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April 26, 2002

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

Re: Docket No.: 990649B-TP

Dear Ms. Bayo:

On behalf of Z-Tel Communications, Inc., I am enclosing the original and 15 copies of Z-Tel Communications, Inc.'s Motion to Strike and in the Alternative Response to Verizon Florida, Inc.'s Request for Reconsideration of Commission Order No. PSC-02-0510-PCO-TP.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and pleading by returning the same. Thank you for your assistance in this matter.

Thank you for your assistance in this matter.

Yours truly,



Joseph A. McGlothlin

JAM/mls
Enclosure

DOCUMENT NUMBER-DATE
04635 APR 26 2002
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No.: 990649B-TP
Filed: April 26, 2002

**Z-TEL COMMUNICATIONS, INC.'S
MOTION TO STRIKE OR IN THE ALTERNATIVE, RESPONSE TO
VERIZON FLORIDA, INC.'S REQUEST FOR RECONSIDERATION
OF COMMISSION ORDER NO. PSC-02-0510-PCO-TP**

Pursuant to Rule 25-22.0376, Florida Administrative Code, Z-Tel Communications, Inc. ("Z-Tel") files its Response to Verizon Florida, Inc.'s ("Verizon") Request for Reconsideration of Commission Order No. PSC-02-0510-PCO-TP. Z-Tel asserts that this Commission should deny Verizon's motion.

MOTION TO STRIKE

1. On April 12, 2002, the Commission issued Order No. PSC-02-0510-PCO-TP. On April 23, 2002, Verizon filed its Request for Reconsideration of Commission Order No. PSC-02-0510-PCO-TP. Rule 25-22.0376, Florida Administrative Code, requires that a party request reconsideration within 10 days of the *issuance* of a non-final order.¹ However, Verizon filed its Request on April 23, 2002, 11 days after the issuance of the disputed order, and one day past the deadline set by the rule. According to Rule 25-22.0376(3), Florida Administrative Code, failure to file a timely motion for reconsideration constitutes a waiver of the right to do so. Therefore, the Commission should strike Verizon's request as untimely filed.

ALTERNATIVE RESPONSE

2. If the Commission does not strike the Motion for Reconsideration in the alternative Z-Tel submits the Motion should be denied for the following reason. Verizon requests that the Commission reconsider that portion of the order which denies Verizon's Motion to Compel Z-Tel to respond fully to Interrogatory No. 1 of Verizon's First Set of Interrogatories.

¹Verizon incorrectly states that its request is filed pursuant to Rule 25-22.060, Florida Administrative Code. However, this rule addresses the proper procedure for requesting reconsideration of a final order.

The standard for reconsideration of a Commission order is well known: whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider when rendering its order. *Diamond Cab Co. of Miami v. King*, 146 So. 2d 889 (Fla. 1962); *Stewart Bonded Warehouse, Inc. v. Beavis*, 294 So. 2d 315 (Fla. 1974); *Pingree v. Quaintance*, 394 So. 2d 161 (Fla. 1st DCA 1981). It is not appropriate to reargue matters that have already been considered. *Sherwood v. State*, 111 So. 2d 96 (Fla. 3d DCA 1959); citing *State ex. rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817 (1st DCA 1958).

3. A review of the Motion for Reconsideration reveals that Verizon has failed to meet the applicable standard. In its motion, Verizon repeats the same arguments that were unsuccessful in the Motion to Compel. For instance, in the Motion for Reconsideration Verizon argues that cost of capital data of *other* ALECs has been produced in discovery *voluntarily* in UNE proceedings in *other* states. This is mere repetition that shows no mistake of fact or law. Further, Verizon does not yet realize that whether information has been voluntarily produced in other jurisdictions by other parties does not assist Verizon in demonstrating that the specific information is relevant at issue or would likely lead to the discovery of admissible information in this case.²

4. In its Motion for Reconsideration, Verizon makes the point that Z-Tel recently performed an internal calculation or estimate of its costs of capital. Again, this argument was tried, unsuccessfully, in the Motion to Compel. The effort was unsuccessful because Z-Tel has never disputed the *fact* of an existing calculation; but the *fact* that information exists does not, without a showing of probative value, automatically render it discoverable.

5. In its Motion for Reconsideration, Verizon again claims that Z-Tel's size, scale operation, and access to capital markets have no bearing on the issue of relevancy. The statement is wrong. Size, scale of operations, and access to capital markets all influence a company's costs of capital. If this were not true, Verizon's expert witness would not have gone

² Verizon also improperly includes an argument relating to "price signals" that did not appear in either its Motion to Compel or its Response to Z-Tel's Motion for Protective Order.


to lengths to devise a “list of comparable companies” for his analysis. In an effort to distract attention away from testimony addressing Verizon’s *costs of capital*, Verizon attempts to argue that the case is somehow about Z-Tel’s cost of capital. The Prehearing Officer correctly ruled that the issue is instead *Verizon’s* costs of capital. Verizon unsuccessfully attempts to argue that the Prehearing Officer somehow failed to meet a standard. However, at page 4 the Prehearing Officer stated:

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).

Instead, Verizon has shown no mistake of fact or mistake of law that warrants overturning the decision of the Prehearing Officer.

Accordingly, Verizon’s Motion for Reconsideration should be denied.

WHEREFORE Z-Tel Communications, Inc. respectfully requests that the Commission deny Verizon’s Request for Reconsideration of Commission Order No. PSC-02-0510-PCO-TP.


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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Z-Tel Communication's Inc.'s Motion to Strike or in the Alternative Response to Verizon Florida, Inc.'s Request for Reconsideration of Commission Order No. PSC-02-0510-PCo-TP has on this 26th day of April, 2002 been served (*) Hand Delivery, Email and U.S. Mail to the following:

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