

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-02-0504-PCO-TP
ISSUED: April 11, 2002

ORDER GRANTING Z-TEL COMMUNICATIONS INC.'S MOTION
FOR LEAVE TO SUBMIT SUPPLEMENTAL TESTIMONY,
DENYING VERIZON FLORIDA INC.'S MOTION TO STRIKE AND
DENYING Z-TEL COMMUNICATIONS INC.'S REQUEST FOR ORAL ARGUMENT

On March 19, 2002, Z-Tel Communications, Inc. (Z-Tel) filed its Motion for Leave to Submit Supplemental Testimony. In its Motion, Z-Tel explains that the purpose of the supplemental testimony is to inform the Commission that the most recent HCPM data does not materially affect the relationship that Dr. Ford describes in his Revised Rebuttal Testimony.

On March 22, 2002, Verizon Florida Inc. (Verizon) filed its Motion to Strike Supplemental Rebuttal Testimony of George Ford. In its Motion, Verizon argues that Dr. Ford's Supplemental Rebuttal Testimony is an inappropriate and untimely attempt to remedy deficiencies that were revealed during his deposition. Verizon states that Dr. Ford's supplemental rebuttal testimony is procedurally improper, because it would deny Verizon the opportunity to respond. In addition, Verizon argues that allowing Dr. Ford to file supplemental testimony would possibly lead the way for others to file supplemental testimony. In particular, Verizon is concerned that AT&T/WorldCom witnesses Mr. Morrison and Dr. Ankum would have the opportunity to correct inadequacies revealed in their depositions. Allowing Dr. Ford to file supplemental rebuttal testimony would cast doubt on the certainty and finality of the procedural schedule as each party seeks to respond to each successive round of testimony by other parties. Finally, Verizon argues that Dr. Ford could have and should have known about the existence of an updated and corrected synthesis model.

On March 27, 2002, Verizon filed its Opposition to Z-Tel's Motion for Leave to Submit Supplemental Testimony. Verizon incorporates the arguments raised in its Motion to Strike and argues that Z-Tel's Motion was untimely filed. Verizon contends that it is prejudiced because Z-Tel did not file the Motion before it filed the Supplemental Testimony, and that the only way to correct this prejudice is to deny Z-Tel's Motion.

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On March 29, 2002, Z-Tel filed a Response to Verizon's Motion to Strike and a Request for Oral Argument. Z-Tel states that oral argument will enable Z-Tel to inform the Commission of the need for Dr. Ford's Supplemental Testimony and allow the Commission the opportunity to better evaluate the materiality of Verizon's contention that Dr. Ford did not use the most recent FCC data in his Revised Rebuttal Testimony.

In its response to Verizon's Motion to Strike, Z-Tel admits that Dr. Ford acknowledges that he learned of the FCC's adjustments during his deposition, but points out that Dr. Ford and his counsel "offered to provide an updated version of the exhibit to Dr. Ford's testimony reflecting the impact of the use of the updated FCC calculation." Z-Tel states that in refusing to accept the updated exhibits, Verizon is attempting "to discredit Dr. Ford's analysis without regard to the materiality - or lack thereof - of the effects of the FCC's adjustments on Dr. Ford's analysis and conclusions."

Z-Tel reiterates that the purpose of Dr. Ford's Supplemental Testimony is "to provide complete information based on the latest vintage of the calculations, and to quantify the extent of any differences occasioned by the FCC update to which Verizon referred." Z-Tel notes that the practice of the Commission is to allow witnesses to provide "'corrections, changes, or additions' to their testimony when they take the stand." Z-Tel argues that the standard to be applied is whether the updated information is useful to the Commission and whether the updated information would prejudice any party. Z-Tel contends that because it provided the supplemental testimony well in advance of the evidentiary hearing, Verizon will not be prejudiced. However, Z-Tel does not object to allowing Verizon the opportunity to provide additional testimony directed solely to Dr. Ford's supplemental testimony.

RULING

As Z-Tel correctly points out, Commission practice allows witnesses to provide corrections, changes, or additions to their testimony when they take the stand. However, allowing the filing of Supplemental Testimony to correct previously filed testimony will allow parties time to digest and conduct discovery on the revisions prior to hearing and thus, would obviate the need for

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opposing parties to conduct discovery through cross-examination at the hearing. While the slippery slope that Verizon warns of is a valid concern, this Order is limited to the filing of Supplemental Testimony which would ward off extensive cross-examination were it introduced for the first time at the hearing. Likewise, any testimony in response solely to Dr. Ford's Supplemental Rebuttal Testimony shall be filed one week from the issuance of this Order.

As stated above, Z-Tel filed a Request for Oral Argument. The pleadings submitted regarding this dispute are extensive and informative. I do not believe that oral argument would provide any further assistance to me in this matter. Therefore, I hereby deny Z-Tel's Request for Oral Argument.

Based on the foregoing, it is

ORDERED by Braulio L. Baez, as Prehearing Officer, that the Z-Tel Communications, Inc.'s Motion for Leave to Submit Supplemental Testimony is hereby granted. It is further

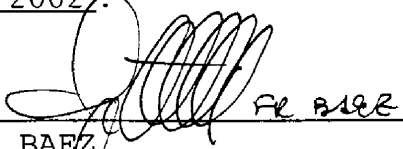
ORDERED that Verizon Florida Inc.'s Motion to Strike Supplemental Testimony of George S. Ford is hereby denied. It is further

ORDERED that any testimony in response solely to Dr. Ford's Supplemental Rebuttal Testimony shall be filed one week from the issuance of this Order. It is further

ORDERED that Z-Tel Communication Inc.'s Request for Oral Argument is hereby denied.

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By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 11th 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.

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

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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.