

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into pricing of unbundled)
network elements (Sprint/Verizon track)) Docket No. 990649B-TP
) Filed: April 10, 2002
)

**VERIZON FLORIDA INC.'S RESPONSE TO
AT&T'S AND MCI'S MOTION TO COMPEL**

Verizon Florida Inc. ("Verizon"), by and through its undersigned counsel and pursuant to Rules 28-106.204 and 28-106.206 of the Florida Administrative Code, hereby responds to the Motion to Compel Discovery ("Motion to Compel") filed by AT&T Communications of the Southern States, Inc. ("AT&T") and MCI WorldCom, Inc. (WorldCom") (collectively, "AT&T/WorldCom") on April 3, 2002. For the reasons stated herein, AT&T/WorldCom's Motion to Compel should be denied.

BACKGROUND

On January 28, 2002, AT&T/WorldCom filed its First Set of Interrogatories, which included some 47 interrogatories (not including subparts). Verizon provided timely responses and objections to AT&T/WorldCom's requests, explaining in detail that a handful of AT&T/WorldCom's interrogatories were unduly burdensome, sought irrelevant information, and were not reasonably calculated to lead to the discovery of admissible evidence. Nevertheless, on April 3, 2001, AT&T/WorldCom filed a Motion to Compel, challenging the propriety of Verizon's objections. AT&T/WorldCom's motion is without merit.

AT&T/WorldCom's discovery tactics are becoming increasingly clear. Neither their interrogatories to Verizon nor their Motion to Compel are a meaningful effort to

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obtain relevant, or potentially admissible, information. Rather, they are a transparent attempt to divert the Commission's attention away from the real issues in the case, and to force Verizon to divert scarce litigation resources to dealing with discovery disputes that have no meaningful connection to the real issues in this proceeding. Moreover, AT&T/WorldCom improperly seek to use the discovery process to force Verizon to conduct special, time- and labor-intensive studies, or alternatively, analyses that AT&T/WorldCom are equally capable of conducting themselves. In short, AT&T/WorldCom are attempting to use the discovery process to harass and impose substantial and undue burden upon Verizon for no legitimate reason. AT&T/WorldCom's Motion to Compel is without merit, and Verizon respectfully urges the Commission to deny it in total.

ARGUMENT

I. **AT&T/WorldCom's Demand for Information About Cost Studies Not Filed In This Proceeding, or Ever Filed In Florida, Is Improper.**

AT&T/WorldCom seek to compel responses to eight interrogatories (Nos. 25-28, 37-40) that asked Verizon to gather and provide data about cost studies filed in other states. Motion to Compel at 3. In these questions, AT&T/WorldCom requested that Verizon supply information regarding cost study assumptions and inputs for cost models sponsored by Verizon in Massachusetts, New Jersey, New York -- none of which *bear any relation* to the Integrated Cost Model, Release ICM-FL ("ICM-FL") filed by Verizon in this proceeding, or the inputs used therein. The simple fact is that the cost models filed in these other states are not at issue in the present docket, and therefore AT&T/WorldCom's requests are inappropriate and seek irrelevant information. Verizon

is sponsoring ICM-FL in this proceeding; other models filed at other times in other jurisdictions are simply not relevant.

AT&T/WorldCom assert, incorrectly, that the information requested is “factual in nature and is not dependent upon the structure of the cost model ultimately used.” Motion to Compel at 3. AT&T/WorldCom are wrong. For example, the input concerning the percent of Integrated Digital Loop Carrier (“IDLC”) loops reflects a basic difference in methodological approaches between the cost models used in other states and ICM-FL. Likewise, the mark-ups for shared and common costs cannot be interpreted separately from the context in which the direct costs are modeled. Indeed, AT&T/WorldCom’s own witness Dr. Ankum admitted that you cannot “necessarily take inputs from one model and plug them into another model.” Ankum Deposition Transcript at 77. Surely, if model inputs cannot be readily substituted, attempting to draw meaningful comparisons between them is a futile exercise. Even with respect to those inputs that may be conceptually comparable, differences among Verizon’s operating environments in various jurisdictions are likely to produce differences in the observed values for inputs.

Moreover, it would be unduly burdensome for Verizon to produce information that AT&T/WorldCom can easily obtain from other state regulatory commissions. Indeed, AT&T/WorldCom were parties to each of the proceedings for which they request information. The Florida Rules of Civil Procedure make clear:

Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that party's representative, including that party's attorney, consultant, surety, indemnitor, insurer, or agent, only upon a showing that the party seeking

discovery has need of the materials in the preparation of the case and *is unable without undue hardship to obtain the substantial equivalent of the materials by other means.* Rule 1.280(a)(3).

AT&T/WorldCom are fully able, and indeed equally well positioned, to obtain the information sought from Verizon and could have readily procured it by now if they had wanted to. Plainly, Verizon's objections to AT&T/WorldCom's interrogatories are proper.

II. AT&T/WorldCom's Demand for Information About Vintage Cost of Capital Information Filed In Other Proceedings Is Similarly Without Merit.

AT&T/WorldCom also seek information regarding vintage cost of capital inputs that have not been put forth by Verizon in this proceeding. Specifically, AT&T/WorldCom request that Verizon identify the capital structure, respective cost rates for debt and equity, and weighted cost of capital that Verizon witness Dr. Vander Weide recommended in other proceedings dating back to 1997. AT&T/WorldCom's First Set of Interrogatories, Interrogatory No. 4. This information has no relevance to this docket. As the Commission is well aware, cost of capital assumptions vary by carrier, by jurisdiction, and over time. AT&T/WorldCom's assertion that Dr. Vander Weide's recommendations over the past five years, for a variety of carriers, in a host of jurisdictions, is somehow relevant to the instant proceeding is absurd. Verizon properly objected to this request on the ground that the information sought is irrelevant and not reasonably calculated to lead to the discovery of relevant and otherwise admissible information.

Moreover, as with the interrogatories discussed above, AT&T/WorldCom were indubitably parties to many, if not all, of the proceedings in which Dr. Vander Weide

testified. To the extent AT&T/WorldCom were truly interested in acquiring such information, they could have easily done so by now.

III. It Would Be Unduly Burdensome For Verizon To Perform The Detailed, Time- and Labor-Intensive Studies Requested By AT&T/WorldCom.

AT&T/WorldCom also complain about Verizon's responses to Interrogatories Nos. 10(b) and 44 because Verizon did not perform the special, detailed studies requested by AT&T/WorldCom. Motion to Compel at 2-4. AT&T/WorldCom's complaints are without merit.

Interrogatory No. 44 sought information regarding "the current, daily, monthly, and annual numbers of orders" that are processed by each of Verizon's three National Market Centers ("NMCs"). Contrary to AT&T/WorldCom's belief that "most if not all of the requested information is readily available" (Motion to Compel at 4), Verizon does not maintain, in its ordinary course of business, the information requested by AT&T/WorldCom. Regardless, even if such source data were readily available, Verizon could not respond to Interrogatory No. 44 without undertaking a special study, which would take a minimum of 4 weeks to complete. As such, it would be unduly burdensome for Verizon to attempt to produce the requested information.

Interrogatory No. 10(b) requested that Verizon provide the output of a model run in which all loops (both retail and unbundled) assumed the use of integrated DLC architecture (while keeping 100 percent of all other assumptions, methods, and inputs constant). Verizon objected to this request on the grounds that it would require Verizon to conduct an unduly burdensome special study. Notwithstanding this objection, Verizon recognizes that, although AT&T/WorldCom are equally well positioned to perform the bulk of this analysis, some data are necessary for them to do so. As such,

Verizon will provide the requisite files and requested instructions in response to Staff Interrogatory No. 239 (the answer to which will also be provided to AT&T/WorldCom). Once in possession of such data, AT&T/WorldCom can run the ICM-FL just as easily as Verizon -- any claim by AT&T/WorldCom that the ICM-FL "is not in a form that can be manipulated by AT&T and WorldCom's experts" (Motion to Compel at 3) is belied by the testimony of AT&T/WorldCom's own witnesses. See Ankum Deposition Transcript at 21 (Dr. Ankum admitting that he personally ran the ICM-FL).

IV. Verizon Will Provide A Supplemental Response To Interrogatory No. 32.

Interrogatory No. 32 requested that Verizon identify specific information related to the ICM-FL's calculation of drop length, average fills for various facilities and the average number of pairs per drop. Verizon maintains that the information requested would require Verizon to perform detailed and burdensome studies; and thus the interrogatory is improper. Notwithstanding the foregoing objections, Verizon will provide the information in its possession relating to drop length and Digital Loop Carriers ("DLC"). With respect to the average fills for distribution facilities (subpart (h)), the information requested is already calculated and reported by ICM-FL, and thus AT&T/WorldCom can readily identify the data they seek. With respect to channel units, the fills are greater than or equal to 95 percent, since ICM-FL only provisions the cards required to serve existing lines and since the inputs reflect an administrative fill of 4.76 percent.

V. Verizon Has Provided A Full Response To Interrogatory No. 3.

AT&T/WorldCom erroneously claim that Verizon has not responded fully to Interrogatory No. 3. Motion to Compel at 1-2. AT&T/WorldCom's Motion to Compel a

further response is a waste of the Commission's and the parties' time. Interrogatory No. 3 requested "information regarding prior instances in which state commissions have adopted capital structure based on market values for debt and common equity for any Verizon operating company." Motion to Compel at 1. Notwithstanding Verizon's objection that the request was unduly broad and burdensome, Verizon responded by noting that the Massachusetts Department of Telecommunications and Nevada Public Utilities Commission adopted the use of market value capital structures, and the Indiana Utility Regulatory Commission and Vermont Department of Public Service have recognized the validity of market value capital structure. Verizon's Response to AT&T/WorldCom's First Set of Interrogatories at 3. To the extent there may be other state regulatory commissions that have adopted a capital structure based on market values, before or after Verizon filed its response, AT&T/WorldCom is in as good a position as Verizon to conduct the necessary research to locate such orders, all of which are undoubtedly publicly available. AT&T/WorldCom surely could have located such information had they so desired.

VI. Interrogatory No. 42 Improperly Requests Information Outside The Scope Of This Proceeding.

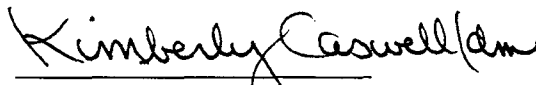
Verizon's objection to Interrogatory No. 42 is proper; the request seeks information that is beyond the scope of this proceeding, and therefore irrelevant to the issues to be decided by the Commission. Interrogatory No. 44 sought information regarding "all other systems" that provide information to Verizon's SIGS system and that pass information on to SIGS, as well as information regarding the "business processes that SIGS supports." While the Commission indicated in its pre-hearing order that it would address the appropriate assumptions and inputs for "OSS design" (Order No.

PSC-01-15192-PCO-TP at 18), AT&T/WorldCom seek information that is not relevant to this purpose. Verizon's non-recurring cost study addressed the design of Verizon's OSS. AT&T/WorldCom's Interrogatory No. 42, on the other hand, seeks detailed information regarding, among other things, the business processes *underlying* Verizon's OSS. The information AT&T/WorldCom seek is relevant only to the Commission's consideration of OSS costs, which will be addressed in a separate proceeding. As such, AT&T/WorldCom's Interrogatory No. 42 is procedurally improper, not relevant to the subject of this proceeding, and could not lead to the discovery of relevant information. Verizon's objection should be sustained.

CONCLUSION

For the foregoing reasons, Verizon respectfully requests that the Commission deny AT&T/WorldCom's Motion to Compel Discovery.

Respectfully submitted on April 10, 2002.

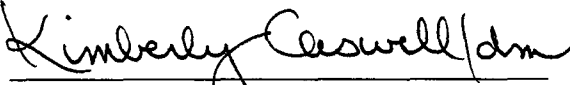
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Response to AT&T Communications of the Southern States, Inc.'s and MCI WorldCom, Inc.'s Motion to Compel Discovery in Docket No. 990649B-TP were sent via electronic mail and/or U.S. mail on April 10, 2002 to the parties on the attached list.



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