filing parties pending an examination of responses Verizon has agreed to produce.

4 The second, filed by Intervenor Integra Telecom of Washington, Inc., asks the Commission to compel Verizon to produce responses to 69 of 76 data requests propounded by the intervenor, to which Verizon objected and withheld all production.

5 The Commission convened a hearing on the Integra motion to compel production on Thursday, August 4, 2005, before Chairman Mark Sidran, Commissioners Patrick Oshie and Philip Jones, and Administrative Law Judge C. Robert Wallis.

6 The parties were represented as follows: Integra Telecom of Washington, Inc., the movant, by Jay Nusbaum, Portland, Oregon; Verizon Communications, Inc., and Verizon Northwest, by Judith Endejan, attorney, Seattle; MCI, Inc., by Arthur A. Butler, attorney, Seattle, and Michel Singer-Nelson, attorney, Denver, Colorado; Public Counsel, by Simon ffitch, assistant attorney general, Seattle; and Commission Staff, by Jonathan Thompson, assistant attorney general, Olympia.

7 **SCOPE OF THE MERGER PROCEEDING.** Verizon's overarching objection to producing the requested information, articulated in its answer and in argument, is that the subject is beyond the scope of the merger proceeding.

8 Integra seeks to explore is Verizon's performance in providing wholesale services to competitive local exchange companies (CLECs)—including Integra -- because, as Integra notes, Verizon has described the merger as one that will improve its ability to compete in the telecommunications markets in which it operates.

9 Verizon responded that the performance of a local exchange operating company in providing wholesale services to competitive companies is irrelevant to the question of whether and under what conditions two parent companies should merge—that the focus in the merger analysis must be the ability of the merged parent companies to impede competition, rather than the actions of or effect on any subsidiary. We reject this argument; the ability of the parent companies to control the policies and activities of the operating companies in light of all

related companies' operations renders relevant the actions of both parent and subsidiary.

10 Verizon also argued that this proceeding is distinguishable from a recent merger proceeding involving U S WEST and Qwest. It says that in the earlier docket it was the parent of the incumbent operating company that was being acquired, rather than the parent of another company. It argues that because the parent of the Verizon incumbent will not be acquired, its policies and activities and those of the operating companies will not change. We find this argument counter to logic. There is no guarantee that the merged operation's policies and operations will remain the same, or that Verizon's ability to implement those policies will remain the same. Verizon's petition itself appears to state that the merger will enable it to become a more effective competitor, and we fail to see how it could do so without changing its policies or its operating practices, or otherwise act to capitalize on increased opportunities in light of its increased size, scope, and power, presumably the benefits it hopes to gain from the merger.

11 Finally, Verizon argues that the current performance of wholesale services is irrelevant because the concern in a merger is whether post-merger activities could adversely affect competition in the future, not what current conditions are. We reject this view -- evidence of existing competitive activities may well set a stage for the need for controls in a changed, post-merger environment. Integra is not broadening the issues, as Verizon contends—it is merely seeking information about matters that could prove relevant in the Commission's evaluation of whether the proposed merger is in the public interest.

12 **OTHER OBJECTIONS.** Verizon posed other objections to the Integra data requests. These included a list of twelve "general objections" that might apply in varying degrees to any specific data request. Only a few of these objections were specifically raised to individual data requests. Verizon also, in a "specific objection" to all data requests, argued that the requests all related to other

pending litigation between Integra and Verizon and therefore constituted an abuse of process; that Integra already knew the answer to requests; that the requests sought admissions instead of information; and that preparing the answer would require a burdensome study.<sup>1</sup>

13 **“General objections.”** As to Verizon’s “general objections,” it is clear that not all of the objections apply to every data response<sup>2</sup> and that almost universally the objections were not specifically raised. Thus, by offering the list as reasons for rejecting a specific data request, Verizon was forcing Integra to guess which objection, if any, applied. This severely limited Integra’s ability to respond with a request that meets a proper objection. Verizon’s list does not comply with WAC 480-07-405(6)(a), which requires a party objecting to a data response to present “the objection” rather than a list of objections that might or might not apply. Verizon’s “General objections” are rejected entirely.

14 **Request for admission.** As to the objection that a data request sought an admission rather than information, WAC 480-07-400(1)(c)(iii) specifically lists requests for admission as among common, and permitted, purposes for data requests (*emphasis added*):

Generally, data requests seek documents, an analysis, compilation or summary of documents into a requested format, a narrative response explaining a policy, position, or a document, or **the admission of a fact asserted by the requesting party.**

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<sup>1</sup> The need for a study is also raised with reference to specific data requests.

<sup>2</sup> These objections included, among others, attorney-client privilege; that the information is outside Verizon’s possession; that the request seeks confidential or proprietary information (although covered by the protective order and agreements thereunder); that the request is argumentative; that the information would require a special study; and that the request calls for speculation or conjecture.

That a data request sought an admission is clearly no basis for objecting to the request, and this objection is rejected.

- 15 **Pending litigation.** Verizon challenged the data requests “in their entirety” on the basis that they related to specific facts in a pending complaint in which discovery had not yet been authorized. First, many of the data requests appear to be directed to merger-specific information. Second, and more importantly, the existence of other litigation cannot affect a party’s right to seek data in this litigation when the request is otherwise appropriate in this docket. The objection that Integra’s requests thereby constitute an abuse of process is rejected.
- 16 **Answer already known.** In one series of three Integra data requests, the third asked for a response in a way that assumed certain answers to the first two. Verizon objects that this indicates Integra’s knowledge of the information sought in the first two. We do not find this a valid basis for objection. Verizon does not contend that the information is in Integra’s possession—only that Integra “knows” the answer, based on Verizon’s inference from the language of the third request in the series. Discovery is often used to obtain information that is believed or known, either for confirmation in writing as a basis for testimony or (perhaps more technically) to obtain an admission. This objection is rejected. If the data request is aimed at factual material, in Verizon’s possession, Verizon must respond unless it presented a valid and timely objection to the data request.
- 17 **A study would be required.** Finally, Verizon responds to a few requests that preparing an answer would require a study and be burdensome. That response is not necessarily invalid, but for purposes of this dispute requires clarification. WAC 480-07-400(1)(c)(iii) provides that it is proper to seek “an analysis, compilation or summary of documents into a requested format.” WAC 480-07-400(4) provides (*emphasis added*),

A discovery request is inappropriate when . . . the discovery is **unduly** burdensome or expensive, taking into account the needs of the adjudicative proceeding, limitations on the parties' resources, scope of the responding party's interest in the proceeding, and the importance of the issues at stake in the adjudicative proceeding.

- 18 The mere assertion that a study is burdensome neither quantifies the nature or extent of the burden nor demonstrates “undue” burden in light of the listed factors. The burden could be as little as selecting a computer file, entering an instruction, and printing a document. It could be as much as the requirement of hundreds or thousands of person-hours and considerable computer programming or other expense.
- 19 If Verizon wishes to pursue its objections to the relevant data requests, it must within five business days after the entry of this order identify to the parties and the bench, the burden that is specifically imposed in each instance. It must describe the nature of the data involved, the form in which the data are kept, the steps required to produce the study, and the time (both in terms of human resources and the elapsed time for completion) required to complete the work with a discussion of why the time is required. Integra may respond within four business days after receiving the necessary description. Verizon may also choose to respond with the data.
- 20 **Conclusion.** We find that Verizon’s objections to most of the data requests at issue are insufficient, and that they violate the Commission’s rules in a way that prejudices another party’s opportunity to participate in the proceeding. We reject the objections or require further explanation as identified above, and direct that Verizon respond to all of the data requests (or provide details of required studies) within five business days following the date of this order. A table is attached and incorporated herein that identifies the ruling as to the objections to each data request and, if necessary, revising the request to facilitate response.

- 21 **DISCUSSION OF SPECIFIC OBJECTIONS.** A discussion table of objections and Data Request Numbers<sup>3</sup> is attached as Appendix A. It contains specific rulings on each data request; we incorporate it herein by reference.
- 22 **SANCTIONS.** This is a proceeding in which Verizon requested, and other parties acceded to, an expedited schedule. Verizon failed to comply with the Commission's rules on discovery, as noted. The Commission considers it appropriate to acknowledge the delay caused to Integra by Verizon's failure to comply with the rules, which could impede its ability to participate in the proceeding on a meaningful and timely basis. The Commission is prepared to extend the schedule in the docket as may be appropriately and reasonably necessary to allow Integra to pursue the data it already sought, plus any follow-up information it may appropriately and reasonably require prior to completing its testimony. We urge Verizon to work cooperatively with Integra to minimize or eliminate delay to the proceeding.
- 23 For the reasons specified above, the Commission grants, in part, Integra's motion to compel production of requested data.

DATED at Olympia, Washington, and effective this 9th day of August, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

C. ROBERT WALLIS  
Administrative Law Judge

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<sup>3</sup> WAC 480-07-405(3) requires a party seeking to compel production of responses to data requests to provide a copy of the request and the response thereto. Integra produced this information for all data responses. Since Verizon objected to all requests, even though it withheld answers totally to only 69 of the 76 requests, we address all requests.

APPENDIX A

Objection or DR No.	Data requested <sup>4</sup>	Objections raised	Ruling on the objections <sup>5</sup>
General objections	All	List of twelve possible objections to all requests.	Rejected. It is not possible for the requesting party to identify the reason for the objection and thus oppose the objection or modify the request to comply with the objection.
Specific Objection No. 1	All	The information requested concern issues in UT-053038 and seeking the information here is an abuse of process.	Rejected. It appears clear that not all data requested relates to the cited docket. Irrespective, it is irrelevant whether another docket contains issues that are somewhat related, if the information is properly discoverable in this docket.
DR No. 01	Admit: VZ <sup>6</sup> is the successor to GTE	No specific objection. Response limited.	The response appears sufficient for the purposes of the litigation.
DR No. 2	Admit: VZ is LEC in former GTE areas	No specific objection. Response limited.	The response appears sufficient for the purposes of the litigation.
DR No. 03	Admit: VZ is UNE source	Admits, with qualifications.	The response appears sufficient for the purposes of the litigation.
DR No. 04	Admit: Integra is largest VZ UNE customer in Washington	Objects; argues that special study would be necessary.	Rejected. Verizon does not argue that performing the study would have any burden, let alone an undue burden, under Commission rules.
DR No. 05	If Integra is not largest VZ UNE customer, name it	Objects: cites objection to DR No. 4.	Rejected. See DR No. 4. <b>Note:</b> This ruling nonetheless does not authorize the release of proprietary information belonging to others than Verizon.
DR No. 06	Identify all UNE buyers since 1/1/03	Objects: customer proprietary information, unduly broad and burdensome	Sustained. The requested information appears to be customer proprietary information.
DR No. 07	Admit that CLECs are VZ customers	Admits, with qualifications	The response appears sufficient for the litigation

<sup>4</sup> The text in this column is intended as a label rather than a complete description.

<sup>5</sup> The text in this column is in general intended to summarize and refer to conclusions in the text of this order rather than state a complete requirement with full reasons.

<sup>6</sup> For economy in space, we use the abbreviation VZ for reference to Verizon.



<b>Objection or DR No.</b>	<b>Data requested</b>	<b>Objections raised</b>	<b>Ruling on the objections</b>
DR No. 08	Admit that Integra is a VZ customer	Admits	Response is sufficient
DR No. 09	Admit that WUTC has not promulgated wholesale service quality standards	This is a matter of law that Integra can determine	Sustained.
DR No. 10	Admit that WUTC has not established service quality standards by order	This is a matter of law that Integra can determine	Sustained.
DR No. 11	Admit that no WA statute establishes service quality standards	This is a matter of law that Integra can determine	Sustained.
DR No. 12	Admit that VZ wholesale service quality is not bound by WA statute, order, or rule	This is a matter of law that Integra can determine	Sustained.
DR No. 13	Does Verizon follow any standards for provisioning UNEs?	Calls for a legal conclusion.	Rejected. The request seeks information, not a legal conclusion.
DR No. 14	If answer to DR 13 is yes, provide a copy of standards and explain why VZ follows them	Calls for a legal conclusion.	Rejected. The request calls for the specific identification of standards that VZ chooses or is required to follow and a narrative describing its reasons for doing so, not a legal conclusion.
DR No. 15	Explain the difference between VZ East and VZ West	Responds with an answer.	The answer is responsive.

<b>Objection or DR No.</b>	<b>Data requested</b>	<b>Objections raised</b>	<b>Ruling on the objections</b>
DR No. 16	Admit that WA is in VZ West	Admits truth only “in certain contexts” but does not explain those contexts	Rejected. Verizon must respond and identify any limitations on its admission.
DR No. 17	Admit that VZ does not post standard provisioning intervals for VZ West	Makes no specific objection but cites general and global “specific” objection. <sup>7</sup>	Rejected. VZ cites no valid reason for failing to respond.
DR No. 18	Admit that VZ does post intervals for VZ East	Makes no specific objection.	Rejected. VZ cites no valid reason for failing to respond.
DR No. 19	Explain why VZ posts intervals for East but not for West	Makes no specific objection.	Rejected. VZ cites no valid reason for failing to respond. VZ argued at hearing that this question indicated knowledge of answers to DRs 17 and 18; that was not raised in the response and it is not a valid objection.
DR No. 20	Admit: VZ does allow CLEC access to VZ-W intervals	Makes no specific objection.	Rejected. If the question should refer to Verizon East, deem it to be reworded.
DR No. 21	Admit: VZ does not allow CLEC access to VZ-W intervals	Makes no specific objection.	Rejected. Verizon must respond.
DR No. 22	Admit: VZ uses same standards in WA as it uses in Oregon	Makes no specific objection.	Rejected. Verizon also argued at hearing that the response would be irrelevant. It failed to make this objection in the response, waiving it, and relevance is not the sole test under the pertinent rule.

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<sup>7</sup> Verizon interposed its general objections and its specific objection to every data request. We will merely state in the balance of the table that Verizon made no additional specific objection to the particular data request.

Objection or DR No.	Data requested	Objections raised	Ruling on the objections
DR No. 23	Identify any standard that VZ-E follows but VZ-W does not follow	Irrelevance. Overly broad and burdensome and seeks a special study.	Ruling reserved. Verizon must identify the nature of any burden. Relevance argument is rejected; the information could contain or lead to production of information relevant to the public interest standard to be applied in the docket.
DR No. 24	Identify any area where VZ-East outperforms VZ-West	Irrelevance. Overly broad and burdensome and seeks a special study.	Ruling reserved. Verizon must identify the nature of any burden. Relevance argument is rejected; the information could contain or lead to production of information relevant to the public interest standard to be applied in the docket.
DR No. 25	Identify areas where VZ standards vary from Qwest's	Irrelevance. Overly broad and burdensome; special study.	Ruling reserved. Verizon must identify the nature of any burden. Relevance argument is rejected; the information could contain or lead to production of information relevant to the public interest standard to be applied in the docket.
DR No. 26	Identify states in which VZ provides ILEC service and cite to any state standards that are applicable	Irrelevance. Broad and burdensome, requires study.	Sustained. VZ must identify states in which it serves as an ILEC or identify where that information is contained in the filed information. The balance of the response is a matter of legal research.
DR No. 27	Admit that competition is in the public interest.	Calls for a legal conclusion.	Sustained. In the context of this docket, where the result will hinge on evidence related to the public interest, it appears to call for a conclusion.
DR No. 28	Admit that some WA CLECs' customers rely on VZ network	No specific objection	Answer not required; the matter is common knowledge and requires no response.
DR No. 29	Admit that it is in public interest that ILEC provision CLEC needs promptly	No specific objection.	Rejected. Verizon must state its opinion on the topic, if it has one.

Objection or DR No.	Data requested	Objections raised	Ruling on the objections
DR No. 30	Admit that wholesale service quality standards are in the public interest	No specific objection.	Rejected. Verizon must state its opinion on the topic, if it has one.
DR No. 31	Admit that there are areas in WA where VZ network design prevents CLECs from using UNEs	No specific objection.	Rejected. Verizon must respond.
DR No. 32	Identify each instance in which VZ WA network design prevents CLECs from offering UNEs	No specific objection.	Rejected. The objections are insufficient. Verizon argued at hearing that the response requires knowledge of competitors' services; Verizon works with CLECs every day and undoubtedly knows what many, if not all, such instances are. It must respond to the extent of its knowledge.
DR No. 33	Admit that VZ WA network uses remote terminals or switches.	No specific objection.	Rejected. Verizon must respond.
DR No. 34	Identify the number of VZ WA customers or access lines behind remotes	Unduly burdensome; special study	Ruling reserved; Verizon must identify any burden and explain why it is "undue."
DR No. 35	Admit that CLECs cannot offer some services to customers behind remotes	No specific objection	Rejected; Verizon must respond.
DR No. 36	Admit that CLECs cannot provide DSL using a DSO loop behind VZ remotes	No specific objection	Rejected; Verizon must respond.

<b>Objection or DR No.</b>	<b>Data requested</b>	<b>Objections raised</b>	<b>Ruling on the objections</b>
DR No. 37	Admit that VZ provides DSL using a DSO loop behind VZ remotes	No specific objection	Rejected; Verizon must respond.
DR No. 38	Admit that CLECs cannot provide disconnect services using DSO loops in some situations	No specific objection	Rejected; Verizon must respond.
DR No. 39	Admit that VZ facilities for CLECs behind remotes are inferior to VZ	No specific objection	Rejected; Verizon must respond.
DR No. 40	Admit that VZ required Integra to use channel bank rather than direct copper to certain Integra users	No specific objection	Rejected; Verizon must respond.
DR No. 41	Admit that channel bank customers service would not disconnect	No specific objection	Rejected; Verizon must respond.
DR No. 42	Admit that VZ believes the disconnect problem was caused by signaling issue	No specific objection	Rejected; Verizon must respond.
DR No. 43	Admit that VZ was unable to cure the problem in #42	No specific objection	Rejected; Verizon must respond.
DR No. 44	Admit that technical problems made Integra use resale rather than UNE	No specific objection	Rejected; Verizon must respond.

Objection or DR No.	Data requested	Objections raised	Ruling on the objections
DR No. 45	Admit that Integra has not reported disconnect problems since using resale	No specific objection	Rejected; Verizon must respond, to the extent of its available information.
DR No. 46	Admit that VZ charges more for resale than for UNE service	Overly broad and burdensome; cannot be answered as posed because rates vary.	Sustained. Verizon described the nature of the burden in answering, which appears undue in light of the factors cited for consideration in the rule, and responds that the answer will vary depending on identified circumstances.
DR No. 47	Admit that VZ provides service to four specific customers	No specific objection	Rejected; Verizon must respond, to the extent of its available information.
DR No. 48	Admit that the customers above returned to VZ because VZ could not provide Integra with working lines for them	No specific objection.	Rejected; Verizon must respond.
DR No. 49	Admit that VZ was able to provide service to the above customers	No specific objection.	Rejected; Verizon must respond.
DR No. 50	Explain why VZ could provide service where Integra could not	No specific objection.	Rejected; Verizon must respond.
DR No. 51	Admit that VZ does not give CLECs access to remotes	No specific objection.	Rejected; Verizon must respond.

Objection or DR No.	Data requested	Objections raised	Ruling on the objections
DR No. 52	Admit that VZ does not give CLECs access to tel. Nos. provided via remotes	No specific objection.	Rejected; Verizon must respond.
DR No. 53	Provide a map showing VZ WA remotes	No specific objection.	Rejected; Verizon must respond.
DR No. 54	Provide a list of WA tel. nos. served by WA remotes	Burdensome; special study required	Ruling reserved. Verizon must identify the nature of the burden. <b>Note:</b> In addition, Integra must within five business days identify why this request is relevant or likely to lead to relevant information.
DR No. 55	Admit that in places VZ can provide DSi service and CLECs cannot over VZ lines	No specific objection.	Rejected; Verizon must respond.
DR No. 56	Admit that CLECs must designate facilities as designed or not based on VZ information in "WISE"	No specific objection.	Rejected; Verizon must respond.
DR No. 57	Admit that VZ-E does not require such information.	No specific objection.	Rejected; Verizon must respond.
DR No. 58	Admit that Qwest does not require such information	No specific objection.	Rejected; Verizon must respond if it knows the answer.
DR No. 59	Identify VZ standard interval for a "designed" loop	No specific objection.	Rejected; Verizon must respond.

Objection or DR No.	Data requested	Objections raised	Ruling on the objections
DR No. 60	Admit that “designed” loops require longer time for provisioning and add’l charges	No specific objection.	Rejected; Verizon must respond.
DR No. 61	Admit that “WISE” contains some false or mis-leading info	No specific objection.	Rejected; Verizon must respond. If the answer is no, respond to the request as if it called for an admission that WISE contains information that is incorrect, partially incorrect, or not totally correct.
DR No. 62	Admit that VZ requires diff’nt certificates for access to VZ wholesale service systems	No specific objection.	Rejected; Verizon must respond.
DR No. 63	Admit that VZ requires CLECs to choose from 5 combinations of codes to order a DSL-capable loop	No specific objection.	Rejected; Verizon must respond.
DR No. 64	Admit that Qwest uses a single code	The request should be directed to Qwest, not Verizon	Rejected. Verizon does not contend that it does not have the information of its own knowledge; Qwest is not a party to this docket. Verizon must respond if it has the information.
DR No. 65	Explain the purpose and use of VZ Customer User Forum	No specific objection.	Rejected; Verizon must respond.
DR No. 66	Explain why VZ created the Customer User Forum	No specific objection.	Rejected; Verizon must respond.
DR No. 67	Explain Customer User Forum when the Customer User Forum began	No specific objection.	Rejected; Verizon must respond.



<b>Objection or DR No.</b>	<b>Data requested</b>	<b>Objections raised</b>	<b>Ruling on the objections</b>
DR No. 68	Admit that VZ did not invite Integra to participate in the Customer User Forum until Nov 2004	No specific objection.	Rejected; Verizon must respond.
DR No. 69	Admit refusal prior to 3/28/05 to port tel. nos. to Integra until condition met	No specific objection.	Rejected; Verizon must respond.
DR No. 70	Admit that the refusal in DR 69 caused delay.	No specific objection.	Rejected; Verizon must respond.
DR No. 71	Admit that Integra did not impose cond. in DR 69 on Verizon	No specific objection.	Rejected; Verizon must respond.
DR No. 72	Admit that Verizon refused to change policy in DR 69.	No specific objection.	Rejected; Verizon must respond.
DR No. 73	Admit that VZ changed its policy in DR 69 to comply with FCC decision	No specific objection.	Rejected; Verizon must respond.
DR No. 74	Admit that facts recited in FCC decision were similar to DR 69 issue	No specific objection.	Objection sustained – information about the facts underlying the cited order is contained therein.
DR No. 75	Admit that the FCC held the DR 69 practice unlawful.	No specific objection.	Objection sustained – information about the facts underlying the cited order is contained therein.

<b>Objection or DR No.</b>	<b>Data requested</b>	<b>Objections raised</b>	<b>Ruling on the objections</b>
DR No. 76	Identify all persons who participated in providing responses and the witness responsible for the subject matter of the response	No specific objection.	Rejected; Verizon must respond.