

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Pricing for Unbundled Network Elements
for Verizon New England Inc.
d/b/a Verizon Massachusetts

)
)
)
)
)

D.T.E. 01-20 (Part A)

**REPLY OF VERIZON MASSACHUSETTS
TO AT&T MOTION TO COMPEL**

Verizon Massachusetts (“Verizon MA”) submits this Reply to AT&T’s Motion to Compel Verizon MA Responses to AT&T Information Requests filed on September 7, 2001 (“Motion to Compel”). AT&T seeks an order compelling further responses to Information Requests ATT-VZ 4-1, 4-3, 4-16, 4-29, 4-48, 4-49, 5-6, 5-9, 12-2, 14-10, 14-11, 14-14, 14-15 and 14-32. AT&T’s Motion to Compel is up to three months late and is a belated attempt to retaliate against the Department’s August 31, 2001 Order compelling AT&T to provide responses to Verizon MA’s information requests. Although Verizon MA agrees to file supplemental responses to a number of AT&T’s requests, the Motion to Compel should be denied as to the remaining requests, as discussed below.

I. BACKGROUND

On May 11, and May 17, 2001, AT&T issued its Fourth and Fifth Sets of Information Requests, respectively, to Verizon MA. On May 25, and May 31, 2001, AT&T issued its Twelfth and Fourteenth Set of Information Requests to Verizon MA. Verizon MA filed responses to AT&T’s Fourth and Fifth Set on May 11, and May 17, 2001, respectively. Verizon MA filed responses to AT&T’s Twelfth and Fourteenth Set on May 25, and May 31, 2001, respectively. Notably, AT&T filed its Motion to Compel

more than three months after Verizon MA submitted its answers and only shortly after the Department issued an Order requiring AT&T to respond to a Verizon MA Motion to Compel. *Interlocutory Order on Verizon MA's Appeal of Hearing Officer's August 8, 2001 Ruling on Motions to Compel*, D.T.E. 01-20 (August 31, 2001) ("Order").

II. ARGUMENT

A. AT&T's Motion to Compel Is an Abuse of the Administrative Process

AT&T received Verizon MA's responses to the information requests that are the subject of the Motion to Compel on or before the last day of May 2001. Notwithstanding follow-up efforts by both AT&T and Verizon MA to address the nature of Verizon MA's objections, which were based on the burdensome nature of AT&T's information requests, AT&T's Motion to Compel was not filed for almost two months after Verizon MA's most recent letter to AT&T, dated July 10, 2001, and only after the Department granted Verizon MA's Motion to Compel further responses from AT&T.

The Department has held that an unreasonable delay in filing a motion may amount to an abuse of the administrative process. *New England Telephone*, D.P.U. 91-63-A, at 17-18 (1991). AT&T's delay in filing its Motion to Compel is unreasonable. In D.P.U. 91-63-A, the Department questioned the timeliness of a motion to strike prefiled testimony after only 31 days had elapsed. *Id.* In this case, AT&T's Motion to Compel was not filed for almost two months from the date of the last correspondence from Verizon MA concerning the discovery dispute. Such delay should not be countenanced by the Department in the context of the transparent retaliatory nature of AT&T's Motion to Compel. It is no accident that AT&T's Motion to Compel was filed only days after the Department issued a directive to AT&T to submit complete responses to Verizon MA

concerning a number of Verizon MA information requests. As indicated below, Verizon MA will provide further responses to a number of AT&T's information requests. However, the Department should deny AT&T's Motion with respect to the remainder of the responses. The Motion is an abuse of the administrative process, and AT&T's requests are unreasonably burdensome.

B. Verizon MA Responses Reflect Proper Objections to AT&T's Requests

1. Information Request ATT-VZ 14-32

AT&T asserts that Verizon MA should provide additional information in response to Information Request ATT-VZ 14-32, which requested copies of all materials (plats, network diagrams, demand forecasts, engineering guidelines, maps, etc.) (in both electronic and hard copy format) reviewed or otherwise used by the Verizon MA engineers in conducting the survey of feeder route data (*Motion to Compel*, at 2-4). Verizon MA's response objected to this request because it is overly broad and would be unduly burdensome to produce because the information resides at multiple Outside Plant Engineering locations. In follow-up correspondence to AT&T concerning Verizon MA's objection, Verizon MA further explained:

[T]he feeder lengths used in the cost study was based on a survey of feeder loop data conducted by Verizon MA engineers. Data that would have been reviewed and/or served as the basis of the survey responses by Verizon MA engineers, include plats, maps, diagrams, etc. of Verizon MA's outside plant. To produce such documents would require Verizon MA to go back to each of the engineers and have them reconstruct their review and knowledge of the network and identify scores of documents that may have been considered by them in responding to the survey. This undertaking would be enormous and any probative value of the results would be overwhelmed by the burden it would place on Verizon MA to respond.

Notably, AT&T is not requesting Verizon MA to produce the fundamental inputs used in Verizon MA's cost study – these have already been provided to AT&T in Verizon MA's response to ATT-VZ 14-31 and 14-33. Instead, AT&T seeks what may be tens of thousands of separate pieces of information in various forms that may have been reviewed by the engineers in numerous locations (essentially, the “backup to the backup”). Not only would this request be unduly burdensome, it would be virtually impossible to recreate after the fact. No written documentation was created contemporaneously by the engineers that would identify each piece of information reviewed. Nor can this information be accurately created many months later. At this tertiary level of detail, the probative value of this information is slight in comparison to the undue burden it would require, were it possible at all, for Verizon MA to produce it.

The Department, guided by the principles and procedures underlying the Massachusetts Rules of Civil Procedure, Rule 26 *et seq.*, may deny discovery where it would cause an undue burden to the respondent. *See* 220 C.M.R. 1.06(c)2 and Mass. R. Civ. P. 26(c). *Interlocutory Order Regarding Scope of Proceeding and Motion to Compel Discovery*, D.T.E. 99-118 (2001) (The Department does not require a response to an information request because it is likely that the information would be overly burdensome). *See Western Massachusetts Electric Company*, D.P.U. 92-8C-A, at 26 (1993) (In ruling on discovery requests, the Department should consider the burdensome nature of specific requests). *See* 1996 WL 1186931, *Howard ex rel. Athena Design Systems, Inc. v. Brynwood Partners II, L.P.* (Mass.Super. 1996) (Broad discovery rights that are afforded to parties do not include requests which are unduly burdensome).

Accordingly, the Department should deny AT&T's Motion to Compel further response to Information Request ATT-VZ 14-32.

2. Information Requests ATT-VZ 14-10, 14-11, 14-14, 14-15

Similar to Information Request ATT-VZ 14-32 described above, Information Requests ATT-VZ 14-10, 14-11, 14-14 and 14-15 sought detailed information that does not provide inputs to Verizon MA's cost model, but rather attempts to obtain data that is not readily available, and which was not itself used as the model's inputs. Each of these requests seek data that are input to the Verizon MA's Detailed Continuing Property Record ("DCPR") system. The DCPR contains the official record of thousands of transactions that do not exist in a mechanized form. As noted below with respect to ATT-VZ 4-16, Verizon MA will provide the DCPR records, which are entered in the ordinary course of business, and which served as the inputs to Verizon MA's study. Providing the subsidiary data will require an extensive manual effort to identify the job-specific documentation that is reported to the DCPR system. Verizon MA estimates that it would take 3-6 months by a group of four people dedicated to the process at a cost of over \$200,000 to gather the subsidiary data.

Broad discovery rights that are afforded to parties do not include requests which are unduly burdensome. 1996 WL 1186931, *Howard ex rel. Athena Design Systems, Inc. v. Brynwood Partners II, L.P.* (Mass.Super. 1996). By providing the DCPR records, Verizon MA will provide AT&T with precisely the data that served as inputs to Verizon MA's study. Nothing more should be required. Accordingly, the Department should deny AT&T's Motion to Compel further responses to Information Requests ATT-VZ 14-

10 and 14-11, 14-14 and 14-15 because they would require Verizon MA to undertake burdensome studies.

3. Information Request ATT-VZ 12-2

Information Request ATT-VZ 12-2 sought, among other things, Verizon MA to produce “all documentation and calculations used by [all Verizon MA] organizations providing input and the organization responsible for developing the forecast” relating to RTU fees for digital switching. Verizon MA objected to producing “all documentation and calculations used by these organizations” because it would be overly burdensome to try to compile such data. Verizon MA will supplement its response to provide additional information.

4. Information Requests ATT-VZ 4-1, 4-3, 4-16, 4-29, 4-48, 4-49, 5-6 and 5-9

AT&T suggests that Verizon MA refused to provide a range of other information concerning its estimation of costs (Motion to Compel, at 8). In each case, Verizon MA provided a reasonable objection to the requested information. However, as discussed below, Verizon MA will provide supplemental responses to most of AT&T’s requests.

a. Information Request ATT-VZ 4-1

Information Request ATT-VZ 4-1 requests documentation and explanations for all inputs used in Part C of the Cost Study that were sourced to Product Management. Verizon MA provided a full response to this request, indicating that the inputs, where the source has been identified as Product Management, are based upon the opinion of the respective product manager, and that “There is no additional supporting documentation available.” Although AT&T may not like this response, Verizon MA has provided an

accurate and complete response. Accordingly, the Department should deny AT&T's Motion to Compel further response to ATT-VZ 4-1.

b. Information Request ATT-VZ 4-3

Information Request ATT-VZ 4-3 sought supporting documents for all investments that were sourced to "Vendor" in Part C. Verizon MA will supplement its response to provide additional information.

c. Information Request ATT-VZ 4-16

Information Request ATT-VZ 4-16 requested all data from the DCPR that was relied upon to develop the Engineer, Furnish & Install ("EF&I") factor for digital switches. Verizon MA will supplement its response by providing a complete copy of the DCPR reports.

d. Information Request ATT-VZ 4-29

Information Request ATT-VZ 4-29 requested Verizon MA to produce all alternative line forecasts or trends used by Verizon MA's marketing, engineering, or strategic planning organizations. Verizon MA will supplement its response to provide additional information if it exists.

e. Information Request ATT-VZ 4-48

Information Request ATT-VZ 4-48 requested supporting documentation for the busy hour to any hour of the day conversion factor. Verizon MA provided a complete response, stating that the development of the busy hour to any hour of the day conversion factor can be found in Part C-3, Workpaper Section 7, Page 1. This response identifies the underlying basis for the relevant conversion factor. AT&T's request, however, seeks to go beyond this, not requesting the inputs to the model or the methodology Verizon MA

uses to develop the conversion factor, but even further “backup of the backup”. AT&T’s request seeks a burdensome level of additional detailed documentation that is of only *de minimus* probative value. Broad discovery rights that are afforded to parties do not include requests, which are unduly burdensome. 1996 WL 1186931, *Howard ex rel. Athena Design Systems, Inc. v. Brynwood Partners II, L.P.* (Mass.Super. 1996). Accordingly, the Department should deny AT&T’s Motion to Compel further response to Information Request ATT-VZ 4-48.

f. Information Request ATT-VZ 4-49

Information Request ATT-VZ 4-49 sought supporting documentation for the non-conversation time factor. Verizon MA will provide a supplemental response.

g. Information Request ATT-VZ 5-6

Information Request ATT-VZ 5-6 sought supporting documentation to substantiate the power installation factor used in the DC Power Consumption cost study. On August 10, 2001, Verizon MA supplemented this response and provided all of the DCPR records which contain the inputs used in Verizon MA’s study. As discussed above, an extensive manual effort would be required to identify the job-specific documentation that are reported to the DCPR system. AT&T’s request seeks a burdensome level of additional detailed documentation that is of only *de minimus* probative value. Broad discovery rights that are afforded to parties do not include requests which are unduly burdensome. 1996 WL 1186931, *Howard ex rel. Athena Design Systems, Inc. v. Brynwood Partners II, L.P.* (Mass.Super. 1996). Accordingly, the Department should deny AT&T’s Motion to Compel further response to Information Request ATT-VZ 5-6.

h. Information Request ATT-VZ 5-9

Information Request ATT-VZ 5-9 sought the engineering guideline that outlines how Verizon MA engineers the deployment of Battery Distribution Fuse Bays in its central offices. Verizon MA provided a response to this request, referring the questioner to Information Request ATT-VZ 5-21. AT&T has apparently misconstrued the response to which reference was made. The character “1” in the referenced response is actually the letter L. The response to ATT-VZ 5-2(1) contains the engineering guideline that AT&T requested. The response reads in pertinent part as follows: “Please see attachment #2 to this request, Bell Atlantic Standard 790-600-500, VZ- MA’s engineering standard for BDFBs.” Verizon MA has thus produced the information requested by AT&T, and the Department should deny AT&T’s Motion to Compel a further response.

IV. CONCLUSION

For the forgoing reasons, Verizon MA respectfully requests that the Department should deny AT&T's Motion to Compel.

Respectfully submitted,

Verizon MA Massachusetts

Bruce P. Beausejour
185 Franklin Street, Room 1403
Boston, Massachusetts 02110-1585
(617) 743-2445

Robert N. Werlin
Stephen H. August
Keegan, Werlin & Pabian, LLP
21 Custom House Street
Boston, Massachusetts 02110
(617) 951-1400

Dated: September 20, 2001