

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into
pricing of unbundled network
elements (Sprint/Verizon track).

DOCKET NO. 990649B-TP
ORDER NO. PSC-02-0510-PCO-TP
ISSUED: April 12, 2002

ORDER DENYING VERIZON'S MOTION TO COMPEL DISCOVERY RESPONSE FROM
Z-TEL; GRANTING, IN PART, VERIZON'S MOTION TO COMPEL DISCOVERY
RESPONSES FROM ALEC COALITION; AND DENYING ALEC COALITION'S
MOTION FOR PROTECTIVE ORDER

On March 20, 2002, Verizon Florida Inc. (Verizon) filed two Motions to Compel Discovery. In its first Motion, Verizon seeks to compel Z-Tel Communications, Inc. (Z-Tel) to immediately reply to Verizon's First Set of Interrogatories (First Set). In its second Motion, Verizon seeks to compel AT&T Communications of the Southern States, LLC, (AT&T), MCI WorldCom Inc. (WorldCom) and Florida Digital Network, Inc. (FDN) (collectively the ALEC Coalition or Coalition) to provide complete responses to Verizon's Second Set of Interrogatories (Second Set) and Third Request for Production of Documents (Third Request). On March 27, 2002, Z-Tel and the ALEC Coalition filed responses to Verizon's Motions to Compel, along with Motions for Protective Orders. On April 3, 2002, Verizon filed a response to the ALEC Coalition's Motion for Protective Order. On April 8, 2002, Verizon filed a response to Z-Tel's Motion for Protective Order.

MOTION TO COMPEL DISCOVERY RESPONSE FROM Z-TEL

In support of its Motion, Verizon states that it served one interrogatory on Z-Tel, which asked what cost of capital Z-Tel uses to evaluate local exchange projects. Verizon contends that "the data requested is probative and germane to the question of pricing unbundled network elements." However, in response to this interrogatory, Z-Tel maintained that the information requested is "irrelevant," "confidential," "particularly intrusive," and "intend[ing] to harass Z-Tel." Nevertheless, Verizon contends that cost of capital information for competitive local exchange carriers (CLECs) has been produced in several other recent Verizon proceedings in other states. In addition, Verizon cites to the deposition of Z-Tel witness Dr. George Ford in which he stated the Z-Tel had recently conducted a cost of capital study to evaluate local exchange projects and acknowledged that this study would be responsive to Verizon's counsel's inquiry. For these reasons,

DOCUMENT NUMBER-DATE

04090 APR 12 8

FPSC-COMMISSION CLERK

Verizon contends the information is relevant and in Z-Tel's control, and as such, should be provided in response to its Interrogatory No. 1.

In its response and Motion for Protective Order, Z-Tel contends that Verizon's assertions that the information sought is probative and germane to the issues in this proceeding are merely conclusory statements which do not satisfy Verizon's burden to show the relevancy of the information sought. Z-Tel states that merely because AT&T/WorldCom information was presented in proceedings in other states does not demonstrate the relevance of Z-Tel's cost of capital in this proceeding.

Z-Tel also points out that Verizon's own witness did not list Z-Tel among the "comparable" companies which he relied on for probative data. Z-Tel states that unlike Verizon, Z-Tel is a small company that does not provide unbundled network elements and does not have ready access to the capital market.

On April 8, 2002, Verizon filed a response to Z-Tel's Motion for Protective Order. Verizon reiterates its belief that regardless of Z-Tel's size, scale of operations, or access to capital markets, Z-Tel's cost of capital is relevant to this proceeding.

RULING

Z-Tel correctly points out that the issue in this proceeding is the forward looking cost of capital for Verizon. Any CLECs' cost of capital information is irrelevant to establishing the appropriate cost of capital for Verizon, nor is the information reasonably calculated to lead to discovery of admissible evidence. See Fla. R. Civ. P. 1.280(a). Consequently, Verizon's Motion to Compel Discovery to Z-Tel is hereby denied, which renders Z-Tel's Motion for Protective Order moot.

MOTION TO COMPEL DISCOVERY TO ALEC COALITION

In support of its Motion, Verizon states that "the data requested is probative and germane to the question of pricing unbundled network elements." Verizon seeks responses to its

Interrogatories Nos. 25, 26, and 27, and its Requests for Production of Documents (PODs), Nos. 15 and 16.

In response to Interrogatory No. 25, the ALEC Coalition stated that the information sought is not relevant or reasonably calculated to lead to the discovery of admissible evidence. As stated above regarding its Motion to Compel directed to Z-Tel, Verizon believes the cost of capital of CLECs is relevant to this proceeding.

Regarding Interrogatories Nos. 26 and 27 and corresponding Requests for Production Nos. 15 and 16, Verizon seeks a list of suppliers of NGDLC RT equipment capable of supporting multi-carrier operation and 2-wire analog loop unbundling; and suppliers of digital circuit switching equipment and associated application software that has the functionality to support multi-carrier GR-303 operation and 2-wire analog loop. Verizon seeks this information to challenge ALEC Coalition witness Dr. August Ankum's claim that IDLC GR-303 unbundling is technically feasible.

Although the ALEC Coalition contended in their initial objections that these discovery requests are "oppressive, unduly burdensome and overly broad" and that it is "unreasonably burdensome to investigate all such [suppliers and/or vendors]," Verizon contends that the requests would require little or no investigating, because Verizon's experience has been that there are, in fact, no such vendors or suppliers that meet the requirements stated. Nevertheless, Verizon is willing to limit the request to require that the ALEC Coalition only identify five vendors or suppliers that are responsive to these Discovery Requests, as well as any supporting documentation.

On March 27, 2002, the ALEC Coalition filed a response to Verizon's Motion to Compel along with a Motion for Protective Order. The ALEC Coalition questions the relevance of the ALEC cost of capital requested in Interrogatory 25 and advances arguments similar to those raised by Z-Tel above. Regarding Interrogatories Nos. 26 and 27 and Requests for Production Nos. 15 and 16, the ALEC Coalition states that the information is not available at this time, but that it is continuing to seek to acquire the information. Further, the ALEC Coalition states that "[i]f and when the information comes into our possession through our continuing

investigation, the ALEC Coalition will provide the requested information."

On April 3, 2002, Verizon filed its Response to the ALEC Coalition's Motion for Protective Order. In its Response, Verizon reiterates its belief that the ALEC Coalition's cost of capital information is relevant to this proceeding and requests that the ALEC Coalition's Motion for Protective Order be denied.

RULING

As stated above, any CLECs' cost of capital information is irrelevant to establishing the appropriate cost of capital for Verizon, nor is the information reasonably calculated to lead to discovery of admissible evidence. See Fla. R. Civ. P. 1.280(a). Therefore, Verizon's Motion to Compel Discovery to the ALEC Coalition regarding Interrogatory No. 25 is hereby denied, which renders that portion of the ALEC Coalition's Motion for Protective Order moot.

However, Verizon's Motion to Compel Discovery to the ALEC Coalition regarding Interrogatories Nos. 26 and 27, and corresponding PODs Nos. 15 and 16, is hereby granted and the ALEC Coalition's Motion for Protective Order as it pertains to these discovery requests is denied. The ALEC Coalition shall provide the requested information one week from the issuance of this Order. If the ALEC Coalition is unable to provide the requested information on that date, then it shall detail the attempts it has made to acquire the information and specify when that information will be made available.

Based on the foregoing, it is

ORDERED by Braulio L. Baez, as Prehearing Officer, that Verizon Florida Inc.'s Motion to Compel Discovery to Z-Tel Communications, Inc. is hereby denied. It is further

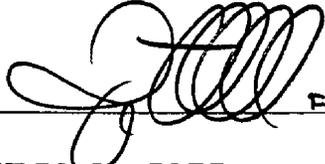
ORDERED that Verizon Florida Inc.'s Motion to Compel Discovery to ALEC Coalition is hereby granted in part, and denied in part, as set forth in the body of this Order. It is further

ORDER NO. PSC-02-0510-PCO-TP
DOCKET NO. 990649B-TP
PAGE 5

ORDERED that the Motion for Protective Order filed by AT&T Communications of the Southern States, LLC, MCI WorldCom Inc. and Florida Digital Network, Inc. is hereby denied to the extent not rendered moot as set forth in the body of this Order. It is further

ORDERED that AT&T Communications of the Southern States, LLC, MCI WorldCom Inc. and Florida Digital Network, Inc. shall provide, one week from the issuance of this Order, additional responses and information to Verizon Florida Inc. as set forth in the body of this Order.

By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 12th day of April, 2002.



BRAULIO L. BAEZ
Commissioner and Prehearing Officer

(S E A L)

JKF

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

ORDER NO. PSC-02-0510-PCO-TP
DOCKET NO. 990649B-TP
PAGE 6

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.