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March 27, 2002

**VIA HAND DELIVERY**

Blanca S. Bayo, Director  
Division of Records and Reporting  
Betty Easley Conference Center  
4075 Esplanade Way  
Tallahassee, Florida 32399-0870

Re: Docket No.: 990649B-TP

Dear Ms. Bayo:

On behalf of Z-Tel Communications, Inc., I am enclosing the original and 15 copies of the Z-Tel Communications, Inc.'s Response to Verizon Florida, Inc.'s Motion to Compel and Z-Tel Communications, Inc.'s Motion for Protective Order.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and pleading by returning the same. Thank you for your assistance in this matter.

Thank you for your assistance in this matter.

Yours truly,



Joseph A. McGlothlin

JAM/mls  
Enclosure

DOCUMENT NUMBER: 02AT

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MCWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, DECKER, KAUFMAN, ARNOLD & STEEN, P.A.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 990649B-TP  
Filed: March 27 2002

**Z-TEL COMMUNICATIONS, INC.'S RESPONSE TO  
VERIZON FLORIDA, INC.'S MOTION TO COMPEL AND  
Z-TEL COMMUNICATIONS, INC.'S MOTION FOR PROTECTIVE ORDER**

Z-Tel Communications, Inc. (Z-Tel), through its undersigned counsel, responds to Verizon Florida, Inc.'s (Verizon) Motion to Compel Discovery and simultaneously moves for a Protective Order ruling that Z-Tel is not required to answer Verizon's Interrogatory No. 1. In support, Z-Tel Communications, Inc. states:

1. On February 13, 2002, Verizon served Z-Tel with its First Set of Interrogatories, which asks:

(a) 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.

2. Z-Tel timely objected to Interrogatory No. 1 on the basis that the information is irrelevant to the issue before the Commission, not reasonably calculated to lead to the discovery of admissible information, and confidential to Z-Tel.

3. On March 20, 2002, Verizon filed a Motion to compel an answer to Interrogatory No. 1. In the Motion, Verizon states:

Contrary to Z-Tel's assertions that its "cost of capital" is so very different from the corresponding characteristics of a large LEC like Verizon - . . . it would be irrelevant to the issue in this proceeding, the data requested is probative of and germane to the question of pricing unbundled network elements.

4. However, Verizon makes only the *naked assertion* that Z-Tel's internally calculated cost of capital would be "probative" of and germane to the issue of Verizon's cost of providing network elements. Without more, such conclusory statements do not satisfy Verizon's

burden of showing the relevancy of Z-Tel's cost of capital to the cost of capital that should be used as an input to the cost model in calculating *Verizon's* cost of providing unbundled network elements.

5. To support its contention, Verizon shows only that information relative to AT&T and WorldCom was provided during discovery in dockets in other jurisdictions. The fact that Verizon obtained discovery of AT&T and WorldCom does nothing to establish the relevancy of Z-Tel's internal view of its cost of capital to the issue before the Commission, which is the proper price of Verizon's unbundled network elements. Z-Tel's small size and special niche as a provider differentiates Z-Tel from these far larger CLECs as well. *Even if Verizon were to demonstrate the relevancy of AT&T's cost of capital to an estimate of Verizon's cost of capital, that would not satisfy its burden to show the relevancy of Z-Tel's information.*

6. Finally, Verizon points to the fact that during his deposition Z-Tel's Dr. George Ford acknowledged that he had recently performed a study of the company's cost of capital, and acknowledged that the study would be responsive to the interrogatory. This is a complete non sequitur. Z-Tel has never claimed that the information sought by the interrogatory does not exist. Rather, Z-Tel objected on the basis that the information is irrelevant to the issue of Verizon's cost of capital and not designed to lead to the discovery of admissible evidence.

7. While the fact of an internal analysis does not prove the relevancy of the analysis or Verizon's entitlement to the information in discovery, Z-Tel would point out that, whereas Z-Tel and other parties have prepared "external" estimates of Verizon's cost of capital based on publicly available information, Verizon seeks confidential and proprietary internal calculations prepared by Z-Tel for the purpose of evaluating specific "local exchange projects." It is clear Verizon's real objective is to learn about Z-Tel's internal business strategies and criteria. That is an inappropriate use of discovery in this case.

8. The issue before the Commission is Verizon's cost of capital, not Z-Tel's. Before a finding can be made that Z-Tel's cost of capital is relevant to the cost of capital that should be attributed to Verizon, there must be some indication that the companies are similar in terms of

their sizes, business endeavors and business risks. Verizon has not even attempted to make such a showing. It is revealing that in the analysis that Verizon's own witness prepared, Z-Tel is not included among the "comparable" companies to which the analyst turned for probative data. Verizon is a huge company; Z-Tel is tiny. Verizon is in the business of providing unbundled network elements; Z-Tel is not. More importantly, Verizon has ready access to the capital market; Z-Tel does not. In fact, in a recent public statement, Z-Tel's CEO advised analysts that Z-Tel plans to operate on internally generated cash because of its current inability to attract outside capital at acceptable costs.

9. This Commission has observed the marked differences between the ILECs' access to capital markets and the very different posture of ALECs. In Order No. PSC-01-1181-FOF-TP, issued in this docket (BellSouth track) on May 25, 2001, the Commission stated:

The record shows that if the financial markets tighten, the ILECs competitors might struggle to find financing. Additionally, witness Billingsley mentions Intermedia Communications and Next Link as firms currently competing with BellSouth in providing local exchange service in Florida. He acknowledges that these companies have single-B bond ratings by Standard and Poors, which is a junk bond or high yield rating. BellSouth has a triple-A bond rating by Standard and Poors and triple-A rated bonds require lower yields than B-rated bonds. *We note that it appears to us that BellSouth's stable access to low-cost capital greatly strengthens its position in the market, as compared to competitors with lower bond ratings.* (emphasis provided)"


9. The FCC has also observed that the costs that are relevant and germane to the pricing of UNEs are the costs incurred by the ILEC, not by new entrants. For example, in its First Report and Order, issued on August 8, 1996 in Circuit Court Docket 96-98, the FCC stated: "We believe that our adoption of a forward-looking cost-based pricing methodology should facilitate competition on a reasonable and efficient basis by all firms in the industry by establishing prices for interconnection and unbundled elements based upon costs similar to those *incurred by the incumbents* (emphasis provided).

10. In short, Verizon has made no showing that Z-Tel's cost of capital is germane in any way to the calculation of the cost of capital that should be attributed to Verizon. On the other hand, Z-Tel has demonstrated the fundamental differences in the sizes of the two

companies, their very different business activities and the different risks associated with each. Moreover, the Commission has already acknowledged the differences.

11. In the absence of any legitimate connection to *Verizon's* cost of providing UNEs, all that is left is Verizon's inquisitiveness and the harassing nature of the attempt to see into Z-Tel's confidential, internal assessment of its costs. This is insufficient to require Z-Tel to provide an answer to Interrogatory No. 1.

**WHEREFORE**, Z-Tel requests the Commission to deny Verizon's Motion to Compel, and to enter a protective order ruling that Z-Tel is not required to answer Verizon's Interrogatory No. 1.

  
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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Z-Tel Communications, Inc.'s Response to Verizon Florida, Inc.'s Motion to Compel and Z-Tel Communications, Inc.'s Motion for Protective Order has on this 27th day of March 2002 been served (\*) Hand Delivery and U.S. Mail to the following:

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Joseph A. McGlothlin

Administrative Code.

**Conclusion**

17. The standard for a motion to dismiss is clear and must be strictly applied. FPL has failed to meet that standard and its motion should be denied.

**WHEREFORE**, Florida Power and Light Company's Motion to Dismiss should be denied.

  
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