

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 990649B-TP
Filed: February 11, 2002

**VERIZON FLORIDA INC.'S MOTION FOR EXTENSION OF TIME
TO FILE SURREBUTTAL TESTIMONY**

Verizon Florida Inc. (Verizon) respectfully requests an extension of time for all parties to file surrebuttal testimony in this proceeding. Sprint Communications Company (Sprint) supports this Motion.

Verizon and Sprint filed their direct cases, including cost studies, on November 7, 2001. Staff and the alternative local exchange carriers (ALECs) filed rebuttal testimony on January 30, 2002. All parties' surrebuttal testimony is currently due on February 19, 2002. This period of time is insufficient to adequately prepare surrebuttal testimony.

In addition to Staff witness Draper, Verizon received testimony from six alternative local exchange carrier (ALEC) witnesses: Augustus Ankum, Sidney Morrison, Gregory Darnell, and Warren Fischer, on behalf of the ALEC Coalition of AT&T Communications of the Southern States, Inc., MCI WorldCom, Inc., and Florida Digital Network, Inc.; George Ford, on behalf of Z-Tel Communications, Inc. (Z-Tel); and Frank Wood, on behalf of KMC Telecom II, Inc. (KMC). Only the ALEC Coalition was required to file testimony electronically. (Order No. PSC-02-0090-PCO-TP, issued Jan. 15, 2002). Verizon received KMC's, Z-Tel's and Staff's testimony via U.S. mail on February 4. (Z-Tel also advised Verizon that it had e-mailed Mr. Ford's testimony.) Because the existing schedule allows only 20 days for preparation of surrebuttal on

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complex costing and other issues, any delay in receiving testimony significantly hinders Verizon's ability to prepare responsive testimony.

Under the existing schedule, Verizon has only 20 days to file surrebuttal testimony in response to the ALEC and Staff rebuttal testimony. Twenty days is also the period for responding to discovery. Thus, even though Verizon has been diligent in serving discovery, Verizon will not obtain discovery responses, let alone have the ability to review them, before it must file its own testimony. This is a significant obstacle to Verizon's ability to prepare its case.

Z-Tel's testimony presents a special problem. When the schedule for this proceeding was discussed among Staff and the parties, they all understood that parties supporting particular cost models would need to present those models in direct testimony. Z-Tel filed no direct testimony. In his rebuttal testimony, however, Mr. Ford advocates use of the FCC's Hybrid Proxy Cost Model (HCPM) to "[e]valuat[e] the relative cost of providing UNEs across the BellSouth and Verizon territories in Florida." (Ford Rebuttal Testimony at 20.) He states that he "used the FCC's Hybrid Proxy Cost Model" to compare BellSouth's and Verizon's costs. (*Id.*) In addition, Mr. Ford claims that the HCPM "is a reliable source of how costs differ across states and, similarly, across carriers within a state" (*id.* at 21) and presents HCPM cost figures for a number of UNEs for Verizon and BellSouth (*id.* at 22-23 & Ex. GSF-11).

Immediately after reviewing Mr. Ford's rebuttal testimony, Verizon's counsel informed Staff and Z-Tel counsel that Mr. Ford's presentation of the HCPM for the first time in rebuttal testimony was improper, and that Verizon would seek appropriate relief for this impropriety. Verizon advised both Staff counsel and Z-Tel's counsel that a

motion to strike Mr. Ford's testimony on HCPM would be necessary unless Verizon was given a sufficient extension to address that testimony. Z-Tel's counsel indicated that Z-Tel would likely agree to an extension. Counsel for Verizon and Z-Tel have continued to discuss the extent of Mr. Ford's use of HCPM. Despite Mr. Ford's representation that he "used" HCPM to draw his conclusions about Verizon's UNE prices, Verizon is informed that he used the FCC's HCPM output, rather than running the model himself. Nevertheless, a model run was necessary to yield the cost figures Mr. Ford presents, and Verizon must evaluate and respond to the claims Mr. Ford makes about HCPM. This effort will require discovery, including a deposition of Mr. Ford (which Verizon has already requested), and may require Verizon to field an additional witness who is an expert on HCPM.

This fact, coupled with Verizon's need to retain a consultant (and perhaps a witness) to assess and respond to Mr. Ford's testimony about HCPM, means that Verizon will not have a meaningful opportunity to respond to Mr. Ford's testimony by the existing surrebuttal due date of February 19.

Obtaining discovery from other witnesses will be just as important. The ALEC Coalition's Dr. Ankum, for example, makes a number of claims that are not supported by any information in his testimony. Verizon has already served interrogatories and requests for production of documents to obtain the information underlying Mr. Ankum's claims. But those responses are not due until February 28, over a week after surrebuttal testimony is due. Thus, Verizon will not have a reasonable opportunity to substantively respond to Mr. Ankum's claims in the absence of an extension for surrebuttal testimony.

Given the 20-day period for discovery responses, the minimum amount of time necessary for Verizon to respond to the rebuttal testimony is April 9, which is just over a week after it receives discovery responses. This extension will not prejudice any party. The hearing in this case was originally scheduled to begin on March 11, 20 days after filing of surrebuttal testimony. Because the hearing has been moved to April 29, an April 9 deadline for surrebuttal will give parties the same amount of time (20 days) they originally had to evaluate the surrebuttal testimony before the hearing.


Verizon notes, in addition, that it formerly had three additional days for preparation of its surrebuttal testimony. Its testimony preparation time was cut when AT&T and MCI obtained an extension for filing rebuttal testimony. That request was granted because AT&T and MCI claimed that without adequate time to prepare testimony, they “would be deprived of a reasonable opportunity to present evidence in this proceeding, thereby depriving the Commission of the best possible record for a reasoned Commission determination.” (Order Granting WorldCom’s and AT&T’s Joint Motion for Extension of Time, Order No. PSC-02-0090-PCO-TP, Jan. 15, 2002).

Exactly the same rationale applies in this situation, where Verizon will be similarly deprived of a reasonable opportunity to present its evidence in the absence of an extension. Verizon notes, in addition, that it has filed this Motion in a timely manner, allowing a sufficient period for response by the other parties. This was not true of AT&T’s and MCI’s Motion for Extension of Time; Verizon did not even know that motion had been filed until after it was granted. (AT&T and MCI requested an extension on January 14, with testimony due on January 16.)

The ALECs had 84 days (since November 7, 2001) to evaluate and respond to Verizon's direct testimony and to obtain discovery on Verizon's testimony and cost model. Verizon has been given only 20 days to respond to the ALECs' and Staff's testimony and to serve discovery. This schedule was very ambitious when it was established. But it is patently unreasonable now, in light of Verizon's need to evaluate testimony about a new cost model (HCPM) and to obtain discovery responses before it can file a meaningful response to the ALEC and Staff testimony.

For all the reasons discussed in this Motion, Verizon asks the Commission to grant all parties an extension until at least April 9, 2002, to file their surrebuttal testimony. If the Commission does not grant this extension, Verizon asks the Commission to at least strike Mr. Ford's testimony about the HCPM and to order the parties and Staff to respond immediately to Verizon's discovery requests.

Respectfully submitted on February 11, 2002.

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