

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into pricing of unbundled network elements (Sprint/Verizon track)) Docket No. 990649B-TP
) Filed: March 20, 2002
)

MOTION TO COMPEL DISCOVERY TO Z-TEL COMMUNICATIONS, INC.

Pursuant to Rules 28-106.204 and 28-106.206 of the Florida Administrative Code and Rule 1.380 of the Florida Rules of Civil Procedure, Verizon Florida Inc. ("Verizon") submits this Motion to Compel Discovery asking the Florida Public Service Commission ("Commission") to order Z-Tel Communications, Inc. ("Z-Tel") to immediately reply to Verizon's First Set of Interrogatories ("First Set").

On February 13, 2002, Verizon served Z-Tel with its First Set, which contained only one Interrogatory ("Interrogatory No. 1"). Z-Tel filed objections on February 21, 2002 ("Objections," attached as Ex. A). For the reasons stated below, Z-Tel's objections to Interrogatory No. 1 are inappropriate and without merit.

Because the information Verizon seeks is integral to preparation of its case, Verizon respectfully asks the Commission to order Z-Tel to immediately provide a complete response to Interrogatory No. 1.

Interrogatory No. 1:

What cost of capital does Z-Tel use to evaluate local exchange projects? Please specify whether this cost of capital is after-tax or before-tax. Please fully describe the cost of equity models that Z-Tel uses to develop the cost of capital and specify all model assumptions and inputs.

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Z-Tel objected to this question, claiming that the information requested is “irrelevant,” “confidential,” “particularly intrusive,” and “intend[ing] to harass Z-Tel.” (Ex. A.) These objections are groundless.

Contrary to Z-Tel’s assertion that its “cost of capital [is] so very different from the corresponding characteristics of a large LEC like Verizon that . . . [it] would be irrelevant to the issue in this proceeding” (Ex. A), the data requested is probative of and germane to the question of pricing unbundled network elements. In fact, such data is particularly relevant to these proceedings; cost of capital data has been produced by competitive local exchange carriers (“CLECs”), both voluntarily and pursuant to record requests, discovery and cross-examination, in several other recent Verizon UNE pricing proceedings. *See, e.g.*, Before the Federal Communications Commission, Docket Nos. 00-218, -249, -251, *AT&T’s Responses to Record Request Nos. 2-10* (Dec. 12, 2001); Before the Federal Communications Commission, Docket Nos. 00-218, -249, -251, *WorldCom’s Responses to Record Request No. 1* (Jan. 18, 2002); Before the Pennsylvania Public Utilities Commission, Docket No. R-00016683, *Hearing Exhibit No. 19 (AT&T/WorldCom’s Supplemental Responses to Verizon-PA’s Second Set of Data Requests, Request No. 71)*(Feb. 21, 2001) (“PA Hearing Ex. No. 19”); Before the Massachusetts Department of Telecommunications and Energy, D.T.E. 01-20, *Hearing Transcripts* (Jan. 7, 2002) at 191-195.¹ Notably, in the recent Pennsylvania UNE proceeding, Verizon moved the CLECs’ cost of capital information into the record *without objection*. *See* PA Hearing Ex. No. 19.

¹ The cost of capital data produced elsewhere is protected from disclosure by appropriate protective agreements or orders. Verizon and Z-Tel have executed a protective agreement in this case, as well, thereby relieving Z-Tel’s claim that such data is proprietary or confidential.

Furthermore, as AT&T/WorldCom witness, John Hirshleifer, admitted during questioning by the FCC Staff in the recent Virginia UNE arbitration, the cost of equity for a CLEC “should be considered by the Commission....all information should be used and considered so that the full spectrum is looked at.” (Before the FCC, Docket Nos. 00-218, -249, and -251, *Hearing Transcript* (Oct. 24, 2001) at 3642-43.) Accordingly, Z-Tel is incorrect in claiming that its cost of capital data is irrelevant and, thus, there is no reason why Z-Tel should not be required to provide it.

Moreover, Z-Tel’s own chief economist, Dr. George Ford, acknowledged at his deposition on March 1, 2002, that he had recently undertaken a study of the company’s cost of capital used to evaluate local exchange projects, stating that a study had been conducted “within the month.” (Transcript of Deposition of Dr. George Stirling Ford, March 1, 2002, at 28.) Subsequently, after being instructed by Z-Tel’s counsel not to respond to the question posed by Verizon’s counsel, Dr. Ford acknowledged that his cost of capital analysis would be responsive to Verizon’s counsel’s inquiry. *Id.* at p. 29-30 (the relevant pages of the Deposition Transcript are attached as Ex. B). Dr. Ford’s deposition testimony thus makes clear that such data is available, was recently assembled, and is, in fact, used to evaluate Z-Tel’s local exchange projects--precisely the information requested in Verizon’s Interrogatory No. 1.

Finally, Z-Tel claims the Commission “noted in the BellSouth phase of this docket that only information on companies comparable to the LEC is germane to an evaluation of the cost of capital related to an ILEC that is providing UNEs.” (Ex. A.) For this proposition, Z-Tel cites to page 169 of the BellSouth UNE Order (Order no. PSC-01-1181-FOF-TP). The cited page falls within the depreciation section of the BellSouth

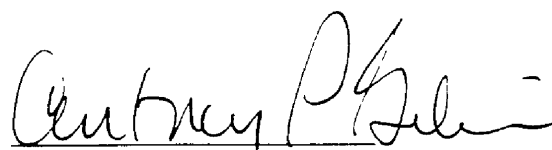
Order and does not state what Z-Tel claims it does. Regardless of what Z-Tel may have intended to cite, Verizon's explanation of the relevancy of Z-Tel's cost of capital--supported by the above citations from FCC and state proceedings--stands.

In sum, Z-Tel is in possession of and has failed to produce information that is directly responsive to Interrogatory No. 1 and its objections to this straightforward and plainly relevant question are meritless. Accordingly, Verizon respectfully requests that Z-Tel be ordered to immediately provide a complete response to Interrogatory No. 1.

CONCLUSION

For the foregoing reasons, Verizon respectfully requests that the Commission grant this Motion to Compel Discovery and order Z-Tel to immediately and completely respond to Interrogatory No. 1 in Verizon's First Set of Interrogatories.

Respectfully submitted on March 20, 2002.

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February 21, 2002

VIA HAND DELIVERY

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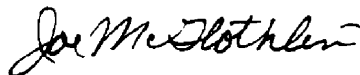
Re: Docket No.: 990649B-TL

Dear Ms. Bayo:

On behalf of the Z-Tel Communications, Inc., enclosed for filing and distribution are the original and 15 copies of Z-Tel Communications, Inc.'s Objection to Verizon Florida, Inc.'s First Set of Interrogatories (No.1) to Z-Tel Communications, Inc.

Please acknowledge receipt of the above on the extra copy and return the stamped copy to me.
Thank you for your assistance.

Sincerely,



Joseph A. McGlothlin

JAM/mls
Enclosure

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 990649B-TP
Filed: February 21, 2002

**Z-TEL COMMUNICATIONS, INC'S OBJECTIONS TO
VERIZON'S FIRST SET OF INTERROGATORIES**

Pursuant to Rule 28-106.206, Florida Administrative Code, and Rule 1.340, Florida Rules of Civil Procedure, Z-Tel Communications, Inc. ("Z-Tel") Objects to Verizon Florida, Inc.'s ("Verizon") First Set of Interrogatories (Nos. 1) and states as follows:

General Objections

1. Z-Tel objects to any interrogatory that calls for information protected by the attorney-client privilege, the work product doctrine, the accountant-client privilege, the trade secret privilege, or any other applicable privilege or protection afforded by law, whether such privilege or protection appears at the time the response is first made to these interrogatories or is later determined to be applicable based on the discovery of documents, investigation or analysis. Z-Tel in no way intends to waive any such privilege or protection.

2. Z-Tel objects to these interrogatories and any definitions and instructions that purport to expand FIPUG's obligations under applicable law. Z-Tel will comply with applicable law.

3. For each specific objection made below, Z-Tel incorporates by reference all of the foregoing general objections into each of its specific objections as though pleaded therein.

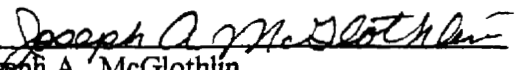
Specific Objections

4. Z-Tel objects to Verizon's interrogatory because it seeks information that is irrelevant and not calculated to lead to the discovery of admissible evidence, as required by the rules of discovery. Rule 1.280, Florida Rules of Civil Procedure. Verizon's interrogatory requests

information regarding the cost of capital that Z-Tel uses to evaluate local exchange projects. As a small ALEC, Z-Tel's corporate structure, business profile, investment risk, and cost of capital are so very different from the corresponding characteristics of a large LEC like Verizon that information regarding Z-Tel's cost of capital would be irrelevant to the issue in the proceeding. Indeed, the Commission noted in the BellSouth phase of this docket that only information on companies comparable to the LEC is germane to an evaluation of the cost of capital related to an ILEC that is providing UNEs. See Order No. PSC-01-1181-FOF-TP at 169. Thus, any response to this interrogatory would not be relevant to the issues in this docket.

5. Z-Tel also objects to the interrogatory because it requests confidential, proprietary business information of the type protected by section 364.183, Florida Statutes. Specifically, the interrogatory asks for Z-Tel's own *internal* cost of capital expectations and criteria which it uses when evaluating business decisions. Releasing the information regarding Z-Tel's internal planning criteria would place Z-Tel at a disadvantage to its competitors.

6. Z-Tel further objects to the interrogatory on the grounds that it is intended to harass Z-Tel. Verizon's interrogatory requests the disclosure of sensitive, confidential business information, even though the requested information would add no relevant information that would be instructive to the issues before the Commission. The nature of this request is particularly intrusive, in that it requires disclosure of Z-Tel's internal policies and criteria rather than an outside analysis of Z-Tel's cost of capital.


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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Z-Tel Communications, Inc's Objections to Verizon's First Set of Interrogatories has on this 21st day of February, 2002 been served by (*) Hand Delivery, Email and U.S. Mail to the following:

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1 project that you're talking about and the magnitude
2 of the money that you need to do the project.

3 The weighted average cost of capital is
4 only useful if you're evaluating cost of the
5 multiple products -- projects, I think particularly
6 for a firm like Z-Tel where we don't spend billions
7 of dollars on things.

8 Q. So is it your testimony that Z-Tel has not
9 developed a weighted average cost of capital?

10 A. I've computed one, but it's -- it can be
11 used to assess a project, but in the end you would
12 probably adjust that analysis to the true source of
13 funds. But as a first proxy it's not a bad thing,
14 and it has been done, and I've done it.

15 Q. And does the company rely on your
16 determination of the weighted average cost of
17 capital in evaluating various local exchange
18 projects?

19 A. It is a consideration and decision.

20 Q. What is the cost of capital that Z-Tel
21 uses to evaluate local exchange projects?

22 MR. MCGLOTHLIN: I'm going to instruct
23 the witness not to answer that question. I
24 think counsel is well aware that we've
25 objected to a similar question by the

1 responses to interrogatories. Z-Tel considers
2 it proprietary in addition to irrelevant. And
3 if you want to pursue it, you need to file a
4 motion to compel.

5 MR. HUTHER: We'll do that.

6 BY MR. HUTHER:

7 Q. Dr. Ford, to be clear, the cost of capital
8 analysis that you've just performed within the last
9 month would be responsive to the question I just
10 proposed that your attorney objected to; is that
11 right?

12 A. Yes.

13 Q. Let's turn to the second aspect of your
14 testimony which is -- which you begin to describe
15 on Page 4 of your prefiled revised testimony and
16 address in more detail in the later pages of your
17 testimony beginning on Page 20, and that relates to
18 the comparative cost analysis.

19 A. Yes.

20 Q. You state on Lines I believe 20 and 21 on
21 Page 20 that you used the FCC's HCPM or Synthesis
22 model to compare the cost of providing elements
23 between BellSouth Florida and Verizon Florida; is
24 that correct?

25 A. Mmm-hmm.