

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of requirements
Arising from Federal Communications
Commission Triennial UNE review: Local
Circuit Switching For Mass Market Customers

Docket No. 030851-TP

Filed: October 20, 2003

COMMISSION
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**OBJECTIONS OF Z-TEL COMMUNICATIONS, INC. TO
BELLSOUTH'S FIRST SET OF INTERROGATORIES**

Pursuant to the *Order Establishing Procedure*, Order No. PSC-03-1054-PCO-TP, issued September 22, 2003 ("*Procedural Order*"), Rule 28-106.206 of the Florida Administrative Code, and Rules 1.280 and 1.340 of the Florida Rules of Civil Procedure, Z-Tel Communications, Inc. ("Z-Tel") submits its preliminary objections to BellSouth Telecommunications, Inc.'s ("BellSouth") First Set of Interrogatories to Z-Tel.

Z-Tel files these objections to comply with the seven (7) day requirement set forth in the *Procedural Order*. These objections are preliminary in nature. Should additional grounds for objection be discovered as Z-Tel prepares its responses to any discovery, Z-Tel reserves the right to supplement these objections.

Further, at the time of the filing of these objections, the issues to be addressed in this proceeding have not yet been identified. Should additional grounds for objections develop as the Commission identifies the issues to be addressed in this proceeding, Z-Tel reserves the right to supplement these objections.

PRELIMINARY GENERAL OBJECTIONS

Z-Tel makes the following general objections to the First Set of Interrogatories:

1. Z-Tel objects to the "Definitions" section, the "General Instructions," and the individual items of BellSouth's First Set of Interrogatories to Z-Tel to the extent that they are

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overly broad, unduly burdensome, and/or oppressive. Z-Tel will attempt to identify specific requests to which this objection applies within the specific objections that follow.

2. Z-Tel objects to the “Definitions,” the “General Instructions,” and the individual interrogatories to the extent they seek information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. By way of illustration and not limitation, Z-Tel objects to interrogatories that seek information that is unrelated to or inconsistent with the methodology and parameters of the analysis of impairment prescribed by the FCC in its Triennial Review Order. Z-Tel will attempt to identify individual items to which this general objection is applicable within the specific objections that follow.

3. Z-Tel objects to the “Definitions,” the “General Instructions,” and the individual interrogatories to the extent they are vague, ambiguous, imprecise, or utilize terms that are subject to multiple interpretations but are not properly defined or explained for purposes of these Requests.

4. Z-Tel objects to the “General Instructions” and the items of BellSouth’s First Set of Interrogatories to Z-Tel to the extent that they purport to impose discovery obligations on Z-Tel that exceed the scope of discovery allowed by the applicable Florida Rules of Civil Procedure.

5. Z-Tel objects to BellSouth’s First Set of Interrogatories to Z-Tel to the extent that the interrogatories seek discovery of materials and/or information protected by the attorney/client privilege, the work product doctrine, the accountant/client privilege, or any other applicable privilege.

6. Z-Tel objects to BellSouth’s First Set of Interrogatories to the extent that the requests would require disclosure of information that constitutes trade secrets and/or

confidential, proprietary business information, which either should not be disclosed at all or should be disclosed (provided the information is otherwise discoverable) only pursuant to the terms of a mutually acceptable confidentiality agreement and use of the Commission's rules and procedures relating to confidential and proprietary information.

7. Z-Tel objects to all interrogatories which would require Z-Tel to provide information which is already in BellSouth's possession or is in the public record before the Commission. To duplicate information that BellSouth already has or is readily available to BellSouth would be unduly burdensome and oppressive.

8. Z-Tel objects to BellSouth's First Set of Interrogatories to the extent BellSouth seeks to impose an obligation on Z-Tel to respond on behalf of subsidiaries and/or former officers, employees, agents, and directors on the grounds that such requests for production are overly broad, unduly burdensome, oppressive, and not permitted by applicable discovery rules.

9. Z-Tel will interpret each interrogatory as relating to intrastate Florida operations within BellSouth's service area. To the extent any interrogatories are not intended to relate to Florida intrastate operations within BellSouth's Florida service area, Z-Tel objects to such interrogatories as overbroad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence.

10. Z-Tel objects to the use of the terms "qualifying service" and "nonqualifying service" on the grounds the terms are subject to differing interpretations.

SPECIFIC OBJECTIONS TO INDIVIDUAL INTERROGATORIES

Z-Tel hereby incorporates by reference the above general objections. To the extent possible given the constraints of the seven-day preliminary objection period, Z-Tel will attempt

to identify individual items that are objectionable. Z-Tel reserves the right to add to or enlarge upon these objections when it files its responses.

INTERROGATORY 7: With regard to the voice-grade equivalent lines identified by ILEC wire center area (or ILEC exchange) in response to Interrogatory 6, separate the lines by end user and end user location in the following manner:

(a) The number of end user customers to whom you provide one (1) voice-grade equivalent line;

(b) The number of end user customers to whom you provide two (2) voice-grade equivalent lines;

(c) The number of end user customers to whom you provide three (3) voice-grade equivalent lines;

(d) The number of end user customers to whom you provide four (4) voice-grade equivalent lines;

(e) The number of end user customers to whom you provide five (5) voice-grade equivalent lines;

(f) The number of end user customers to whom you provide six (6) voice-grade equivalent lines;

(g) The number of end user customers to whom you provide seven (7) voice-grade equivalent lines;

(h) The number of end user customers to whom you provide eight (8) voice-grade equivalent lines;

(i) The number of end user customers to whom you provide nine (9) voice-grade equivalent lines;

(j) The number of end user customers to whom you provide ten (10) voice-grade equivalent lines;

(k) The number of end user customers to whom you provide eleven (11) voice-grade equivalent lines;

(l) The number of end user customers to whom you provide twelve (12) voice-grade equivalent lines; and

(m) The number of end user customers to whom you provide more than twelve (12) voice-grade equivalent lines;

OBJECTION: This interrogatory asks Z-Tel to break down the total voice-grade equivalent lines identified by ILEC wire center in a prior response on the basis of “end user and end user location.” Z-Tel objects to this interrogatory on the grounds it is vague and ambiguous. The meaning of “customer location” is unclear in context. Z-Tel requests clarification of the item. Z-Tel also objects on the basis that the information sought with respect to BellSouth’s switches is known to BellSouth. Further, in the event BellSouth intends to require Z-Tel to provide the information for each customer’s address, Z-Tel objects to the interrogatory on the basis that it is onerous, unduly burdensome, and asks for confidential, proprietary information that BellSouth does not require for its legitimate discovery purposes.

INTERROGATORY 11: Identify by name, address, and CLLI code each ILEC wire center area, i.e., the territory serviced by the wire center, in which you provide qualifying service to any end user customers in Florida using an ILEC’s switch either on an unbundled or resale basis. If you assert that you cannot identify or do not know how to ascertain the boundaries of a wire center area, provide the requested information for the ILEC exchange in which your end user customer is located.

OBJECTION: Z-Tel objects to this interrogatory on the grounds that, with respect to the information relating to the wire center area of a BellSouth switch used by Z-Tel, the information is already in BellSouth's possession.

INTERROGATORY 12: For each ILEC wire center area identified in the foregoing Interrogatory (or ILEC exchange if you do not provide the information by wire center area) identify the total number of voice - grade equivalent lines you are providing to end user customers in that wire center area using an ILEC's switch either on an unbundled or resale basis.

OBJECTION: Z-Tel objects to this interrogatory on the grounds it requests information -i.e., the number of lines that Z-Tel provides using BellSouth switches - that is already in BellSouth's possession. Further, the information is proprietary and confidential.

INTERROGATORY 13: With regard to the voice-grade equivalent lines identified by ILEC wire center area (or ILEC exchange) in response to Interrogatory 12, separate the lines by end user and end user location in the following manner:

(a) The number of end user customers to whom you provide one (1) voice-grade equivalent line;

(b) The number of end user customers to whom you provide two (2) voice-grade equivalent lines;

(c) The number of end user customers to whom you provide three (3) voice-grade equivalent lines;

(d) The number of end user customers to whom you provide four (4) voice-grade equivalent lines;

(e) The number of end user customers to whom you provide five (5) voice-grade equivalent lines;

(f) The number of end user customers to whom you provide six (6) voice-grade equivalent lines;

(g) The number of end user customers to whom you provide seven (7) voice-grade equivalent lines;

(h) The number of end user customers to whom you provide eight (8) voice-grade equivalent lines;

(i) The number of end user customers to whom you provide nine (9) voice-grade equivalent lines;

(j) The number of end user customers to whom you provide ten (10) voice-grade equivalent lines;

(k) The number of end user customers to whom you provide eleven (11) voice-grade equivalent lines;

(l) The number of end user customers to whom you provide twelve (12) voice-grade equivalent lines;

(m) The number of end user customers to whom you provide more than twelve (12) voice-grade equivalent lines;

OBJECTION: Z-Tel objects with respect to BellSouth's switching on the ground that the information sought is already known to and available to BellSouth. Further, the information is proprietary and confidential.

INTERROGATORY 15: Identify every business case in your possession, custody or control that evaluates, discusses, analyzes or otherwise refers or relates to the offering of a qualifying service using: (1) the Unbundled Network Element Platform (UNE-P), (2) self-

provisioned switching, (3) switching obtained from a third party provider other than an ILEC, or (4) any combination of these items.

OBJECTION: Z-Tel objects to this interrogatory on the grounds it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, inasmuch as the FCC has determined that the state commissions' analysis of impairment is not to be based on individual carriers' business cases. Z-Tel also objects on the grounds that the interrogatory seeks the disclosure of commercially sensitive, confidential and proprietary business information. Z-Tel also objects because as defined within the interrogatories the term "business case" is overbroad. Z-Tel also objects because, particularly in view of the fact the information is irrelevant, requiring Z-Tel to disclose its internal analyses would be oppressive and unduly burdensome.

INTERROGATORY 16: Identify any documents that you have provided to any of your employees or agents, or to any financial analyst, bank or other financial institution, shareholder or any other person that describes, presents, evaluates or otherwise discusses in whole or in part, how you intend to offer or provide local exchange service, including but not limited to such things as the markets in which you either do participate or intend to participate, the costs of providing such service, the market share you anticipate obtaining in each market, the time horizon over which you anticipate obtaining such market share, and the average revenues you expect per customer.

OBJECTION: Z-Tel objects to this interrogatory on the grounds that, inasmuch as the FCC has determined the state commissions' impairment analyses is not to be based on individual carriers' business modules, it seeks information that is irrelevant to the impairment analysis to be conducted by the Commission and not reasonably calculated to lead to the

discovery of admissible evidence. Z-Tel also objects on the grounds the interrogatory is overbroad, oppressive, and unduly burdensome. Z-Tel objects on the grounds the interrogatory requests proprietary and confidential business information.

INTERROGATORY 17: If not identified in response to a prior Interrogatory, identify every document in your possession, custody, or control referring or relating to the financial viability of self-provisioning switching in your providing qualifying services to end user customers.

OBJECTION: Z-Tel also objects on the grounds the interrogatory seeks information that is unrelated to and inconsistent with the impairment analysis prescribed by the FCC. It is therefore irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Z-Tel objects to this interrogatory on the grounds that the request to identify “every” document is unduly burdensome and oppressive. Z-Tel also objects on the grounds the interrogatory seeks the disclosure of confidential and proprietary business information.

INTERROGATORY 26: For those end user customers to whom you only provide qualifying service in the State of Florida, please state the average monthly revenues you receive from each such end user customer.

OBJECTION: Z-Tel objects on the grounds the interrogatory asks for information that is irrelevant to the impairment analysis prescribed in the Triennial Review Order and not reasonably calculated to lead to the discovery of admissible evidence. Z-Tel also objects to this interrogatory on the grounds it seeks confidential and proprietary business information. Further, Z-Tel interprets this interrogatory to request aggregate information. If BellSouth intended to

request average monthly revenues for each individual end use customer, then Z-Tel objects on the grounds that the interrogatory is unduly burdensome and oppressive.

INTERROGATORY 34: For each class or type of end user customer referenced in Interrogatory No. 33, please state the average acquisition cost for each such end user class or type. Please provide this information for each month from January 2000 to the present.

OBJECTION: Z-Tel objects to this interrogatory on the grounds it seeks information that is unrelated to and inconsistent with the impairment analysis prescribed in the Triennial Review Order, is therefore irrelevant to the issues in the case and the analysis to be conducted by the Commission, and is not reasonably designed to lead to the discovery of admissible evidence. Network Telephone also objects on the grounds the interrogatory seeks the disclosure of commercially sensitive, confidential and proprietary business information. Z-Tel objects to the request for information on a monthly basis since January 2000 as onerous, oppressive, unduly burdensome and beyond any legitimate discovery need.

INTERROGATORY 35: For each class or type of end user customer referenced in Interrogatory No. 33, please state the typical churn rate for each such end user class or type. Please provide this information for each month from January 2000 to the present.

OBJECTION: Z-Tel objects to this interrogatory on the grounds it seeks information that, inasmuch as it is unrelated to and inconsistent with the impairment analysis prescribed in the Triennial Review Order, is irrelevant to the issues in this case and the analysis that the Commission is to conduct, and is not reasonably calculated to lead to the discovery of admissible evidence. Z-Tel also objects on the grounds the interrogatory seeks the disclosure of commercially sensitive, confidential and proprietary information. Z-Tel also objects on the

grounds that the request for monthly information beginning with January 2000 is unduly burdensome.

INTERROGATORY 39: Describe how the marketing organization that is responsible for marketing qualifying service in Florida is organized, including the organization's structure, size in terms of full time or equivalent employees including contract and temporary employees, and the physical work locations for such employees. In answering this Interrogatory, please state whether you utilize authorized sales representatives in your marketing efforts in Florida, and, if so, describe with particularity the nature, extent, and rates, terms, and conditions of such use.

OBJECTION: Z-Tel objects to this interrogatory on the grounds that, because it relates to Z-Tel's individual business model, it is inconsistent with the analysis prescribed in the Triennial Review order, is unrelated to the analysis the Commission is to make, irrelevant to the issues in the docket and not reasonably calculated to lead to the discovery of admissible evidence. Z-Tel also objects on the basis that the interrogatory seeks the disclosure of confidential and proprietary business information. Z-Tel also objects on the grounds the interrogatory as framed is overbroad and unduly burdensome.

INTERROGATORY 43: What cost of capital do you use in evaluating whether to offer a qualifying service in a particular geographic market and how is that cost of capital determined?

OBJECTION: Z-Tel objects to the interrogatory on the grounds it seeks information that, given the determination in the Triennial Review Order that the impairment analysis is not to be based on individual carriers' business models, is irrelevant to the issues in the case and unrelated to the analysis the Commission is to conduct, and is not reasonably

calculated to lead to the discovery of admissible evidence. Z-Tel also objects on the grounds the interrogatory seeks the disclosure of confidential and proprietary business information.

INTERROGATORY 44: With regard to the cost of capital you use in evaluating whether to provide a qualifying service in a particular geographic market, what are the individual components of that cost of capital, such as the debt-equity ratio, the cost of debt and the cost of equity?

OBJECTION: Z-Tel objects to this interrogatory on the grounds it seeks information that is inconsistent with the parameters of the Triennial Review Order, unrelated to the analysis the Commission is to conduct, irrelevant to the issues in the case, and not reasonably calculated to lead to the discovery of admissible evidence. Z-Tel also objects on the grounds the interrogatory seeks the disclosure of confidential and proprietary business information.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Objections of Z-Tel Communications, Inc. to BellSouth's First Set of Interrogatories has been provided by (*) hand delivery, (**) email and U.S. Mail this 20th day of October 2003, to the following:

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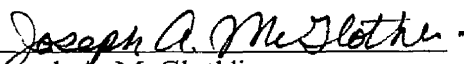
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