

William J. Evans
Parsons Behle & Latimer
201 South Main St. #1800
Salt Lake City, UT 84145-0898
Telephone: (801) 536-6817
Facsimile: (801) 536-6111
Email: BEvans@parsonsbehle.com

Thomas F. Dixon
Assistant General Counsel
Verizon
707 - 17th Street, #4000
Denver, CO 80202
Telephone: (303) 390-6206
Facsimile: (303) 390-6333
Email: thomas.f.dixon@verizon.com

Attorneys for MCI Communications Services, Inc. d/b/a Verizon Business Services

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
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**VERIZON BUSINESS’S SUPPLEMENTAL RESPONSE
TO QWEST’S MOTION TO COMPEL**

MCI Communications Services, Inc. d/b/a Verizon Business Services (“Verizon”), respectfully requests leave to submit this supplemental response to Qwest’s Motion to Compel (“Motion”). Verizon was previously only afforded one-day to file its response to the Motion.¹ After submitting its response, Verizon received additional information that is directly relevant to Qwest’s claims, and that it desires to bring to the Commission’s attention.

¹ On June 4, 2009, the Administrative Law Judge issued an order directing Verizon Business to file a response to the Motion the following day.

On June 8, Qwest filed what purports to be a “Reply” to Verizon’s Response. In fact, Qwest did not reply to the issues that Verizon addressed in its Response. Rather, Qwest continued to engage in a hyperbolic – yet demonstrably false -- characterization of Verizon’s approach to discovery,² raise new claims that it did not present previously and to which Verizon has not had a fair opportunity to respond,³ and create and rebut “strawman” arguments that Verizon did not present.

Qwest acknowledges that Verizon’s response devoted “more than seven pages” to the question of whether the one data request at issue is relevant. Reply at 4. In a nutshell, Verizon demonstrated that Qwest’s request for “all” traffic records was not relevant given its explicit desire to know “what percentage” or “what portion” of Verizon’s entire traffic is represented by “non-NANP-originated traffic.” Verizon Response at 5.⁴ However, Qwest’s “reply” ignores that critical issue altogether. In fact,

² Verizon will not endeavor to refute Qwest’s unwarranted 3-page attack on the nature and quality of its responses to Qwest’s often carelessly drafted data requests. Instead, Verizon invites the Commission not to uncritically accept Qwest’s emotional (and erroneous) commentary, but to carefully review Verizon’s responses to all of Qwest’s data requests, in order to determine for itself whether Verizon’s objections to certain data requests were well-founded and appropriate, as well as to evaluate the sufficiency of Verizon’s responses to numerous discovery requests to which it provided specific information.

In considering whether either party has been less than cooperative and forthcoming, the Commission should compare Verizon’s responses in this proceeding with Qwest’s responses to certain data requests propounded by Verizon. Attachment A hereto consists of the first two “responses” of Qwest to Verizon’s First Set of Data Requests in a companion proceeding in Colorado, received on June 5, 2009. In Qwest’s response to Verizon’s first data request, Qwest refused to provide *any* of its “own data,” “sample data,” or “comparable ... data” that its witness purported to have relied upon in developing his testimony and, which Qwest now claims, it “does not maintain ... in a manner that can readily be provided.” Qwest merely offered to provide such data “if and when Qwest finds a viable option” for doing so.

³ For the first time, Qwest makes unsubstantiated claims about Verizon’s responses to discovery in other jurisdictions (Reply at 1), and information that Verizon has produced as part of confidential settlement discussions (Reply at 3). This Commission may not base its decision on the Motion on these unfounded, improper and irrelevant accusations.

⁴ Qwest claims it “has the right to seek this data so it can determine the numerator (i.e., the ‘unidentified’/non-NANP 10-digit ‘international’ calls” that are relevant to the dispute. Reply at 5 n. 6. Inconsistently, Qwest cavalierly dismisses out of hand Verizon’s offer to provide call records that *directly address* that point (the percentage of total traffic that is non-NANP originated) (*see* Verizon response at 7-8, 12), claiming that Verizon could have made this offer “long ago.” Reply at 3. This is disingenuous.

Qwest abandons the original premise of its Motion and instead devotes its “reply” to rebutting a point that Verizon did *not* make.

Qwest’s reply focuses on its claim that it would not be an “undue burden” for Verizon to produce the hundreds of thousands of call records encompassed by its data request. Reply at 5-7. However, this is a fictitious argument of Qwest’s own making. Verizon did not object to the production of all of its call records on the grounds that the sheer volume of call records was overbroad or that it would be “overly burdensome” to compile and produce them in the manner specified by Qwest (*see* Verizon’s Response at 7 n. 12). Rather, Verizon objected that the request to produce 330,000 call records was unnecessary, irrelevant and overbroad because the vast majority of the traffic was something other than NANP-originated international calls, which are at issue.

More telling, Qwest’s new strawman argument must be evaluated in light of Qwest’s response – last Friday -- to Verizon’s data request in Colorado. There, in sharp contrast to its position here, Qwest acknowledged that Verizon had provided “voluminous data” and admitted that “Qwest has not attempted to ... verify in detail all of Verizon’s data ... due to the voluminous data involved.” Qwest explained that

[t]he voluminous data associated with Verizon’s confidential exhibit PHM-2⁵ becomes apparent when assuming conservatively that Verizon would have routed at least one million answered calls to Qwest each day of the three month study period that was referenced in [the exhibit]. This would result in over 90 million individual records that would need to be provided in order to verify in detail all of Verizon’s data. Qwest is not aware nor does Qwest employ the use of a universal application that could accommodate 90 million records for analysis.

Verizon responded to Qwest’s Third Set of Data Requests on May 28, and, after a single cursory phone conversation, Qwest filed its motion to compel less than a week later, on June 2.

⁵ This is similar to PHM-2, attached to the direct testimony of Mr. Patrick Merrick in this proceeding.

Attachment A, Qwest Response to Verizon Request 01-002 (Colo. PSC Docket No. 08S-550). While the volumes of traffic delivered by Verizon to Qwest in Utah and Colorado are different (330,000 as opposed to one million calls a day), the principle is critical: Qwest asserts that it does not have the ability to process large volumes of records. Nor is it clear that Qwest could process and verify the large volume of records it seeks via its data request in the present docket, using its own internal records for comparison.⁶ Thus, not only has Qwest manufactured the “unduly burdensome” argument, but its points are contradicted by its contemporaneous assertions elsewhere. Given its shifting rationales, it is abundantly clear that Qwest is, in fact, attempting to use the discovery process to harass an access customer that has raised concerns with its proposed tariff revisions by aggressively seeking access to commercially sensitive information about “all” of Verizon’s customers’ traffic terminated in Utah, rather than address valid issues that Verizon did raise in a reasonable and focused manner.

⁶ While Qwest has access to information about Verizon’s traffic through its switch records and billing system, it argues that the data is not maintained in a manner that can be readily provided. *See* note 2, *supra*. In addition, Qwest admits that its Automatic Message Accounting study for the day on which it seeks call records from Verizon is “admittedly incomplete” and, for that reason, it would be able to validate only “some of Verizon’s data.” Motion at 19 note 9. Given the limitations of Qwest’s own internal processes, the Commission should disregard Qwest’s gratuitous suggestions as to how and in what format Verizon should be able to produce the voluminous records requested. *See* Reply at 8.

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of June, 2009, I caused to be sent by electronic mail a true and correct copy of the foregoing **VERIZON'S SUPPLEMENTAL RESPONSE TO QWEST'S MOTION TO COMPEL** to the following, and a hard copy to each of the following in the manner indicated below:

VIA HAND DELIVERY TO:

Michael L. Ginsberg
Assistant Attorney General
160 East 300 South, Fifth Floor
Salt Lake City, UT 84114
mginsberg.@utah.gov

VIA OVERNIGHT COURIER TO:

Alex M. Duarte
Qwest Corporation
421 SW Oak Street, Suite 810
Portland, OR 97204
Alex.Duarte@qwest.com

VIA U.S. MAIL TO:

William Duncan
Utah Division of Public Utilities
160 East 300 South
Salt Lake City, UT 84114
wduncan@utah.gov

VIA U.S. MAIL TO:

Roger Moffitt
AT&T Communications
645 East Plumb Lane, B132
P. O. Box 11010
Reno, NV 889502
roger.moffitt@att.com

VIA U.S. MAIL TO:

Casey Coleman
Utah Division of Public Utilities
160 East 300 South
Salt Lake City, UT 84114
ccoleman@utah.gov

VIA U.S. MAIL TO:

Sharon M. Bertelsen
Ballard Spahr Andres & Ingersoll, LLP
201 South Main Street, Suite 800
Salt Lake City, UT 84111
Bertelsens@ballardspahr.com

/s/ Colette V. Dubois