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March 22, 2002

Ms. Blanca S. Bayo, Director  
Division of the Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

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Re: Docket No. 990649B-TP  
Investigation into Pricing of Unbundled Network Elements (Sprint/Verizon track)


Dear Ms. Bayo:

Please find enclosed for filing an original and 15 copies of Verizon Florida Inc.'s Motion to Strike Supplemental Rebuttal Testimony of George S. Ford in the above matter. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this filing, please contact me at 813-483-2617.

Sincerely,

  
Kimberly Caswell

KC:tas  
Enclosures

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Investigation into pricing of unbundled ) Docket No. 990649B-TP  
network elements (Sprint/Verizon track) ) Filed: March 22, 2002  
\_\_\_\_\_ )

**VERIZON FLORIDA INC.'S MOTION TO STRIKE  
SUPPLEMENTAL REBUTTAL TESTIMONY OF GEORGE S. FORD**

Verizon Florida Inc. ("Verizon") moves the Florida Public Service Commission ("Commission") to strike the Supplemental Rebuttal Testimony of George S. Ford and all exhibits associated therewith, filed on behalf of Z-Tel Communications, Inc. ("Z-Tel") on March 18, 2002.

**BACKGROUND**

Dr. Ford's "supplemental" rebuttal testimony is an inappropriate and untimely attempt to remedy deficiencies in his prefiled revised rebuttal testimony that were made known to him during his recent deposition. Dr. Ford's revised rebuttal testimony, filed on January 30, 2002, contained, among other things, a "comparative cost analysis" that relied upon the Federal Communications Commission's ("FCC") federal universal service cost model ("Synthesis Model") to measure the differences between Verizon's and BellSouth's costs of providing unbundled network elements ("UNEs") in Florida. Dr. Ford contends that his comparative cost analysis is consistent with the methodology employed by the FCC when using the model for vastly different purposes (i.e., comparing the costs of a *single* carrier in *two different states* for Section 271 purposes). (Ford Revised Rebuttal at 21-22.) Putting aside the fact that the FCC has never used the Synthesis Model for the purposes proposed by Dr. Ford (i.e., comparing the costs of *two carriers* operating in the *same state*), Dr. Ford acknowledged during his March 1,

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2002 deposition that, not only was he using a defective and obsolete version of the Synthesis Model, but his computations did not comport with those used by the FCC in Section 271 proceedings. (Ford Depo. at 41-43, 81.)

Z-Tel attempts to remedy these problems with Dr. Ford's testimony by filing supplemental rebuttal testimony on the day that Verizon filed surrebuttal testimony responding to Dr. Ford. Dr. Ford states, however, that his revised analysis is now based upon the most recent vintage of the Synthesis Model and a revised set of calculations that have never been analyzed by the Commission, Verizon, or other parties to this proceeding. Dr. Ford's supplemental rebuttal testimony must be stricken because it is a procedurally improper attempt to circumvent the Commission's procedural schedule and to prejudice Verizon.

## **ARGUMENT**

### **A. Dr. Ford's Supplemental Rebuttal Testimony Is Procedurally Improper.**

All parties, including Z-Tel, must adhere to the Commission's procedural schedule. That schedule does not call for or in any way contemplate the filing of Supplemental Rebuttal Testimony by any party. Filing Dr. Ford's supplemental rebuttal testimony on the day that Verizon filed its surrebuttal testimony (without even asking the Commission's leave to do so) is a blatant attempt by Z-Tel to undermine the Commission's procedural calendar and deny Verizon its opportunity to respond. A procedural schedule becomes meaningless when parties are allowed to file new testimony at will to shore up their cases in response to lapses identified by their opponents.

Aside from the plain impropriety of making a filing that is not permitted by the procedural schedule, Dr. Ford's last-minute submission of revised testimony deprives Verizon and other interested parties of a meaningful opportunity to evaluate and comment upon his allegedly corrected comparative cost analysis. Verizon's surrebuttal testimony properly focused on the earlier -- albeit error-ridden and obsolete -- version of the Synthesis Model Dr. Ford used in his revised rebuttal testimony. Verizon has not analyzed or commented upon the purportedly corrected version of the Synthesis Model and allegedly updated calculations Dr. Ford now proffers. Indeed, absent revising the procedural schedule, yet again, at this late date to allow for the filing of additional testimony, Verizon has not had, nor will it have, the opportunity to conduct a meaningful review of or respond thoroughly to Dr. Ford's revised comparative cost analysis before the hearing.

The Commission should not countenance Z-Tel's disregard of the procedural schedule and other parties' due process rights. If the Commission permits Dr. Ford's Supplemental Rebuttal Testimony, there will be nothing stopping any other party from filing its own Supplemental Rebuttal Testimony. Indeed, Verizon took the depositions of AT&T/WorldCom witnesses Morrison and Ankum, as well as Z-Tel's Dr. Ford. If Dr. Ford is allowed to supplement his testimony to remedy inadequacies identified in his deposition, then Mr. Morrison and Dr. Ankum might like to have this opportunity, as well.

The problems with allowing parties to file testimony at will, rather than in accordance with the procedural schedule, are obvious. There will be no certainty to the procedural schedule and procedural finality will be difficult to achieve, as each party seeks the right to respond to each successive round of testimony by other parties.

There is no reason to sanction Z-Tel's unilateral departure from the established procedural schedule; Verizon urges the Commission to strike Dr. Ford's supplemental rebuttal testimony and all exhibits associated therewith.

**B. Dr. Ford Should and Could Have Known About the Existence of an Updated and Corrected Synthesis Model.**

Dr. Ford's late-filed supplemental rebuttal testimony is especially inappropriate because there is no reason he could not have known that the cost model upon which he relied in conducting his comparative cost analysis was flawed and outdated. Indeed, he does not claim otherwise.

The FCC details the history of its universal service model on its website, describes the changes made in various Orders and Public Notices, and maintains the most current version of the model online for the public (including Dr. Ford) to review, analyze and download. Dr. Ford, admittedly, never bothered to update his findings. (Ford Depo. Tr. at 43 (Dr. Ford admitting that he did not "recall updating the model . . . within the last 10 months").) Had he done so, he would have realized that, in the 10 to 12 months since he conducted his analysis, four iterations of the Synthesis Model had been released (Ford Depo. Tr. at 41, 74), the most recent on December 18, 2001--over a month and a half before he filed his revised rebuttal testimony. (Ford Depo. Tr. at 43 and Depo. Exhibit 3 ("Design History of HCPM").) Similarly, the FCC's computations in using the Synthesis Model's output in the Section 271 context were identified in the FCC's recent Pennsylvania 271 proceeding -- an Order that was not only released months before Dr. Ford's January 30, 2002 revised rebuttal filing, but was even referenced by Dr. Ford in his revised rebuttal testimony. (Ford Revised Rebuttal at 21.)

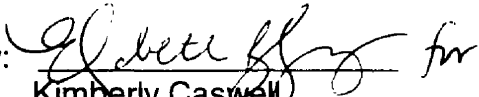
In short, Dr. Ford has no one to blame but himself for these oversights; it is improper to look to the Commission for help in correcting them.

As noted, the Commission's procedural schedule certainly did not contemplate any opportunity for parties to remedy through prefiled testimony any inadequacies or omissions identified through discovery. There is no reason that Dr. Ford could not have said in his rebuttal testimony exactly what he said in his supplemental rebuttal testimony. The Commission should not condone Z-Tel's attempt to remedy the deficiencies in Dr. Ford's revised rebuttal testimony, particularly when such a failure would operate to the extreme prejudice of Verizon and other interested parties.

### CONCLUSION

For the foregoing reasons, the Commission should strike the Supplemental Rebuttal Testimony of Dr. George S. Ford and all exhibits associated therewith.

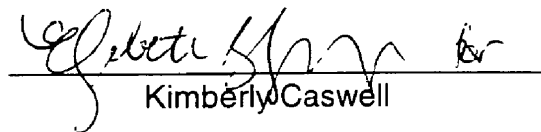
Respectfully submitted on March 22, 2002.

By:   
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Attorney for Verizon Florida Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Motion to Strike Supplemental Rebuttal Testimony of George S. Ford in Docket No. 990649B-TP were sent via electronic mail and U. S. mail on March 22, 2002 to the parties on the attached list.

  
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