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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of Verizon’s Objection, Protest and Request for Investigation in Response to Qwest’s Recent Filing of its Revised Access Service Tariff Sheets 13, 13.1 and 16.

Docket No. 08-2430-01

**VERIZON BUSINESS’S RESPONSE TO QWEST’S MOTION TO COMPEL
VERIZON’S RESPONSE TO QWEST DATA REQUEST IN ITS THIRD SET OF DATA
REQUESTS AND REQUEST FOR EXPEDITED CONSIDERATION**

MCI Communications Services, Inc. d/b/a Verizon Business Services (“Verizon”), in accordance with the Administrative Law Judge’s order issued June 4, 2009, hereby files its response in opposition to Qwest’s Motion to Compel Verizon’s Response to Qwest Data Request in the Third Set of Data Requests (“Motion”).¹ As explained below, the relief requested by Qwest is not warranted and its Motion should be denied. Qwest’s discovery request is

¹ Under the Commission’s rules, parties are normally afforded 15 days to file a response to a motion. Utah Admin. Code R746-100-4(D). Verizon was not afforded an opportunity to respond to Qwest’s request for expedited consideration but was instead directed to respond to the motion to compel within one day of the ALJ’s order referenced above. This highly abbreviated schedule is unfair, particularly in light of Verizon’s need to coordinate with individuals located in several different states.

unnecessarily overbroad, unrelated to issues that are properly in dispute, and goes far beyond matters that are, in fact, relevant to this proceeding. Qwest's stated concerns can be addressed and accommodated in more narrow and appropriate ways, and Verizon is willing to produce information that is more properly tailored to the issues *that Qwest claims* are material to this proceeding.

I. Introduction – Background of Case

The introductory section of Qwest's Motion consists of a summary of Qwest's position in this proceeding as set forth in its pre-filed testimony. Qwest also provides an incomplete and self-serving review of portions of the testimony of Verizon's witness, Mr. Patrick Merrick, filed on May 28. For the sake of brevity and given the limited time permitted to respond to the Motion, Verizon will not engage in a substantive response to that discussion. However, to ensure a more fulsome record for purposes of this discovery motion, Verizon instead attaches as Exhibit 1 hereto the complete testimony (excluding confidential exhibits) of Mr. Merrick.

Nevertheless, one point deserves mention, and provides one example of Qwest's limited and selective use of the record. In its Motion, Qwest continues to perpetuate the myth that its proposed tariff changes are "consistent" with the practices of other carriers, and that it is simply following the lead of other carriers that have implemented similar billing procedures. See Motion at 3-4. In doing so, Qwest completely ignores the fact, explained by Mr. Merrick, that neither BellSouth nor Verizon have implemented such billing practices and that neither incumbent local exchange carrier ("ILEC") is billing interexchange carriers under the procedures that Qwest seeks to implement (for the first time) in Utah. See Exhibit 1, Testimony of Patrick Merrick, at 3 and 23 – 24.

II. The Information Qwest Seeks to Obtain Via the Single Data Request in Question is Not Relevant to the Issues That Qwest and Verizon Have Identified as Important and Material to this Proceeding.

Stripped of its hyperbole, rhetoric, misrepresentations of Verizon's positions, and false accusations, Qwest's Motion boils down to a single question.² Of the multiple data requests it has formally propounded to Verizon on three separate occasions in this proceeding,³ and to which Verizon has responded, Qwest asks the Commission to compel Verizon to respond to one question. Specifically, its data request asks Verizon to produce "*all terminating ... Call Detail Records for all traffic delivered to Qwest ... for the entire day of March 25, 2009*" in the state of Utah (emphasis added). Motion at 6. As explained below, this request is over-reaching and over-broad, and seeks volumes of information that far exceed the information that Qwest asserts it needs to analyze and that the parties agree is pertinent to the present debate.

A. The Type of Calls that are at Issue

In this proceeding, Verizon has identified as a central concern Qwest's treatment of *certain* international traffic that, in Verizon's view should not be subject to the new proposed tariff procedures.⁴ Qwest claims that it should be entitled to compel discovery of the data at issue because "Verizon argues that Qwest is unable to determine *internationally-originated* calls that do not follow the 10-digit format used by the North American Numbering Plan," (Motion at 8, emphasis in original), and because "Verizon has criticized what it purports to be Qwest's inability to identify Verizon's international traffic." Motion at 6. Verizon's concern, however, is

² Verizon refutes below Qwest's fallacious claims that Verizon has not responded to discovery in good faith.

³ Verizon has also provided responses to Qwest's informal requests for information on multiple occasions. See Section III below.

⁴ This is because international calls are, by definition, not "intrastate," and therefore should not be assessed intrastate access charges, which could occur if the amount of jurisdictionally unidentified traffic, including such international calls, exceeds the level of Qwest's proposed "floor."

predicated not on Verizon's traffic, but on Qwest's own admissions about its own billing practices made during the discovery process.

In response to a series of data requests,⁵ Qwest explained that "[t]he method used [by Qwest] to determine jurisdiction is a multi-step process involving the comparison of originating and terminating NPA/NXX."⁶ Qwest stated further that, when performing that comparison, it evaluates whether the call detail contains a valid Charge Party Number or Calling Party Number; if either is lacking, Qwest concludes that the call's jurisdiction cannot be determined.⁷

As explained by Mr. Merrick, the terms Charge Party Number and Calling Party Number, as well as calls in the NPA-NXX format, are standard industry terms that are associated only with calls that originate within the North American Numbering Plan.⁸ Those concepts and terms do not apply, however, to international calls that originate outside of the NANP; rather, such calls are governed by a different numbering plan and international standard.⁹ With respect to international calls that originate outside of the NANP, Qwest admitted in discovery (for the first time, in Verizon's experience) that if an international call includes a "country code" followed by additional digits, Qwest does not "consider this valid and sufficient to determine the call's jurisdiction."¹⁰ As a follow-up question in a related proceeding, Verizon asked:

Does Qwest attempt to identify the jurisdiction of international calls that are originated outside of the North American Numbering Plan Area?

to which Qwest responded "No."¹¹

⁵ Attached as Exhibit 2 is a copy of the non-confidential portion of Qwest's Responses to Verizon Business's First Set of Data Requests, dated March 16, 2009.

⁶ See Exhibit 1, Merrick Testimony at 16; Exhibit 2, Qwest Responses to Data Requests 004 and 008.

⁷ See Exhibit 1, Merrick Testimony at 14 – 18; Exhibit 2, Qwest Responses to Data Requests 002 through 008.

⁸ See Exhibit 1, Merrick Testimony at 16-17.

⁹ *Id.*

¹⁰ Qwest Responses to Data Requests 007 through 011.

¹¹ See Exhibit 1, Merrick Testimony at 18, referencing Qwest's Response to Verizon Business Service's First Set of Data Requests, Response to Data Request 006, dated April 9, 2009, in Oregon PUC Docket UT 157.

These are statements by Qwest of its own practices, not criticisms of or arguments made by Verizon, as Qwest falsely represents. And it is this traffic -- international calls that originate outside of the NANP – and the manner in which Qwest determines their jurisdiction and applies the correct rates, that is at the heart of Verizon’s concern, and position, in this case.

B. Qwest’s Data Request

In its Motion, Qwest asserts that it needs to “see [Verizon’s] total traffic *to see what percentage* of Verizon’s total traffic terminated to Qwest is ‘non-NANP-originated international traffic (i.e., international traffic that does not follow the 10-digit format used by the NANP [North American Numbering Plan].’” (Emphasis added) Motion at 5, fn. 6. On page 9, Qwest reiterates that in order for it to know “how big of a problem” the issue with respect to non-NANP originated traffic is, it needs to know “*what amount or percentage of that traffic is.*” Motion at 9 (emphasis added). Accordingly, Qwest argues that it should be able to obtain data on Verizon’s “total traffic ... *to determine what percentage* of Verizon’s total traffic ... is ‘non-NANP-originated international traffic.’” Motion at 9 (emphasis added). On page 11 of the Motion, Qwest reiterates this objective at least three times: obtaining 100 percent of Verizon’s call detail records “is essential to determine ... *what portion ... of the whole ... traffic ... reflect*” the non-NANP international calls at issue; it “needs to have the total amount of traffic ... so that it can determine *what percentage* of such total traffic is the ‘international’ traffic” at issue, and it cannot know how significant such international traffic is “without comparing it to the whole.” (Emphasis added).

Verizon has asserted that non-NANP-originated international traffic would be unfairly impacted by the proposed tariff changes. It agrees that Qwest has a legitimate interest in

understanding the amount of such traffic and the scope and significance of the problem that Verizon has identified. Verizon has already provided Qwest an abundance of data, both formally and informally, and is willing to cooperate in responding to the specific concern expressed above, namely, Qwest's interest in determining *the amount and percentage* of such international traffic. However, the data request that is the focus of Qwest's motion to compel represents gross overkill, given Qwest's stated need.

C. Qwest's Data Request is Over-broad, and Not Designed to Elicit Information that Is Necessary to Address the Issue it has Identified.

Qwest tries to downplay the magnitude of its request by claiming that it seeks "only one day," "only one day's worth," and merely "one sample day" of terminating traffic. Motion at 8, 9, 10. In fact, based on the call records Verizon has reviewed during the last week of March, Verizon terminated more than 330,000 calls on a single day to Qwest in Utah. Thus, the total number of call detail records sought is substantial, and is grossly disproportionate to the number of call records that include the international traffic at issue.

More important, Qwest has no need to review the call detail for 100 percent of Verizon's traffic in order to obtain the information it claims it needs, that is, the "percentage" or "portion" of non-NANP originated international traffic that Verizon terminates to Qwest in Utah. The jurisdiction of the vast majority of those calls can be and is readily identified. Such calls would not be considered of "indeterminate jurisdiction," and thus they would not be thrown into the "bucket" of traffic that would be subject to the new billing procedures proposed by Qwest. Even Qwest admits as much. For example, it states that international traffic from Canada, most international traffic from the Caribbean and some international traffic from Mexico that follow the 10-digit NANP format "is not at issue because there should be sufficient call detail to

determine its proper jurisdiction.” Motion at 8, fn. 7. Yet, its data request encompasses all call records for such traffic, even though Qwest acknowledges such traffic “is not at issue.” The same is true for call detail about all domestic intrastate and interstate traffic, which comprises the vast majority of the call detail records that Qwest seeks to obtain through its over-broad request. Therefore, details for those calls, including call records, would not provide anything of relevance or legitimate value to Qwest in this context.

If Qwest wants to know the percentage of traffic that Verizon considers to be non-NANP international-originated, it needs two pieces of information: 1) the amount of such traffic, and 2) how that amount compares to the entire amount of traffic that Verizon delivers to Qwest. Verizon has already provided Qwest some data (albeit for a different day) that is responsive to both of these points. Qwest should be able to use the daily usage information about non-NANP originated calls that Verizon has already provided, coupled with information in its own billing system, to determine what percentage of the total daily traffic those calls represent. Qwest has failed to explain why it cannot perform that basic analysis, let alone why it needs to ask the Commission to compel Verizon to produce the data instead.¹²

Nevertheless, in addition to the data that Verizon has already produced, it is willing to provide Qwest with 1) call records (for a single day or other reasonable representative period of time) for all international calls that are originated outside of the NANP, that are terminated to

¹² Verizon’s call detail records reside in a data base and must be extracted into a comma delimited file for further import into a data base or system that can then parse such a file, Qwest acknowledges that Verizon does not compile or maintain the data in the format Qwest desires (e.g., in Excel format, split into sequential worksheets, limited to no more than 50,000 records per worksheet, with headers included in each worksheet, as specified in its data request). Contrary to Qwest’s claim (Motion at 12), Verizon did not object to Qwest’s data request on the basis that it would be “burdensome” to produce the data in the format Qwest requests. Rather, Verizon’s objection was based in part on the fact that it does not store or maintain the data in the manner requested and that it would have to extract, sort, format and organize the voluminous data records in a certain way and add headers and labels in order to accommodate Qwest’s particular request, which is not something Verizon normally does in the ordinary course of business.

Qwest in Utah, and that Verizon does not believe are appropriate to be considered in the “bucket” of “jurisdictionally indeterminate” calls that would be subject to the proposed “floor” (above which intrastate rates would apply), i.e., the type of traffic that is at issue in this proceeding, as well as 2) the total volume of traffic that Verizon terminates to Qwest in Utah on the same day (or during the same period of time). These two figures – total non-NANP international traffic divided by the total amount of traffic– produces the “percentage” of traffic that Qwest claims it needs.¹³

There is no necessity for Qwest to obtain and review all of the call detail for all of the remaining traffic in order to calculate this percentage. Once Qwest calculates the percentage using the information in the numerator and denominator that Verizon is offering to provide, Qwest can determine (and argue) whether the amount is significant or immaterial, “how big of a problem” there is, and whether Verizon’s contentions are legitimate or not. But those conclusions go to the ultimate merits of the parties’ respective positions, not to the question of what data is needed to perform the calculation that Qwest asserts is required. The important point is that Qwest does not need all of the call records for more than 330,000 daily calls (including all domestic interstate and intrastate calls) in order to perform the simple arithmetic calculation it argues is essential.

To summarize, Qwest argues that it needs data to determine the percentage or portion of international traffic that Verizon has highlighted as an issue in this proceeding. It can make that determination by reviewing the information that Verizon is willing to provide in response to its Third Data Request. Because Qwest does not need 100 percent of Verizon’s call detail records –

¹³ Because Qwest bills both intrastate and interstate switched access charges on a “per minute of use” basis, only information related to per-minute usage is relevant, not the number of calls, as Qwest suggests in the Motion (at 11).

which amount to more than 330,000 records on a single day – in order to make that determination, its request is overbroad. In fact, the call records that Qwest seeks contain substantial amounts of information that is not relevant or pertinent to the narrow set of issues that is presently before the Commission.

It is clear that Qwest’s request is not countenanced by the applicable Rules of Civil Procedure. As the courts have determined, the purpose of discovery rules is to make discovery “simple and efficient” and to eliminate the possibility of “surprise or trickery,” so that parties can “determine the facts and resolve the issues as directly, fairly and expeditiously as possible.” *Ellis v. Gilbert*, 19 Utah 2d 189, 429 P.2d 39 (Utah 1967); *see also Mower v. McCarthy et al.*, 122 Utah 1, 16, 245 P.2d 224 (1952) (objectives of discovery are “to develop the truth and prevent surprises”). Although discovery is liberally permitted, it “should not be extended to permit ferreting unduly into detail,” but “should be confined within the proper limits of enabling the parties to find out essential facts” for the legitimate objectives of discovery. *State of Utah v. Petty*, 17 Utah 2d 382, 388, 412 P.2d 914 (1966). As explained above, Qwest’s data request is not limited to eliciting those facts that are essential to the issue it has identified (calculating the percentage of traffic that is non-NANP originated). Instead, Qwest is trying to probe unduly into excruciating and extensive details about Verizon’s total communications traffic in Utah that are not germane to the core issue.

Qwest also suggests that it needs the requested data because Verizon has proposed “that an extremely involved process be developed to evaluate whether adjustments should be made in the proposed floor, based on such international, non-NANP traffic.” Motion at 9. According to Qwest, absent the information, it is unable to determine whether the issue is material enough to

warrant developing such a process or to explore ways for developing one. Motion at 9. Whether the process is complex or simple, and whether Verizon's recommendation is a reasonable one, are questions of fact for the Commission to consider, but knowing details about the totality of Verizon's traffic will not shed any light on how non-NANP originated international traffic should be handled by Qwest under the new tariff procedures it has proposed. The purpose of such a process is to ensure that non-NANP originated international calls (which, by definition, are not intrastate traffic) are not included as "unidentified traffic" in establishing Qwest's floor, and are not subject to higher intrastate rates that would be applied under Qwest's proposed tariff. Qwest's desire to obtain 100% of Verizon's traffic data will not assist in that analysis, however, so its attempt to rationalize the broad scope of its data request on this basis is not well-founded.

III. Verizon Has Not Been Uncooperative in Responding to Reasonable Discovery Requests.

In an effort to inflame the discussion and engender sympathy for its Motion to compel, Qwest repeatedly charges that Verizon has failed to respond to discovery in good faith. Motion at 5-6, 13. While a response to this allegation is not essential to the resolution of the issue raised by Qwest's Motion, Verizon is compelled to respond to Qwest's repeated attacks. Its allegations are completely wrong and unjustified.

As Qwest points out, it has served three, and now four separate set of data requests on Verizon in this proceeding (as well as additional discovery requests in related proceedings in other states). Verizon provided responses to the first two sets of data requests, plus two supplemental responses. *See* Motion, Attachment B. While Verizon has objected to some data

requests on legitimate grounds,¹⁴ it nevertheless provided information that was responsive to most of those data requests. For example, Verizon provided specific responses to 17 of Qwest's 21 data requests contained in its first set, and subsequently provided two supplemental responses. Verizon also provided confidential and non-confidential information in response to Qwest's second set of data requests.

In addition to the formal discovery process, Verizon has voluntarily provided all sorts of information requested by Qwest on an informal basis on at least 10 occasions over the past few months. It is not Verizon's intent to address the substance of the parties' settlement discussions. However, even Qwest acknowledges the fact that Verizon has provided Qwest with various samples of call detail records as a part of that informal process. Motion at 12 – 13.

Thus, it is not true that Verizon has acted improperly during the discovery process. Verizon has exercised its legitimate rights and also provided a considerable amount of information to Qwest through both formal and informal processes. As explained in section II above, the request that is the subject of the Motion to Compel represents a dramatic escalation in the type and quantity of information that Qwest asserts it needs. As explained above, the information requested is not genuinely required for the purposes Qwest identifies. Rather, its pattern of continually seeking more and more detailed information about the entire universe of Verizon's communications traffic in Utah appears intended more to harass Verizon than to

¹⁴ For example, Verizon objected to several questions that related to the business practices of its ILEC's affiliate in other states, because such information is not relevant to the reasonableness of Qwest's particular tariff proposal in Utah. Verizon raised legitimate objections to other data requests because they contained terms that were not defined or were confusing. Verizon also objected to certain requests on the basis that it did not have the information requested, it does not compile or maintain such information in the ordinary course of business and/or it would be burdensome to obtain. Qwest does not here challenge the legitimacy of those objections, and has not sought a motion to compel further responses to those earlier data requests. In any event, as stated above and as demonstrated in the documents contained in Attachment B to the Motion, Verizon went on to provide full or partial responses to many of those same data requests.

advance any genuine effort to resolve the legitimate issues before the Commission. The Commission need not be distracted by Qwest's flamboyant and baseless rhetoric about the extent of the parties' cooperation, and instead should address the narrow substantive issue presented in the Motion. On that basis, it should deny the Motion to Compel.

IV. Conclusion

Qwest's Motion to Compel seeks extensive data that is not necessary for the purpose that Qwest asserts is the basis for its request. Its data request is over-broad, as it seeks the production of information that is far more extensive and intrusive than is necessary to obtain the specific information and to perform the calculation (determining the percentage of traffic) that Qwest argues is pertinent. Rather than produce the hundreds of thousands of call detail records that Qwest seeks and that are unnecessary for that purpose, Verizon offers to provide call records for the traffic that is relevant (non-NANP originated international calls), as well as the total volume of traffic that it terminates to Qwest, to enable Qwest to calculate the percentage it claims is critical. Such a focused production is far more reasonable, efficient and manageable. By contrast, Qwest's expansive data request violates the principles that discovery should be "simple and efficient," designed to elicit those facts that are essential to the issue at hand, and enable the parties to resolve the pertinent issues "as directly, fairly and expeditiously as possible." For these reasons, the Commission should deny the Motion to Compel.

Dated this 5th day of June, 2009.

Respectfully submitted,

MCI COMMUNICATIONS SERVICES, INC.
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By /s/

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of June, 2009, pursuant to the administrative law judge's Order on Request for Expedited Response and Consideration, issued June 4, 2009, I caused to be sent by electronic mail a true and correct copy of the foregoing **VERIZON BUSINESS'S RESPONSE TO QWEST'S MOTION TO COMPEL VERIZON'S RESPONSE TO QWEST DATA REQUEST IN ITS THIRD SET OF DATA REQUESTS AND REQUEST FOR EXPEDITED CONSIDERATION** to the following, and will cause the original and five hard copies of same to be filed with the Public Service Commission on Monday, June, 8, 2009:

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