COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Proceeding by the Department 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

OPPOSITION OF VERIZON MASSACHUSETTS
TO MOTION OF AT&T TO COMPEL
RESPONSES TO INFORMATION REQUESTS

Verizon Massachusetts ("Verizon MA") opposes AT&T's motion to compel responses to certain information requests to which Verizon MA has objected. AT&T originally sought to compel responses to 13 information requests. Upon conferring, however, the parties have resolved their disagreements with respect to 10 of those requests, leaving only requests ATT-VZ-131, 132 and 133 at issue. By these requests, AT&T is fishing for the net gain or loss on Verizon's pension plan for 2002-2004 (ATT-VZ-131) and comparative information regarding the wages, salaries and benefits Verizon pays its employees (ATT-VZ-132 and 133). The Department should deny AT&T's motion because the information sought is not relevant to any issue in this proceeding and falls outside the scope of permissible discovery.

A. The annual "net gain or loss" of the Verizon pension plan does not reduce the pension benefit earned by Verizon's employees, and thus is not relevant to the labor cost factors used in Verizon MA's hot cut cost studies submitted in this matter.

ATT-VZ-131 seeks Verizon's pension plan actuarial assumptions for the years 2002-2004 and the actual or anticipated "net gain or loss" on the pension plan. AT&T

asserts that the benefit data Verizon used in developing its hot cut cost studies in this case do not recognize Verizon's so-called "pension credits" or "cost offsets," and that AT&T intends to use the data sought to "recalculate Verizon's labor costs…." Motion at 16.

AT&T's argument misunderstands the nature of Verizon's pension plan cost obligations. In a nutshell, the investment performance of the pension plan in a given year neither increases nor reduces the cost Verizon incurs in that year in the form of increased pension obligations. Verizon incurs an obligation to pay a pension benefit to an employee in partial exchange for the employee's labor in a given year. Verizon owes that obligation and incurs the cost of meeting that obligation whether the Verizon pension plan experiences a net gain or a net loss for the year, just as Verizon incurs the cost of paying the employee's salary whether or not the company makes a profit for the year.

Because the net performance of the Verizon pension plan does not affect the pension costs Verizon incurs, it has no bearing on the labor costs included in Verizon's hot cut cost study here. In other words, the "net gain or net loss" of the pension plan – whatever it might be – would not provide reason to "recalculate" the labor costs included in the hot cut study, and that data is therefore irrelevant to any issue in this proceeding.

Moreover, the labor rates used in Verizon's hot cut cost study filed in this proceeding were developed using the same methodology used in the cost studies which the Department recently accepted and relied on in establishing new hot cut rates and other UNE rates in D.T.E. 01-20. Neither AT&T nor any other party argued in that proceeding – or in any earlier TELRIC proceeding in Massachusetts – that the loading factor Verizon used to account for its pension plan obligations should be adjusted based on the

performance of the pension plan's investments. That performance simply has no bearing on Verizon's pension costs.

B. Data comparing Verizon's wages, salaries and benefits to those of other companies is not relevant to any issue in this proceeding and falls outside the scope of discovery.

ATT-VZ-132 and 133 seek any studies performed on behalf of Verizon or in its possession compare Verizon's wages, salaries and/or benefits to those of other companies. AT&T claims that this data "sheds light on the reasonableness of the cost models Verizon has proposed" in its Testimony. Motion at 17. Contrary to AT&T's claim, however, the reasonableness of Verizon's wages, salaries and benefits is not at issue in this proceeding. As noted above, the labor rates in the hot cut cost study submitted in this proceeding were developed in the same manner as those used in D.T.E. 01-20. No party has questioned the reasonableness of Verizon's wages and employee benefits in that docket or any earlier TELRIC case in Massachusetts. Nor has the Department ever considered the reasonableness of Verizon's employee compensation levels to be a relevant issue to investigate in setting TELRIC rates. That issue may have been relevant under a rate-of-return regulatory regime, but that era is long gone in Massachusetts.

Furthermore, AT&T's attempt to second-guess the reasonableness of Verizon's employee compensation is an exercise in pure speculation, in which the sheer multitude of factors makes it impossible to render a finding, one way or the other, based on rational inferences from evidence in the record. Though AT&T seeks data comparing Verizon's employee compensation with that of other companies, that is only one of many ways to assess the reasonableness of Verizon's labor costs. Any such comparison would have to

be adjusted to account for, among other things: (1) the relative skill, experience and education of Verizon's employees; (2) the geographic location of those workers; (3) the bargaining abilities and positions of Verizon's unions; (4) Verizon's leadership role in the telecommunications industry; (5) the judgment of Verizon's management and employees as to what constitutes fair compensation for services rendered; (6) how each of those factors apply to the companies against whom Verizon is being compared, and (7) how all these factors should be applied in a forward-looking context. The Department should decline to enter this thicket, so rife with speculation.

Finally, the Department has long shied away from micro-managing Verizon's business. Certainly, nothing in the Telecom Act or in the FCC's TELRIC orders even remotely authorizes the Department to do so, but that is precisely what it would be doing if it allows AT&T to turn this proceeding into a review of Verizon's managerial decisions on such fundamental issues as how to compensate its employees, whether a particular collective bargaining agreement should be entered into, the appropriate level of compensation for managerial employees, the package of benefits that best addresses the needs of its employees, and so on.[1]

[1] That an administrative law judge in New York required Verizon to respond to similar requests by AT&T for comparative wage and benefit studies is not persuasive. With all due respect, the New York decision is in error, for the reasons stated above.

CONCLUSION

For these reasons, the information which AT&T seeks by way of ATT-VZ-131, 132 and 133 is neither relevant to any legitimate issue in this proceeding nor likely to lead to the discovery of admissible evidence, and the motion to compel should be denied.

Respectfully submitted,

VERIZON MASSACHUSETTS

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