COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Proceeding by the Department of Telecommunications and Energy on its own Motion to Implement the Requirements of the Federal Communications Commission's Triennial Review Order Regarding Switching for Mass Market Customers	D.T.E. 03-60

AT&T's RESPONSE TO VERIZON'S OPPOSITION TO ITS MOTION TO COMPEL RESPONSES TO AT&T INFORMATION REQUESTS

AT&T Communications of New England, Inc. ("AT&T") files this response to the opposition of Verizon Massachusetts ("Verizon") to AT&T's motion to compel Verizon to respond to AT&T information requests ATT-VZ-131, -132, and -133. Contrary to Verizon's claims in its opposition, the information sought by these requests is relevant to the purposes of this proceeding. In the Triennial Review Order ("TRO"), the Federal Communication Commission (FCC) established directed state commissions "to approve and implement a batch cut migration process" that is "low-cost" as well as "seamless." *TRO*, ¶ 423.[1] The information requests to which Verizon to avoid responding seek information that bears directly on the costs of Verizon's hot cut processes.

[1] In the alternative, state commissions may "issue detailed findings that a batch cut process is unnecessary in a particular market because incumbent LEC hot cut processes do not give rise to impairment in that market." *TRO*, ¶ 423. Presumably, existing hot cut processes do not give rise to impairment if and only if they are already low-cost and seamless.

I. Information about Verizon's pension plan actuarial assumptions is relevant to the labor costs used in Verizon's proposed hot cut cost models.

In ATT-VZ-131, AT&T seeks information about credits and costs associated with Verizon's pension plan. Verizon objects to this information request on the grounds that (1) because Verizon's pension costs were not attached in past decisions where the reasonableness of labor rates were considered, parties cannot attack them here; and (2) in any event, the performance of Verizon's pension plan does not affect Verizon's incurred pension costs and therefore "has no bearing on the labor costs included in Verizon's hot cut cost study." *Verizon Opposition*, at 2. Both arguments are wrong.

Verizon's claim that the parties' failure to attack the reasonableness of its pension costs in D.T.E. 01-20 constitutes a waiver of their right to attack the reasonableness of such costs in this proceeding is a novel proposition, unsupported by any citation to any Department decision or ruling. Moreover, this is not a situation in which the Department has made an express finding as to the specific issue of whether Verizon's pension costs reflect a reasonable adjustment for pension plan performance. Rather, Verizon simply argues that the matter should not be considered here since it was not considered the last time that Verizon's labor rates were considered. The Department can easily reject such a claim by Verizon.

Verizon's second argument is that the performance of its pension plan does not affect its pension costs, because its pension costs are determined by its pension obligations. Verizon's argument ignores the entire body of knowledge relating to the funding of pension plans and is patently false. The costs of pension plan obligations is determined by the cost of funding those obligations. The cost of funding the obligations is a function of the investment performance of the assets in the plan: the greater the return, the less Verizon must contribute to the plan. Verizon

should be compelled to provide the information sought by ATT-VZ-131 so that AT&T and the Department can investigate whether Verizon's pension cost inputs should be reduced.

As AT&T observed in its motion to compel with regard to this information request, in response to information requests issued in New York Public Service Commission Docket No. 02-C-1425, Verizon did provide pension plan performance information that is essentially the same as the information sought by ATT-VZ-131. It is a simple matter for Verizon to produce the same documents here. Verizon can, and should, provide this information here.

II. Data comparing Verizon's wages, salaries and benefits to those of other companies is relevant and within the scope of this proceeding.

Verizon's argument that the information sought by ATT-VZ-132 and -133 is irrelevant and outside the scope of this proceeding is erroneous. ATT-VZ-132 and -133 seek information about the reasonableness of Verizon's compensation levels in comparison to the compensation levels of other companies. As such, this information goes directly to the reasonableness of costs that ultimately are passed on to CLECs requesting hot cuts from Verizon. These costs are relevant in light of the FCC's mandate that state commissions ensure that there is a "seamless, low-cost" procedure for hot cuts in place at the close of this proceeding.

Verizon essentially argues here that (1) the reasonableness of its labor rates are outside the scope of this proceeding; (2) if they are not outside the scope of this proceeding, we must use exactly the same type of information that we used in past cases (apparently, according to Verizon, Verizon's actual costs) to consider whether labor rates are TELRIC-compliant; and (3) determining whether Verizon's labor rates are reasonable for hot cut rate-setting purposes somehow constitutes "micromanaging" Verizon's business. Verizon cites to no Department decision to justify any of its arguments for good reason: the arguments are all wrong.

Verizon's claim that its labor rates are outside the scope of this proceeding makes no sense. Non-recurring charges are inherently comprised almost entirely of labor costs. In order to consider whether its proposed rates are TELRIC-compliant, it is necessary to consider whether the labor rates it pays reflect the rates that would be paid by a forward-looking firm without a legacy labor force and labor culture that developed in a monopoly environment. Indeed, Verizon's desire to rid itself of its accumulated "fat" from its monopoly history is precisely the reason that it has commissioned studies of wages and benefits paid by other firms. It is presumably seeking to bring its current, inflated rates into line with the market. In sum, the reasonableness of Verizon's labor rates are central to the determination of the TELRIC cost of a non-recurring charge, and Verizon's own attempts to determine the reasonableness of its rates are highly relevant to this issue.

Verizon's argument that information not considered in past proceedings for determining TELRIC-compliant labor rates may not be considered in this proceeding is wrong for the reasons stated above. Moreover, as a substantive matter, accepting Verizon's argument apparently would mean that the Department must accept Verizon's claimed actual costs, for anything else is an attempt to "second guess" Verizon's employee compensation. *Verizon Opposition* at 3. First, this argument appears to overlook the fact that this proceeding includes cost analysis components: the TRO requires an analysis of operational and economic barriers to competitive entry and requires implementation of a "low cost" hot cut process. *See TRO*, ¶¶ 423, 475. Second, in order to assess the reasonableness of the overall costs for hot cuts, one must be able to evaluate the validity and accuracy of the components of these costs. Third, the goal of cost analysis is to assess *reasonable* costs rather than the costs that Verizon incurs. Verizon cannot

expect the Department and CLECs to accept that costs are reasonable simply because Verizon incurs them; to do so would violate TELRIC principles.

In addition, under TELRIC principles the Department must consider the reasonableness of Verizon's costs not only from the perspective of a carrier that has previously negotiated labor contracts and rates in a monopoly environment, but also from the perspective of a new entrant that is not affected by the legacy of previously negotiated contracts. The studies requested by ATT-VZ-132 and -133 reveal how Verizon's wages, salaries and benefits compare to the wages and benefits of other firms bear greatly on the reasonableness of Verizon's costs. The Administrative Law Judge in New York recognized this essential truth and required Verizon to provide the information sought.

Finally, information sought in a discovery request is relevant if it is reasonably likely to lead to the discovery of admissible evidence. In opposing AT&T's motion to compel with respect to ATT- VZ-132 and -133, Verizon is arguing the weight of the evidence, not the basis for its alleged inadmissibility. For the reasons stated above, the information sought by ATT-VZ-132 and -133 is reasonably likely to lead to the discovery of admissible evidence. Thus, Verizon should be compelled to respond to ATT-VZ-132 and -133.

Conclusion

For the reasons stated above as well as those stated in AT&T's Motion to Compel, the Department should compel Verizon to respond fully to interrogatories ATT-VZ-131, -132 and -133.

Respectfully submitted,

AT&T COMMUNICATIONS OF NEW ENGLAND, INC.

By its attorneys,

Jeffrey F. Jones
Kenneth W. Salinger
Laurie Gill
Ruth Dowling
John Bennett
Michael Rabieh
PALMER & DODGE LLP
111 Huntington Avenue
Boston, MA 02199
617.239.0561
ksalinger@palmerdodge.com

Jay E. Gruber
Harry M. Davidow
AT&T Communications
of New England, In
99 Bedford Street, 4th Floo
Boston, MA 02111
617.574.3149
jegruber@lga.att.com

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