

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Review of:)	
Unbundled Loop and Switching Rates;)	Docket No. UT-023003
the Deaveraged Zone Rate Structure; and)	
Unbundled Network Elements,)	AT&T OPPOSITION TO
Transport and Termination)	VERIZON SECOND MOTION TO
(Recurring Costs))	COMPEL DISCOVERY
_____)	

AT&T Communications of the Pacific Northwest, Inc. (“AT&T”), provides the following opposition to the Second Motion of Verizon Northwest, Inc. (“Verizon”) to Compel Discovery (“Motion”). Verizon’s Motion is designed more to burden AT&T’s participation in this proceeding and to garner competitively sensitive business information than to obtain information necessary to evaluate the HAI model and supporting testimony. With the few exceptions discussed below, the Commission should deny the Motion.

DISCUSSION

Verizon seeks to compel responses to two types of data requests. The first type are data requests directed to the HAI model and supporting testimony filed jointly on behalf of AT&T and WorldCom, Inc., k/n/a MCI, Inc. (“MCI”). AT&T and MCI generally are willing to provide some additional information in response to these requests. The second type of data requests to which Verizon seeks to compel responses, however, expansively and intrusively seek information about AT&T’s local and long distance networks in Washington and across the country. The vast majority of information requested in these requests bears no reasonable relationship to any issue in this proceeding and would be extremely burdensome, if not impossible, for AT&T to produce. AT&T continues to object to providing any additional response to these requests, and the Commission should deny Verizon’s Motion to compel any additional response.

Verizon Joint Data Requests to AT&T and MCI

Verizon has served six different sets of data requests on AT&T and MCI, each of which includes dozens of individual requests. Despite Verizon's hyperbole to the contrary, AT&T and MCI have timely responded to the vast majority of these data requests, and have supplemented or corrected many of these responses after being contacted by Verizon. Verizon nevertheless seeks to compel responses to 9 data requests from its first, third, fifth, and sixth sets of requests. As discussed more fully below, AT&T and MCI have provided or are willing to provide some additional information in response to most of these 9 requests, at least where AT&T and MCI are able to do so.

Verizon Data Request No. 1-11

Verizon requests a "detailed description of each user-adjustable input value to the clustering software." AT&T and MCI responded by explaining, "There are typically no adjustments made by a user to inputs to the clustering software," but a few variables can be changed, including "Grid Size," "Minimum Lines in a Cluster," "Maximum Lines in a Cluster," and "Maximum Cluster Radius." Verizon claims that this information is not sufficiently "detailed" to be responsive, but Verizon has not shared with AT&T or MCI, nor provided the Commission with, any guidance on what type of "detail" that Verizon believes is missing. Any good dictionary can provide Verizon with the meaning of terms such as "size," "maximum," "minimum," and "radius," while "grid," "lines," and "cluster" are used throughout the HAI model documentation and have been for many years. AT&T and MCI nevertheless attach a further supplemental response that provides an explanation derived from the model documentation.

Verizon Data Request No. 1-34

Verizon requests algorithms used by Taylor-Nelson-Sofries (“TNS”) Telecommunications in processing customer location data in the HAI model. Pursuant to the Commission’s Fourteenth Supplemental Order, AT&T and MCI have already provided supplemental responses to other Verizon data requests seeking this and similar data. Attached is a comparable supplemental response to this data request.

Verizon Data Request No. 3-9

Verizon seeks a detailed description of “how housing types were determined in HM 5.3’s inputs database.” AT&T and MCI provided a response, but Verizon claims that the response lacks sufficient detail. While AT&T and MCI believe that their response is sufficient, they are willing to provide a more detailed explanation.

Verizon Data Request No. 3-14

Verizon requests documents relating to any external validation testing of the HAI model’s cluster database. AT&T and MCI provided a substantial number of such documents in response to Verizon Data Request No. 1-10 and represented that they would continue to search for any responsive documents. To date, AT&T has not discovered any additional documents, but AT&T will provide additional responsive documents if AT&T discovers or obtains any such documents. Verizon nevertheless charges that AT&T and MCI “are well aware of, and have ready access to, the data being sought by Verizon.” Motion at 16. Verizon has provided neither AT&T nor the Commission with any evidence to support this accusation. In the absence of such evidence, Verizon has provided no basis on which the Commission can or should compel any additional response to this request.

Verizon Data Requests Nos. 5-10, 5-25, 5-26, and 5-30

Verizon seeks information on interoffice transport costs and investments used in the HAI model. Two of these data requests use terminology that is not used in the model (contrary to Verizon's representations), while the other two requests are so broad as to be unreasonable. Verizon never attempted to provide AT&T and MCI with any additional information that would clarify or narrow the information that Verizon seeks, despite representations that it would do so. AT&T and MCI nevertheless have attempted to provide responses to these data requests with references to the HAI Model documentation, and those supplemental responses are attached.

Verizon Data Request No. 6-80

Verizon has requested a list of unbundled network elements ("UNEs") for which AT&T and MCI are proposing cost estimates in this proceeding, including the estimated cost for each such UNE. While AT&T and MCI will likely propose or support another party's cost estimate for each UNE at issue in this proceeding, AT&T and MCI continue to be unable to provide the information Verizon has requested. AT&T and MCI had intended to use customer location data provided by Verizon to update the HAI model results contained in their direct testimony, which presumably would have altered the cost estimates produced by the model and may have altered the elements for which AT&T and MCI would propose cost estimates. The Commission established the November 18, 2003, filing date for supplemental direct testimony specifically to permit AT&T and MCI to provide the Commission and the parties with the results of that effort.

The Commission, however, has effectively precluded AT&T and MCI from using TNS to process the Verizon customer location data by requiring AT&T and MCI to produce proprietary processing data that they do not possess and that TNS refuses to provide. AT&T and MCI are

continuing to explore other means of obtaining customer location data that the Commission will find acceptable, but in the meantime, AT&T and MCI do not know and cannot determine the UNEs for which they will propose their own cost estimates, the cost estimates themselves, or how those estimates will be developed.

Verizon Fourth Set of Data Requests to AT&T

Verizon seeks to compel responses to all 43 of the requests comprising its fourth set of data requests to AT&T, but with few exceptions, Verizon does not even attempt to address individual data requests. Verizon's collective discussion is misleading at best, and largely mischaracterizes the information that Verizon has requested, as well as AT&T's responses to those requests.

Verizon first mischaracterizes its data requests by claiming that the information Verizon seeks "is the same type of information sought by Qwest and found to be relevant by ALJ Mace." Motion at 7. Only six of Verizon's 43 requests ask for the same type of outside plant construction data that Qwest requested and that Judge Mace found relevant. The remaining 37 requests ask for very different data, including AT&T vendor pricing, business plans, and customer counts, none of which has the Commission found relevant in this proceeding.

Verizon also erroneously contends that the information it requests has been compelled in other states. The Oregon Commission, for example, required production of information related to whether "non-incumbent carriers are experiencing lower costs because of more sufficient technology or lower cost network configurations." Motion at 8 (quoting oral ALJ ruling). Vendor pricing, business plans, and customer counts are not even arguably related to such an inquiry. Indeed, most of Verizon's data requests seek cost data that is comprised almost entirely of third party vendor equipment prices. Not

only is AT&T contractually obligated not to disclose such information, but a discrepancy in vendor prices reflects only relative bargaining power of the purchasers, not any greater efficiency or deployment of superior technology. Verizon cannot credibly claim that such information is necessary for its evaluation of the HAI Model, particularly when the equipment prices used in the model are derived from publicly available sources and thus are conservatively high.

Finally, Verizon misrepresents AT&T's concerns with respect to the effort that would be required to provide responsive information. Verizon requests "average" investments, "best available estimates" and other data that AT&T and other competitively classified companies have no reason to create in the course of their normal business operations. The alternative that Verizon is "willing to accept" is essentially all documents on AT&T's local operations in Washington, which in many cases would include each individual customer record over a period of several years. Production of such information is vastly overbroad and unduly burdensome and expensive, particularly in light of the lack of any evidentiary value.

Despite Verizon's representations to the contrary, the Commission cannot properly evaluate Verizon's fourth set of data requests as a whole but should consider each individual request within that set. In addition to Verizon's general arguments, therefore, AT&T individually addresses the 43 data requests in Verizon's fourth set of data requests below:

Request No. 4-1. Verizon requests information on the cost of capital that AT&T uses to evaluate "local exchange projects." Verizon does not define "local exchange projects," but AT&T does not construct its own local outside plant network. Rather, AT&T has obtained infeasible rights of use ("IRUs") to facilities placed by one or more other providers. AT&T's planning cost of capital

in Washington, therefore, is irrelevant.

Request Nos. 4-2 & 4-3. Verizon requests the “route-to-air ratio” of AT&T’s Washington and national interoffice transport network. AT&T’s interstate, interLATA, and interexchange long distance transport network is not even remotely related to the forward-looking costs of Verizon’s local transport UNE. Nor has Verizon made any attempt to explain why a calculation of the “route-to-air ratio” of AT&T’s local transport network would be related to that issue. Even if Verizon could demonstrate such a relationship, AT&T’s network information would be irrelevant. Because AT&T does not construct its own local outside plant network, AT&T has no reason to calculate “route-to-air” ratios in the course of its normal business operations in Washington, and any such calculation would have no meaning in this context. Accordingly, AT&T should not be required to create data in response to these Verizon’s data requests.

Request Nos. 4-4, 4-15 through 18, 4-20 through 4-23 & 4-25 through 4-27, and 4-39.

Verizon requests data on virtually every aspect of AT&T’s switching costs in Washington, as well as AT&T’s investment per service control point, DS-1 channel bank, signal transfer point, OC-48 add drop multiplexer, OC-48 optical generator, and optical distribution panel in Washington. As explained above, the vast majority of the requested information consists of prices that AT&T pays to its switch and equipment vendors, and such information is irrelevant when individualized vendor pricing reflects relative market power of the purchasing party, not that party’s efficiency or deployment of superior technology. That information is all the more useless to Verizon in light of the fact that the HAI Model uses switching costs that Verizon (as well as other ILECs) provided to the FCC.

AT&T, moreover, has contractual arrangements with its switch and other equipment vendors

not to disclose the prices AT&T pays, and production of the requested information would violate those agreements. Verizon contends that AT&T should obtain permission from its vendors to disclose this information, just as Verizon has done. Verizon, however, has affirmatively placed the prices it pays its vendors at issue in this proceeding, while AT&T has not. Indeed, AT&T has made every effort not to use vendor-proprietary data in order to keep the cost figures as open and verifiable as possible. Particularly given the lack of any value the information would have in this proceeding, AT&T should not be compelled to seek permission from its vendors to disclose proprietary pricing when AT&T has not placed that pricing at issue.

Request Nos. 4-5, 4-6 & 4-24. Verizon requests the average per square foot cost that AT&T incurs for building construction and the average price that AT&T has paid for land since passage of the Act. As discussed above, AT&T does not make such calculations in the course of its normal business operations, and that fact does not entitle Verizon to have access to all AT&T documents related to AT&T's building and real estate costs.

Request Nos. 4-7 through 4-10, 4-28 & 4-29. Verizon requests AT&T's manhole, pole, conduit, and fiber placement investment in Washington since 1996. While such requests are overbroad and request data that AT&T does not maintain in the normal course of its operations, AT&T responded to Verizon, as it responded to Qwest, that AT&T has no such investment in Washington. That response is more than sufficient.

Request Nos. 4-11, 4-12 & 4-40 through 4-42. Verizon requests copies of AT&T engineering guidelines for its local and long distance networks. Long distance network costs are not at issue in this proceeding, and AT&T has already responded to Verizon that AT&T engineers its local

network to meet or exceed Bellcore standards. Indeed, because AT&T's local outside plant consists of IRUs and has not been constructed by AT&T, any AT&T engineering guidelines are irrelevant. No further response is necessary or warranted.

Request No. 4-13. Verizon requests the number of local customers by class that AT&T has served in Verizon's service territory every year since 1996. This data is wholly unrelated to the issues in this proceeding, and Verizon does not even attempt to demonstrate otherwise. AT&T, moreover, does not track such information in the form Verizon has requested, and attempting to compile it would require an extensive and expensive search of AT&T customer records. Such efforts are unwarranted, particularly here, when the information has no value in this proceeding.

Request No. 4-14. Verizon requests any analysis AT&T has undertaken since 1996 to determine whether to enter the local market in Verizon's service territory in Washington. Such data is extremely sensitive and proprietary business information and bears no relationship to the issues in this proceeding. Verizon thus appears to be more interested in assessing the market entry strategy of a competitor than in obtaining data that would be useful in this proceeding.

Request Nos. 4-19. Verizon requests data on the fill factors AT&T uses in doing its network planning in Washington. As discussed above, AT&T does not construct its own local outside plant network, but has obtained IRUs to facilities placed by one or more other providers. Fill factors, therefore, are irrelevant.

Request No. 4-30. Verizon asks for the same information in this data request that it has requested in many of its other data requests. For the reasons that AT&T has explained in response to Verizon's other data requests, the Commission should refuse to compel AT&T to provide any further

response to this request.

Request Nos. 4-31 through 4-34. Verizon requests AT&T's plans for future deployment of new switch and loop technology and projections for use of UNE loops. These requests are wholly unrelated to the forward-looking costs that Verizon incurs to provide UNEs in Washington and are designed only to obtain the highly confidential business plans of a competitor.

Request No. 4-35. Verizon requests that AT&T define "DS-3 Entrance Facility Without Equipment," "Dedicated Transport," and "SS7 Links." These UNEs have been defined by the FCC and/or parties in their interconnection agreements, and this request is improper by seeking to require AT&T to provide those legal definitions. AT&T nevertheless responded that it has not developed any definition of these elements for use by its employees or consultants. Verizon, however, persists and claims that it this information "is essential to Verizon NW's understanding and analysis of AT&T/MCI's proposed cost model." Motion at 13, n.31. These requests make no reference to that model or to any testimony AT&T or MCI have filed in this case. Information about how the HAI Model estimates costs for these elements is an appropriate area for discovery, but Verizon has not requested any such information. The Commission should refuse to compel production of the information that Verizon has requested.

Request Nos. 4-36 & 4-37. Verizon requests the average length of AT&T's DS1 and DS3 loops on a wire-center basis. Such information is entirely irrelevant to the issue of Verizon's loop lengths or any other issue in this proceeding. AT&T, moreover, does not maintain such information, which would be virtually impossible to produce. AT&T's network consists of fiber optic rings with redundant routing, rather than the "hub-and-spoke" configurations in Verizon's network. A single

“loop” on AT&T’s network, therefore, may have multiple lengths, depending on how the signal is routed over the fiber rings. None of this information is of any value to Verizon or the Commission in this proceeding.

Request No. 4-38. Verizon requests all business cases or other internal studies in which AT&T has utilized an Expense to Investment methodology. Again, Verizon has not demonstrated any relationship between such studies and the HAI model or testimony that AT&T has sponsored in this proceeding. This request thus is simply another example of Verizon’s improper attempt to obtain the highly proprietary internal business case evaluations of a competitor.

Request No. 4-43. Verizon requests detailed maps of any and all distribution areas of AT&T’s local network in Washington. Such information bears no relationship to Verizon’s forward-looking costs to provide UNEs and represents only Verizon’s improper attempt to discover the size and precise location of a competitor’s network. AT&T, moreover, scrupulously protects this information as part of its heightened network security following the events of September 11, 2001 – as, presumably, does Verizon – making Verizon’s request all the more inappropriate and unwarranted.

CONCLUSION

AT&T and MCI will provide additional information in response to most of the data requests identified in the Motion that seek information concerning the HAI model and supporting testimony. The Commission, however, should refuse to compel AT&T to provide additional responses to the remaining Verizon data requests, including the requests in Verizon’s fourth set of data requests.

DATED this 5th day of November, 2003.

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