

D.T.E. 01-20

August 31,
2001

Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts' Resale Services in the Commonwealth of Massachusetts.

INTERLOCUTORY ORDER ON VERIZON'S APPEAL OF
HEARING OFFICER'S AUGUST 8, 2001 RULING
ON MOTIONS TO COMPEL

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INTERLOCUTORY ORDER ON VERIZON'S APPEAL
OF HEARING OFFICER'S AUGUST 8, 2001 RULING
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I. INTRODUCTION

On May 8, 2001, Verizon New England, Inc. d/b/a Verizon Massachusetts ("Verizon") and AT&T Communications of New England, Inc. ("AT&T") submitted to the Department of Telecommunications and Energy ("Department") their direct cases in Part A of D.T.E. 01-20. Verizon's and AT&T's direct cases include their Total Element Long Run Incremental Cost ("TELRIC")-based cost models, inputs, pre-filed direct testimony, supporting documentation, and proposed rates addressing unbundled network elements ("UNEs") and other wholesale services. An open discovery period was held from May 8 through August 8, 2001, and technical sessions were held June 4 and 5, 2001. Parties filed rebuttal testimony with the Department on July 18, 2001.

On July 5, 2001, Verizon filed a Motion to Compel Discovery with regard to AT&T's responses to 63 of Verizon's Information Requests ("Motion to Compel"). On July 12, 2001, AT&T filed with the Department an Opposition to Verizon's Motion to Compel. The Hearing Officer ruled on Verizon's motion on August 8, 2001, granting it in part and denying it in part ("August 8 Ruling"). On August 13, 2001, Verizon appealed the Hearing Officer's August 8 Ruling¹ to the Commission ("Appeal") and filed a Motion to Extend Procedural Schedule.² In

¹ The portion of the August 8 Ruling pertaining to the Motion to Compel filed by Allegiance Telecom of Massachusetts, Inc., Covad Communications Company, El Paso Networks, LLC, and Network Plus, Inc. (collectively, "CLEC Coalition") is not at issue in the Appeal.

the Appeal, Verizon requests that the Department reverse the portions of the August 8 Ruling that denied Verizon's motion to compel discovery responses pertaining to AT&T's network and information AT&T claims is intellectual property of other companies. Alternatively, Verizon requests that, if AT&T is not required to provide these responses, the Department should strike portions of AT&T's pre-filed testimony relating to the HAI 5.2a-MA Model.

On August 17, 2001, AT&T filed its Opposition to Verizon's Appeal and Motion to Strike the HAI 5.2a-MA Model and its Cross-Motion to Strike Verizon's recurring cost model ("Opposition"). Verizon responded to AT&T's Opposition and Cross-Motion on August 24, 2001 ("Response").

II. VERIZON APPEAL

A. Information Requests at Issue on Appeal

The Information Requests and Responses that are the subject of the Appeal are attached in Appendix A to this Order. Verizon appeals the Hearing Officer's denial of Verizon's Motion to Compel production of information in two categories: (1) information relating to costs and operational experience of AT&T's network, requested in VZ-ATT 1-38, 1-39, 1-70 through 1-79, 1-114 through 1-128, 1-131, 1-135, 2-1, 2-15 and 2-91; and (2) information that AT&T claims is intellectual property of an outside vendor that AT&T does not have and is not authorized to provide, requested in VZ-ATT 1-20, 1-21, 1-23, 1-25, 1-26, 1-82, 1-83 and 2-62 (Appeal at 4).

² In the Motion to Extend, Verizon requested that the Department extend the procedural schedule in this proceeding so that the filing date of Surrebuttal be set for two weeks after final discovery responses are received.

In the first category, Verizon requested information on engineering guidelines for AT&T's local loop or outside plant network and its long distance network; installation of AT&T's most recent digital switch, digital tandem switch, signal transfer point, signal control point, and most recently constructed power plants; investments; depreciation of plant and equipment; and values used by AT&T in planning its network. AT&T objected that information on its own network and operational experience are not relevant to the issues in this proceeding.

In the second category, AT&T indicated that it could not provide the following intellectual property requested by Verizon: copyrighted information on addresses obtained through the Metromail, Inc., National Consumer database; documents containing copyrighted Dun & Bradstreet data related to the business adjustment referenced in the HAI Model Description; and intellectual property of PNR Associates, Inc. (now TNS Telecoms), including the geocoded data set for Massachusetts used to produce clusters in HAI 5.2a; documents, software and inputs related to the PNR clustering algorithm; and information on how HAI 5.2a locates customers not identified through the geocoding process. Also, AT&T indicated that the response to VZ-ATT 2-62, regarding the percentage of end office switches in HAI 5.2a with tandem functionality, involved copyrighted Bellcore (now Telcordia) Local Exchange Routing Guide (LERG) data. AT&T responded to all of these requests by stating that the information is commercially available.

B. Positions of the Parties

1. Verizon

Verizon states that the Information Request responses that it sought from AT&T in its Motion to Compel, and that it continues to seek in its Appeal, are necessary to enable Verizon to analyze the HAI 5.2a-MA Model and “evaluate the propriety of its platform methodologies, input values, and the accuracy of the cost estimates it produces” (Appeal at 2). Furthermore, Verizon had anticipated that the information sought would form the basis of its Rebuttal Testimony (id.). Verizon argues that, because the information requested meets the Department’s discovery standards, and is not only relevant to the proceeding, but in fact critical to Verizon’s ability to rebut AT&T’s case, the Department should compel AT&T to provide full responses to all of the Information Requests at issue in the Appeal (id.). Alternatively, Verizon argues, because the failure of AT&T to produce the information would require a finding that AT&T had not met its evidentiary burden to support HAI 5.2a-MA, the Department should strike AT&T’s testimony regarding that model “to save all parties and the Department the expenditure of resources needed to address a model that cannot be supported by the record” (Appeal at 7 n.6).

Verizon asserts that the Hearing Officer erred in finding that the information relating to costs and operational experience of AT&T’s network is not crucial to Verizon’s evaluation of AT&T’s Model, and erred in refusing to order AT&T to produce the information that AT&T claims is the intellectual property of an outside vendor (id. at 4, 6). Verizon argues that the Hearing Officer’s ruling regarding information on AT&T’s network is based on an erroneous finding and erroneous standard of review (id. at 4).³ Verizon argues that information

³ The Hearing Officer found that the information on AT&T’s network would not serve as

demonstrating that the operations, practices, and costs of AT&T are inconsistent with the inputs, assumptions, and cost outputs of the HAI 5.2a-MA Model could undermine the credibility of that model and thus support Verizon's position that the costs computed by HAI 5.2a-MA do not represent a realistic depiction of the costs that would be incurred by a forward-looking network (Appeal at 4-5). Verizon asserts that if expert opinions and engineering principles AT&T obtained over the past five years and incorporated into the HAI Model are truly forward-looking, then it would be reasonable for AT&T to follow these same principles, and therefore AT&T's costs, operations, and practices are relevant to this proceeding (Response at 4). Verizon further states that it should be permitted to verify the accuracy of the HAI 5.2a-MA Model's inputs against AT&T's actual practices, because the inputs are allegedly derived from AT&T's own general industry experience, and because AT&T never validated the model through use of external data (Response at 4, citing Direct Testimony of Robert A. Mercer, Exh. RAM-3, at 85, 90-91, 105, 110-115, 117, 135 and 170; and Response to VZ-ATT 1-33 (May 29, 2001)).

Verizon argues that the only appropriate inquiry under the Department's standard for discovery is whether the information it seeks is relevant to this proceeding (Appeal at 5). While Verizon maintains its position that the information on AT&T's network is in fact "crucial," Verizon argues that the network information is discoverable in any case because it meets the

a useful benchmark for evaluation of the HAI 5.2a-MA Model (August 8 Ruling at 10-11).

definition of relevance⁴ (id. at 5-6).

With regard to the second category of information, customer location data that AT&T did not produce because it claimed that it was intellectual property of others, Verizon states that the relevance of the information was acknowledged by the Hearing Officer, who cited AT&T's burden to ensure that the HAI 5.2a-MA Model is sufficiently available for public review and recognized the importance of Verizon being able to evaluate the data underlying that model (Appeal at 5-6, citing August 8 Ruling at 12). Having properly determined that the data was relevant, Verizon argues, the Hearing Officer should have either ordered AT&T to produce the data or, alternatively, stricken the HAI 5.2a-MA Model and related testimony (Response at 5).

In response to AT&T's arguments in its Opposition that AT&T has offered to facilitate access to customer location and geocoding data compiled by PNR (now TNS) and that AT&T's proposed means of access was the same as that deemed adequate by the Federal Communications Commission ("FCC") in the FCC's Report and Order selecting input values for its universal service synthesis cost model ("Inputs Order"),⁵ Verizon states that the offered access is meaningless, because no party has ever been able to validate the accuracy of PNR customer location data (Response at 6). Further, Verizon asserts, the procedures approved by

⁴ Verizon states that the information is likely to prove or disprove the reasonableness and validity of AT&T's claims and thus "will 'tend[] to prove or disprove an alleged fact'" (Response at 5; Appeal at 6, citing Black's Law Dictionary, Abridged Sixth Edition, at 894).

⁵ See Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High Cost Support for Non-Rural LECs, CC Docket Nos. 96-45 and 97-160, Tenth Report and Order, FCC 99-304 (rel. November 2, 1999) ("Inputs Order").

the FCC in the context of universal service are not adequate or appropriate for a state-specific UNE rate proceeding (id. at 9).

First, Verizon asserts, the record in this proceeding is devoid of any offer by AT&T to help Verizon review the PNR data, as AT&T made no such offer prior to AT&T's July 12, 2001, Opposition to Verizon's Motion to Compel (id. at 6-7). Verizon states that AT&T's vague references to its "offer" do not explain the exact manner in which Verizon can obtain the information or the cost of access (id. at 7). Moreover, Verizon states that, for proceedings in other states, it has availed itself of previous AT&T offers for Verizon representatives to review the PNR customer location database on-site at PNR's facilities, but PNR has limited review of the data and imposed restrictions on what Verizon is allowed to take away, so that the efforts were not worthwhile (id. at 7-8, 10). Verizon asserts that, because "PNR has repeatedly and consistently refused to make the essential data and methodologies by which the customer locations are produced available[,] . . . neither AT&T, Verizon, the FCC, nor any state public service commission has ever been able to validate the accuracy of the PNR customer location data" (id. at 8).

Furthermore, while AT&T argues that it is offering Verizon access to the PNR data in the same manner that the FCC deemed adequate in the FCC universal service Inputs Order, Verizon states that it is inappropriate to draw an analogy between the federal universal service proceeding and a state-specific UNE proceeding designed to determine the actual cost of providing service (Response at 9). The purpose of FCC's universal service model was to

determine the relative cost differences among the states, not to determine rates for particular elements or actual costs of providing service within a state, Verizon asserts (id.).

In sum, Verizon argues that because AT&T represents that the HAI 5.2a-MA Model accurately locates customers throughout the network and produces a realistic estimate of the actual costs of providing services, it is critical that the parties in this proceeding have the opportunity to “review and analyze the accuracy of the underlying customer location data and the method by which it is compiled and derived” (id. at 10). Verizon maintains that any site visit or arranged remote access would not provide meaningful opportunity for review due to restrictions on the data, and therefore requests that the Department either order AT&T to produce the data or strike the AT&T HAI 5.2a-MA Model and associated pre-filed testimony (Response at 10-11).

2. AT&T

AT&T responds to Verizon’s Appeal by arguing that the Hearing Officer properly denied Verizon’s Motion to Compel responses to the information requests at issue. First, AT&T maintains that the information about AT&T’s network is not relevant to this proceeding (Opposition at 1). AT&T also asserts that it has provided adequate access to geocoding data underlying the HAI 5.2a-MA Model, consistent with procedures endorsed by the FCC (id. at 5). Furthermore, AT&T argues that Verizon has withheld analogous data, and, should the Department grant Verizon’s Motion to Strike, the same reasoning would require the Department to strike Verizon’s recurring cost models (id. at 1, 5, 17-18).

AT&T cites the FCC’s statement that “the forward-looking cost of constructing a plant

should reflect costs that an efficient carrier would incur,” not the costs of embedded plant, and states that, because AT&T does not have a forward-looking local services network in place, information about its equipment purchases and investment in and capacity of its long distance network is not relevant to the issues in this case or to Verizon’s evaluation of the HAI 5.2a-MA Model (id. at 2, citing Inputs Order at ¶ 90). Further, AT&T states, the Department may protect parties against the undue burden of responding to discovery requests that seek irrelevant or marginally relevant information (id. at 3).

Regarding the proprietary customer location data, AT&T states that the Hearing Officer properly ruled that AT&T need not turn over intellectual property of other companies, but must facilitate arrangements for Verizon to obtain the data (id. at 5). AT&T notes that in response to Verizon’s Motion to Compel, AT&T reiterated a “long-standing offer” to help Verizon access data compiled by PNR (now TNS),⁶ consistent with the manner in which access to this information has been provided around the country, including in the FCC’s universal service docket (Opposition at 5). AT&T states that Verizon never contacted AT&T to request access (id.).

AT&T states that the HAI 5.2a-MA Model CD-ROM, which it filed with its May 8, 2001, direct testimony, contains detailed electronic data for customer clusters in Massachusetts and that the actual geocoded location is known for 87.5 percent of all customer locations (id. at 6-7). AT&T further explains that TNS estimates the remaining percentage of customer

⁶ The PNR data includes geocoding data obtained by PNR from Metromail, Inc. and Dun & Bradstreet (Opposition at 5). See Information Requests VZ-ATT 1-21, 1-23, 1-25, 1-26, 1-82 and 1-83.

locations by the same road surrogate method adopted by the FCC, and uses a proprietary National Access Line Model (“NALM”) to estimate the number of residential and business locations and the number of access lines demanded at each location (id. at 7). AT&T asserts that the cluster database “refined” by TNS and filed in this proceeding provides sufficient information for Verizon to plot the location and density of customers assumed in HAI 5.2a-MA (id. at 8).

AT&T further asserts that, while it could not file the actual demographic data that is TNS intellectual property, it has offered to assist Verizon or any other party in obtaining electronic access to the data (id.). While the proprietary data cannot be taken away, it can be viewed, analyzed and manipulated, according to AT&T (id. at 8, 9). AT&T maintains that in all other states where the issue of access to this geocoding data has arisen, parties wishing to view the data have had to make arrangements through PNR (id. at 8).⁷

Moreover, AT&T asserts, this manner of access to the data was deemed appropriate by the FCC in its development of a forward-looking cost model for universal service fund purposes (Opposition at 10). According to AT&T, the customer location information that is the subject of Verizon’s appeal is the same customer location information used by the FCC to run the model it adopted in the universal service proceeding, and none of the information was ever placed on the public record in that proceeding (id. at 11). Instead, parties were given the opportunity to review the data at PNR, AT&T states (id., citing Inputs Order at ¶¶ 55, 60).

⁷ AT&T states that it made arrangements for Verizon representatives to access the data for UNE rate proceedings in Maine and New Hampshire and that Verizon did not respond to a similar offer in New York (Opposition at 8-9).

AT&T asserts that, in providing a description of the NALM in the HAI Model documentation, filing the output of the NALM for Massachusetts, and offering to help any party review the NALM and underlying data through TNS, it has provided what the FCC deemed to be reasonable access to review and analyze the customer location data and calculations used as inputs to the HAI Model (Opposition at 11-12; Inputs Order at & 55).

Finally, AT&T includes a Cross-Motion to Strike Verizon's recurring cost model. While maintaining that Verizon's Motion to Strike the HAI 5.2a-MA Model is without merit, AT&T argues that, alternatively, if the grounds Verizon asserts for striking AT&T's HAI Model were accepted, Verizon's recurring cost model should also be stricken because Verizon has failed to provide full information regarding its own model inputs (id. at 17). Specifically, AT&T asserts that Verizon has failed to make available information on which its loop cost model is based, as well as data underlying the Engineer, Furnish & Install ("EF&I") and power factors (id. at 13-17).

III. ANALYSIS AND FINDINGS

A. Verizon Appeal

1. Information Requests Involving AT&T's Network

With respect to discovery, the Department's regulations provide:

The purpose for discovery is to facilitate the hearing process by permitting the parties and the Department to gain access to all relevant information in an efficient and timely manner. Discovery is intended to reduce hearing time, narrow the scope of the issues, protect the rights of the parties, and ensure that a complete and accurate record is compiled. 220 C.M.R. § 1.06(6)(c)1.

Hearing officers have discretion in establishing discovery procedures and are guided,

but not bound, in this regard by the principles and procedures underlying the Massachusetts

Rules of Civil Procedure, Rule 26 et seq. 220 C.M.R. § 1.06(6)(c)2. Rule 26 provides that:

Parties may obtain discovery regarding any matter, not privileged, relevant to the subject matter involved in the pending action.... It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Mass. R. Civ. P. 26(b).

Verizon is correct in its assertion that the appropriate standard under which to consider its Motion to Compel discovery responses is whether the information requested is relevant or likely to lead to the discovery of admissible evidence. Although AT&T contests the relevance of the information about its own network, Verizon asserts that if it can demonstrate that operations, practices, and costs of AT&T's network are inconsistent with HAI 5.2a-MA, it can thus undermine the credibility of the HAI Model and support Verizon's position that the costs computed by HAI 5.2a-MA do not represent a realistic depiction of the costs that would be incurred by a forward-looking network (Appeal at 5-6). Verizon states that it should be allowed to verify the accuracy of HAI 5.2a-MA Model inputs "derived from AT&T's general industry experience" in comparison to AT&T's actual practices (Response at 4).

Without addressing the merits of the position Verizon may intend to take, we find that Verizon should have the opportunity to develop its position. Contrary to the standard applied in the Hearing Officer's Ruling, whether information is "crucial" to developing a party's case is not the appropriate discovery standard. The information Verizon requested about AT&T's network is relevant, under the Department's broad discovery standard, to Verizon's ability to

present its argument in the course of this investigation and it could lead to the discovery of admissible evidence. Therefore, we grant Verizon's Appeal with respect to information requests VZ-ATT 1-38, 1-39, 1-70 through 1-79, 1-114 through 1-128, 1-131, 1-135, 2-1, 2-15 and 2-91.

2. Information Requests Involving Intellectual Property

The parties do not dispute, and the Hearing Officer acknowledged in the August 8 Ruling, that the PNR customer location data is relevant to analysis of the HAI 5.2a-MA Model (August 8 Ruling at 12). As the Hearing Officer noted, the FCC stated that the model it was adopting in the universal service proceeding had to comply with the requirement that "the model and all underlying data, formulae, computations and software associated with the model must be available to all interested parties for review and comment"⁸ (August 8 Ruling at 12). The FCC specifically sought a source of geocode data, explaining in the universal service Inputs Order that "the determination of customer locations relative to the wire center heavily influences a forward-looking cost model's design of outside plant facilities."⁹ Customer location is an essential component of a cost model, and thus the customer locating data and method utilized by the HAI 5.2a-MA Model is highly relevant in this proceeding. Therefore, the issue is not whether AT&T should be required to produce the relevant information, but whether the information that it has provided or its offer to make certain information available satisfies the requirement that the relevant information be produced. We find that AT&T has not satisfied its

⁸ Inputs Order at ¶ 38.

⁹ Id. at ¶ 33.

burden.

The FCC affirmed in the Inputs Order that a model is most likely to produce the least-cost, most efficient outside plant design if it uses actual geocode data (precise latitude and longitude) for locating customers.¹⁰ However, the FCC found that no source of verifiable actual geocode data had yet been made adequately available for public review.¹¹ The FCC deemed the only actual geocode data offered in the proceeding, that of PNR, to be insufficiently available for public review because of the conditions and expense imposed by PNR in obtaining access to the geocode point data, which was available only on-site at PNR's facilities, and relied on third-party data that PNR was not permitted to disclose.¹² In the absence of actual geocode customer locations, the FCC concluded that PNR's road surrogate algorithm should be used to develop geocode customer locations.¹³

The FCC went on in the Inputs Order to select the PNR NALM as a method for estimating the number of customer locations within the geographic region to be used in developing customer location counts, the demand for service at each customer location, and

¹⁰ Id. at ¶ 37.

¹¹ Id. at ¶¶ 35-36, 39.

¹² Id. at ¶ 38.

¹³ Id. at ¶¶ 40-47. The road surrogate algorithm utilizes the Census Bureau's Topologically Integrated Geographic Encoding and Referencing ("TIGER") files. Id. at ¶ 43.

how customer locations should be allocated to each wire center.¹⁴ PNR made the NALM process available for review through on-site examination. The FCC found that because the NALM is a multi-step process, there was no practical alternative to on-site review, and that because NALM is a commercially licensed product, it was not unreasonable for PNR to place restriction on its distribution to the public.¹⁵ The FCC stated that parties had been given reasonable opportunity to review the NALM, because, in addition to on-site review, the sponsors of the HAI Model version provided a complete description of the NALM in the HAI Model documentation, and PNR filed with the FCC a complete output of the NALM process.¹⁶

AT&T has proposed the HAI 5.2a-MA Model for determining UNE rates in Massachusetts, and it is AT&T's responsibility to support its case and ensure that the underlying data and assumptions of the model are available for review (Verizon Motion to Compel at 14; August 8 Ruling at 12). AT&T contends that because it has offered to make the NALM available for review in a similar manner to that offered in the FCC universal service proceeding, it has provided the underlying customer location data according to the procedures deemed adequate by the FCC (Opposition at 10-12). However, the access procedures the FCC deemed appropriate in the federal universal service proceeding are not necessarily adequate in the context of a state-specific UNE rate proceeding. The federal universal service proceeding considered comparative cost differences of the states rather than actual costs of providing

¹⁴ Id. at ¶¶ 48-62.

¹⁵ Id. at ¶¶ 55, 60.

¹⁶ Id.

service, and the FCC stated that because it used nationwide, rather than company-specific, input values for its universal service cost model, the same approach may not be appropriate for other purposes, “such as determining prices for unbundled network elements.”¹⁷

AT&T asserts that HAI 5.2a-MA specifically and accurately locates customers and that the clustering algorithm ensures that identified customer locations are served by an economically efficient quantity of outside plant (Direct Testimony of Robert A. Mercer at 38-39). This clustering process was performed by PNR, and it is the resulting database of “cluster type and shape information, as well as other data about each cluster” that becomes the demographic input data for the HAI 5.2a-MA Model (Id. at 41; HAI Model Description at 33; Opposition at 8). Because the customer clusters are “pre-processed” by PNR, there is no way to validate the data, software, and methodologies PNR used to create the customer location database (Response at 8; Rebuttal Testimony of Timothy A. Tardiff at 48, 51-56). If AT&T is to support its claims that the HAI 5.2a-MA Model accurately locates customers and produces a realistic estimate of actual costs of providing service to those customers, it must, as the FCC noted, make the model and its underlying data available to all interested parties for review and comment. AT&T therefore must provide parties with a meaningful opportunity to review and analyze the PNR customer location data and the method by which it is compiled and derived. This includes not only the NALM process, but also the actual and road surrogate geocode data

¹⁷ Id. at ¶¶ 30-32.

and the manner in which these are used in the process of producing customer clusters. While the FCC found that on-site review of the NALM was appropriate for purposes of its universal service proceeding, it rejected PNR's geocode point data as insufficiently available for public review because of the conditions and expense of obtaining access to the data on-site at PNR's facilities.

AT&T maintains that, since its May 8 filing, it has been prepared to provide access to the customer location data by assisting Verizon or any other party in obtaining electronic access through TNS (Opposition at 5, 9, 12-13). However, although AT&T referenced a "long-standing" offer to which Verizon did not respond (id. at 5), AT&T cannot, by contemporaneous documentation, substantiate its offer to help, because, as far as the record shows, it was mentioned for the first time in AT&T's July 12, 2001 Opposition to Verizon's Motion to Compel (Response at 6, citing Opposition to Motion to Compel at 13). Verizon further insists that its past experience with such offers demonstrates that any remote electronic access or on-site review of the PNR customer location data provided through TNS would be inadequate for purposes of analysis and validation of the data, because PNR has consistently refused to make available the essential data and methodologies by which the customer locations are produced (Response at 8, 10).

The Department finds AT&T's offer to provide access to the data to be vague and lacking sufficient explanation of the information to be provided, the manner in which it will be provided, and any cost associated with access. Further, regardless of the procedures for access to the NALM allowed by the FCC, we find that any method of on-site or remote electronic

access proposed by AT&T in this proceeding is insufficient to afford parties in this proceeding a meaningful opportunity to review and analyze the PNR customer location data. The Department is conducting an evidentiary proceeding to evaluate Verizon and AT&T's proposed cost models for determining UNE rates. To render a decision, the Department requires relevant information to be spread upon the record. The FCC, on the other hand, does not conduct evidentiary hearings or mark exhibits as evidence in its proceedings; therefore what the FCC deemed to be adequate access to data in its federal proceeding does not necessarily meet standards for production of evidence for the record in this state proceeding. In the conduct of an adjudicatory proceeding, the Department "shall follow the rules of evidence where practicable . . . There shall be excluded such evidence . . . as is not the kind on which reasonable persons are accustomed to rely in the conduct of serious affairs." 220 C.M.R. § 1.10 (1). In addition, "a party may file a motion for the production or view of any object which relates to the subject matter of any proceeding." 220 C.M.R. § 1.10(9). See also G.L. c. 30A § 11(2),(4),(6).

The Department's standard Ground Rules, issued at the commencement of this docket, require that the proponent of an exhibit offer the Department bench copies during hearings, and state that nonconforming documents will not be marked.¹⁸ As determined above, customer

¹⁸ The Ground Rules state: "The proponent of an exhibit must offer the Department three bench copies of the proposed exhibit (standard three-hole punch). Nonconforming documents will not be marked. . . . Before the close of hearings, each party that offers exhibits shall submit a listing for those exhibits that presents (1) the exhibit number, (2) the date marked and (3) a description of the exhibit." D.T.E. 01-20, Hearing Officer Memorandum re: Procedural Conference and Procedural Schedule; Service List; and Ground Rules at 5 (February 9, 2001).

location data is relevant to this investigation and likely to lead to discoverable evidence, either in support of AT&T's HAI 5.2a-MA Model, or in Verizon's rebuttal of the merits of that model. Data that AT&T admits can be "viewed but not taken away" (Opposition at 9) cannot be marked for identification and introduced into the record of the Department's evidentiary proceeding.

AT&T must therefore produce the requested information in full, and if such information is proprietary or intellectual property, AT&T must make arrangements with its vendors to provide the information. The Department grants Verizon's Appeal with regard to Information Requests VZ-ATT 1-20,¹⁹ 1-21, 1-23, 1-25, 1-26, 1-82, 1-83 and 2-62.

B. AT&T Cross-Motion

AT&T asserts that if the Department accepts Verizon's arguments in support of Verizon's Motion to Strike the HAI 5.2a-MA Model, the Department should, by the same logic, strike Verizon's recurring cost model on the same ground. First, because we have granted Verizon's Appeal of the Hearing Officer's August 8 Ruling on Verizon's Motion to Compel, the Department does not now rule on Verizon's Motion to Strike.

Further, AT&T's Cross-Motion, raised in its Opposition to Verizon's Appeal, is

¹⁹ The Hearing Officer denied Verizon's Motion to Compel VZ-ATT 1-20 because AT&T did not object that the response involved copyrighted information, and responded to the question. VZ-ATT 1-20 requests: "State exactly what portions of HAI 5.2a's customer location database have been pre-processed and what portions are developed through running the model itself." AT&T's Response: "The customer location database is produced by PNR." AT&T provided a response, but did not respond as fully as it could have. AT&T is directed to supplement its answer to this question with a detailed response.

procedurally inappropriate in the context of the Appeal. AT&T bases its Cross-Motion on its assertion that Verizon has failed to respond to Information Requests regarding certain inputs to Verizon's cost model. However, AT&T never filed a motion to compel responses to these Information Requests, nor did it make a cross-motion to strike Verizon's cost model in response to Verizon's Motion to Compel, which included its initial Motion to Strike AT&T's HAI5.2a-MA Model and related testimony. AT&T may not now raise the issue of Verizon's discovery responses on appeal of a hearing officer ruling on a motion to compel that involved AT&T's responses to Verizon. AT&T's Cross-Motion to Strike is denied.

IV. ORDER

Accordingly, after review and consideration, it is

ORDERED: That the Appeal by Verizon of the Hearing Officer's August 8, 2001 Ruling is hereby GRANTED; and it is

FURTHER ORDERED: That AT&T produce responsive answers to Verizon's discovery requests VZ-ATT 1-38, 1-39, 1-70 through 1-79, 1-114 through 1-128, 1-131, 1-135, 2-1, 2-15 and 2-91; and 1-20, 1-21, 1-23, 1-25, 1-26, 1-82, 1-83 and 2-62 by September 7, 2001; and it is

FURTHER ORDERED: That AT&T's Cross-Motion to Strike Verizon's recurring cost model is DENIED; and it is

FURTHER ORDERED: That all parties comply with all other directives contained herein.

By Order of the Department,

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

Appendix A

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY
D.T.E. 01-20

**Information Requests Subject of Verizon's Appeal of August 8, 2001 Hearing Officer
Ruling on Motions to Compel Discovery Responses**

I. Information Requests Related to AT&T's Network

REQUESTS: Verizon Massachusetts Information Requests to AT&T Communications of New England, Inc.

DATE: May 29, 2001

VZ-ATT 1-38: Provide the most current AT&T engineering guidelines (electronic and hard copy) and any other documents used by AT&T personnel to engineer AT&T's local loop and/or outside plant network.

Respondent: R. Mercer

RESPONSE: AT&T objects to this information request on the grounds that it is overbroad, unduly burdensome, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. This case involves Verizon-MA's forward-looking economic costs to provide UNEs. AT&T's own operational experience to date is not relevant to that issue.

VZ-ATT 1-39: Provide the most current AT&T engineering guidelines (electronic and hard copy) and any other documents used by AT&T personnel to engineer AT&T's long distance network.

Respondent: R. Mercer

RESPONSE: See objection in response to VZ-ATT 1-38.

VZ-ATT 1-70: Provide all documents concerning, referring or relating to the engineering, furnishing, and installation of AT&T's most recent digital switch.

Respondent: R. Mercer

RESPONSE: AT&T objects to this information request on the grounds that it is overbroad, unduly burdensome, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. This case involves Verizon-MA's forward-looking economic costs to provide UNEs. AT&T's own operational experience to date is not relevant to that issue.

VZ-ATT 1-71: Identify any and all expenses concerning, referring or relating to the installation of AT&T's most recent digital switch, including riggers, transportation, and heavy equipment as well as all installation labor costs. Provide the total cost information and the number of lines and the number of trunks the switch was initially equipped for and identify how many of those lines and how many of those trunks were actually placed in service at the time the switch was initially placed in service.

Respondent: R. Mercer

RESPONSE: See objection in response to VZ-ATT 1-70.

VZ-ATT 1-72: Provide all documents concerning, referring or relating to the engineering, furnishing, and installation of AT&T's most recent digital tandem switch.

Respondent: R. Mercer

RESPONSE: See objection in response to VZ-ATT 1-70.

VZ-ATT 1-73: Identify any and all expenses concerning, referring or relating to the installation of AT&T's most recent tandem switch, including riggers, transportation, and heavy equipment as well as all installation labor costs. Provide the total cost information on and the number of lines and the number of trunks the switch was initially equipped for and identify how many of those lines and how many of those trunks were actually placed in service at the time the switch was initially placed in service.

RESPONSE: Respondent: R. Mercer
See objection in response to VZ-ATT 1-70.

VZ-ATT 1-74: Provide all documents concerning, referring or relating to the engineering, furnishing, and installation of AT&T's most recent Signal Transfer Point ("STP").

Respondent: R. Mercer

RESPONSE: See objection in response to VZ-ATT 1-70.

VZ-ATT 1-75: Identify any and all expenses concerning, referring or relating to the installation of AT&T's most recent STP, including riggers, transportation, and heavy equipment as well as all installation labor costs.

Respondent: R. Mercer

RESPONSE: See objection in response to VZ-ATT 1-70.

VZ-ATT 1-76: Provide all documents concerning, referring or relating to the engineering, furnishing, and installation of AT&T's most recent Signal Control Point ("SCP").

Respondent: R. Mercer

RESPONSE: See objection in response to VZ-ATT 1-70.

VZ-ATT 1-77: Identify any and all expenses concerning, referring or relating to the installation of AT&T's most recent SCP, including riggers, transportation, and heavy equipment as well as all installation labor costs.

Respondent: R. Mercer

RESPONSE: See objection in response to VZ-ATT 1-70.

VZ-ATT 1-78: Provide any and all documents concerning, referring or relating to the engineering, furnishing, and installation of AT&T's most recently constructed power plant

including the addition of rectifiers, batteries, fuse distribution bays, automatic breakers, microprocessor, and the standby emergency generator.

Respondent: R. Mercer

RESPONSE: See objection in response to VZ-ATT 1-70.

VZ-ATT 1-79: Identify any and all expenses concerning, referring or relating to the installation of AT&T's most recently constructed power plants, including riggers, transportation, and heavy equipment as well as all installation labor costs.

Respondent: R. Mercer

RESPONSE: See objection in response to VZ-ATT 1-70.

VZ-ATT 1-114: Does AT&T utilize the same fill factors used as default values in HAI 5.2a in doing their own network planning? If not, why not? Identify the fill factors AT&T uses in their own network planning.

Respondent: R. Mercer

RESPONSE: AT&T objects to this information request on the grounds that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. This case involves Verizon-MA's forward-looking economic costs to provide UNEs. AT&T's own operational experience to date is not relevant to that issue.

VZ-ATT 1-115: What are AT&T's investments for transmission equipment that terminates both ends of an SS7 link, as defined by the HAI 5.2a?

Respondent: R. Mercer

RESPONSE: See objection in response to VZ-ATT 1-114.

VZ-ATT 1-116: What are AT&T's service control points investments per transaction per second, as defined by the HAI 5.2a?

Respondent: R. Mercer

RESPONSE: See objection in response to VZ-ATT 1-114.

VZ-ATT 1-117: What are AT&T's investments per operator position, as defined by the HAI 5.2a?

Respondent: R. Mercer

RESPONSE: See objection in response to VZ-ATT 1-114.

VZ-ATT 1-118: What are AT&T's investments per public telephone station, as defined by the HAI 5.2a?

Respondent: R. Mercer

RESPONSE: See objection in response to VZ-ATT 1-114.

VZ-ATT 1-119: What are AT&T's investments per installed DS-1 channel bank?

Respondent: R. Mercer

RESPONSE: See objection in response to VZ-ATT 1-114.

VZ-ATT 1-120: What are AT&T's per pair STP investments as defined by the HAI 5.2a?

Respondent: R. Mercer

RESPONSE: See objection in response to VZ-ATT 1-114.

VZ-ATT 1-121: Identify how many STP pairs AT&T has in its U.S. domestic network and the average link termination fill percentage in those STP pairs.

Respondent: R. Mercer

RESPONSE: See objection in response to VZ-ATT 1-114.

VZ-ATT 1-122: For each of the past five years, identify the location(s) and price per square foot that AT&T has paid for land on which switching or indoor transmission facilities are located within the State of Massachusetts.

Respondent: R. Mercer

RESPONSE: See objection in response to VZ-ATT 1-114.

VZ-ATT 1-123: For each of the past five years, identify the location(s) and AT&T's cost per square foot of construction for buildings that house switching or transmission equipment in the State of Massachusetts.

Respondent: R. Mercer

RESPONSE: See objection in response to VZ-ATT 1-114.

VZ-ATT 1-124: Identify AT&T's average investment per installed OC-48 add drop multiplexer.

Respondent: R. Mercer

RESPONSE: See objection in response to VZ-ATT 1-114.

VZ-ATT 1-125: Identify AT&T's average investment per OC-48 optical regenerator.

Respondent: R. Mercer

RESPONSE: See objection in response to VZ-ATT 1-114.

VZ-ATT 1-126: Identify AT&T's average investment per optical distribution panel (the physical fiber patch panel used to connect interoffice fibers to transmission equipment).

Respondent: R. Mercer

RESPONSE: See objection in response to VZ-ATT 1-114.

VZ-ATT 1-127: Identify AT&T's investment per foot for placing fiber optic cable in trenches in the State of Massachusetts.

Respondent: R. Mercer

RESPONSE: See objection in response to VZ-ATT 1-114.

VZ-ATT 1-128: Identify AT&T's investment per foot in underground conduit for fiber optic cable in the State of Massachusetts.

Respondent: R. Mercer

RESPONSE: See objection in response to VZ-ATT 1-114.

VZ-ATT 1-131: On or about page 4 of Mr. Lee's direct testimony filed by AT&T in this proceeding, he makes the following statement: "In depreciation proceedings, such forward-looking economic plant lives are termed 'projection lives,' to differentiate them from 'remaining lives' and 'average service lives' which reflect past plant placements." Please provide by plant account, lives in accordance with Mr. Lee's definition and future net salvages that.

- a) AT&T uses to depreciate its plant equipment.
- b) AT&T uses to depreciate its fixed wireless equipment
- c) AT&T or any affiliates use to depreciate cable television plant and equipment
- d) AT&T affiliate, TCG (formerly Teleport), uses to depreciate its plant and equipment

Respondent: R. Lee

RESPONSE: AT&T objects to this information request on the grounds that it is overbroad, unduly burdensome, irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information that is proprietary and competitively sensitive. This case involves Verizon-MA's forward-looking economic costs to provide UNEs. AT&T's own experience to date is not relevant to that issue.

VZ-ATT 1-135: According to Mr. Lee as stated in his direct testimony on page 6, the depreciation reserve is an extremely important indicator of the depreciation process. Please provide AT&T's reserve percentages comparable to those used on the chart witness Lee exhibit 4, for the years 1990 through 2000.

Respondent: R. Lee

RESPONSE: See objection in response to VZ-ATT 1-131.

VZ-ATT 2-1: Identify the following values used by AT&T in planning its network:

- a. the route to air ratio for inter-office facilities;
- b. the actual number of minutes per month, per DSO level switched access trunk;
- c. the investment per DSO level trunk port;
- d. the investment per installed OC-48 ADM multiplexer (equipped with 48 DS3s and equipped with 12 DS3s);
- e. the investment per installed foot of fiber;
- f. the tandem common equipment investment;
- g. the switch installation multiplier;
- h. the power investment per switch;
- i. the cost of construction per square foot of a wire center building;
- j. the price per square foot of land that contains switch buildings;
- k. the busy hour fraction of daily usage;
- l. the annual to daily usage reduction factor;
- m. the installed terminal multiplexer investment per OC3;
- n. the interoffice facility wire center EF&I fully loaded labor rate per hour in Massachusetts;
- o. the installed cost of an OC-48 regenerator;
- p. interoffice facility fiber optic regeneration spacing;
- q. optical distribution panel cost to connect 24 fibers to the

- transmission equipment; and,
- r. the number of hours required to install the equipment associated with the interoffice transmission systems.

Respondent: R. Mercer

RESPONSE: AT&T objects to this information request on the grounds that it is overbroad, unduly burdensome, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. This case involves Verizon-MA's forward-looking economic costs to provide UNEs. AT&T's own operational experience to date is not relevant to that issue.

VZ-ATT 2-15: Provide AT&T's investment cost per foot for fiber feeder cable installed in Massachusetts.

Respondent: R. Mercer

RESPONSE: AT&T objects to this information request on the grounds that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. This case involves Verizon-MA's forward-looking economic costs to provide UNEs. AT&T's own operational experience to date is not relevant to that issue.

VZ-ATT 2-91: Has AT&T employed the use of splitter shelves and splitter cards in the provisioning of DSL service? If the answer is yes, please provide all documents:

- a. identifying each vendor's material price to AT&T for both the shelf and the individual splitter cards;
- b. identifying charges for any engineering, provisioning, installation, acceptance-testing type of activities performed by each vendor;
- c. explain any non-material activities performed by vendors and/or AT&T;
- d. identify the number of units of both the shelf and splitter cards purchased in 1999; and,
- e. identify the expected number of units to be purchased in the

current year.

Respondent: W. Salvatore/F. Lombardi

RESPONSE: AT&T objects to this information request on the grounds that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. This case involves Verizon-MA's forward-looking economic costs to provide UNEs. AT&T's own operational experience to date is not relevant to that issue.

II. Information Requests Involving Intellectual Property

REQUESTS: Verizon Massachusetts Information Requests to AT&T Communications of New England, Inc.

DATE: May 29, 2001

VZ-ATT 1-20: State exactly what portions of HAI 5.2a's customer location database have been pre-processed and what portions are developed through running the model itself.

Respondent: R. Mercer

RESPONSE: The customer location database is produced by PNR.

VZ-ATT 1-21: For the State of Massachusetts provide:

- a. the number of addresses obtained through the Metromail, Inc. National Consumer Database;
- b. the percentage of addresses to total households obtained through the Metromail, Inc., National Consumer Database; and,
- c. the percentage of addresses that are P.O. Boxes and Rural Route Boxes.

Respondent: R. Mercer

RESPONSE:

- a. The requested information is based on copyrighted Metromail, Inc., data, and is commercially available from Metromail.
- b. See response to part “a”.
- c. The Model does not report percentage of addresses that are P.O. Boxes or Rural Route Boxes.

VZ-ATT 1-23: Provide, in electronic format, the geocoded data set for the State of Massachusetts used to produce the clusters in HAI 5.2a.

Respondent: R. Mercer

RESPONSE: To the extent that the question is seeking any software or documentation that is the intellectual property of PNR, AT&T is not able to provide such information, but states that such material is commercially available from PNR.

VZ-ATT 1-25: Provide all documents concerning, referring or relating to the estimated total business count of 12 million that is used as the basis for the business adjustment referenced at page 27 of the Model Description.

Respondent: R. Mercer

RESPONSE: The requested information is based on copyrighted Dun and Bradstreet data. The information is commercially available from Dun & Bradstreet.

VZ-ATT 1-26: Provide all software and inputs that constitute the PNR Associates, Inc. (“PNR”) clustering algorithm.

Respondent: R. Mercer

RESPONSE: See response to VZ-ATT 1-23.

VZ-ATT 1-82: Explain in detail how HAI 5.2 “locates” customers who are not identified through the geocoding process. Provide any and all documents concerning, referring or relating to the process of locating such customers.

Respondent: R. Mercer

RESPONSE: The requested explanation is provided in Section 5.3.7 of the HAI 5.2a-MA Model Description and pages 39-40 of Dr. Mercer’s testimony.

To the extent that the question is seeking any software or documentation that is the intellectual property of PNR, see response to VZ-ATT 1-23.

VZ-ATT 1-83: Provide the “clustering algorithm” that is used to determine groupings of customers and explain how this algorithm is utilized in HAI 5.2a and all previous versions of the Hatfield Model Release. Provide all documents concerning, supporting, referring or relating to this algorithm.

Respondent: R. Mercer

RESPONSE: The clustering algorithm process is described in Section 5.4.2 of the HAI 5.2a-MA Model Description.

To the extent that the question is seeking any software or documentation that is the intellectual property of PNR, see response to VZ-ATT 1-23.

VZ-ATT 2-62: In HAI 5.2a, what percentage of end office switches have tandem functionality and perform tandem functions? Provide the basis upon which this percentage was determined and all documents, data sources, workpapers, and calculations concerning, referring or relating to the development of the percentage.

Respondent: R. Mercer

RESPONSE: End offices having tandem functionality is a user adjustable input. See Section 4.2.2 of the HM 5.2a-MA HIP for the recommended percentage and support.

SUPPLEMENTAL

RESPONSE: In addition to providing a default percentage of 0.4, Section 4.2.2 describes the

basis for that default value: "...a conservatively low estimate of the number of shared-use switches based on Bellcore's Local Exchange Routing Guide (LERG) data." There are no documents other than the LERG, which is a copyrighted Bellcore (now Telcordia) document which AT&T is not authorized to copy. The LERG is commercially available from Telcordia.