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April 3, 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

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 Response to the ALEC Coalition's Motion for Protective Order 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 *HC*

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Enclosures

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 990649B-TP
Filed: April 3, 2002

**VERIZON FLORIDA INC.'S RESPONSE TO THE
ALEC COALITION'S MOTION FOR PROTECTIVE ORDER**

Verizon Florida Inc. ("Verizon"), by and through its undersigned counsel and pursuant to Rules 28-106.204 and 28-106.206 of the Florida Administrative Code, hereby responds to the Motion for Protective Order filed by AT&T Communications of the Southern States, LLC, ("AT&T"), MCI WorldCom, Inc. ("MCI") and Florida Digital Network, Inc. ("FDN") (collectively the "ALEC Coalition") on March 27, 2002. For the reasons stated herein, the ALEC Coalition's Motion for Protective Order should be denied and Verizon's Motion to Compel a full and complete response to Interrogatory No. 25 of Verizon's Second Set of Interrogatories should be granted.¹

BACKGROUND

On February 13, 2002, Verizon served the ALEC Coalition with its Second Set of Interrogatories (Nos. 25-31) ("Interrogatories"). Through these interrogatories, Verizon asked, among other things, that each member of the ALEC Coalition identify the "cost of capital" used to evaluate local exchange projects, noting whether the data is "after-tax or before-tax," describing the "cost of equity models that each member . . . uses to develop the cost of capital," and "specify[ing] all model assumptions and inputs."

¹ While Verizon's Motion to Compel also addressed Interrogatories Nos. 26 and 27 of Verizon's Second Set of Interrogatories and Document Requests Nos. 15 and 16 of Verizon's Third Request for Production of Documents, Interrogatory 25 is the only remaining request for which the ALEC Coalition is in possession of responsive information, which it refuses to produce.

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Interrogatory No. 25. Members of the ALEC Coalition had previously produced this information to Verizon in other recent regulatory proceedings addressing the pricing of unbundled network elements (“UNEs”); however, the protective orders issued in those proceedings prevent Verizon from using the cost of capital information in this case. Surprisingly, the ALEC Coalition objected to Interrogatory No. 25, claiming that the information sought was not relevant or reasonably calculated to lead to the discovery of admissible evidence. ALEC Coalition’s Objections to Verizon’s Second Set of Interrogatories (filed February 25, 2002); ALEC Coalition’s Responses to Verizon’s Second Set of Interrogatories (filed March 5, 2002); *see also* Motion for Protective Order at 1 (filed March 27, 2002). Even more astounding, the ALEC Coalition moved for a protective order to prevent the disclosure of the very information its members had voluntarily produced elsewhere.

STANDARD OF REVIEW

It is well settled that the Commission will generally require the discovery of relevant, non-privileged information:

Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. *It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.*

Florida Rules of Civil Procedure, Rule 1.280(b)(1).

The ALEC Coalition confuses this lenient discovery standard with the more stringent standard concerning the *admissibility* of information into evidence. The ALEC

Coalition mistakenly asserts that it need not produce the requested information because the “fact that the information sought has been produced in other jurisdictions does not simply in and of itself *guarantee relevance* in this proceedings.” Motion for Protective Order at 2 (emphasis added). In effect, the ALEC Coalition turns the discovery standard on its head. In seeking a response to Interrogatory No. 25, Verizon is under no obligation to *guarantee* the relevance of information sought. Rather, Verizon need only demonstrate that the information is relevant, or reasonably calculated to lead to the discovery of admissible evidence. Verizon has amply satisfied this standard.

ARGUMENT

The ALEC Coalition’s objections to the relevancy of the requested information ring hollow. The ALEC Coalition has already effectively conceded the relevancy of its members’ internal cost of capital information by producing it *repeatedly* in recent UNE 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 Exh. No. 19”); Before the Massachusetts Department of Telecommunications and Energy, D.T.E. 01-20, *Hearing Transcripts* (Jan. 7, 2002) at 191-195. Notably, this information has been produced *voluntarily* and moved into evidence *without objection*. *Id.* Thus, it is a little late for the

ALEC Coalition to assert that, although the data sought by Verizon was relevant--and indeed *admitted into evidence*--in Virginia, Massachusetts and most recently Pennsylvania, it somehow does not even meet the lower discovery threshold in Florida.

Similarly, it is disingenuous for the ALEC Coalition to allege that Verizon has failed to demonstrate that the issues in the other UNE proceedings “were not the same or even close to the issues in this proceeding.” Motion for Protective Order at 2. As AT&T and WorldCom are well aware--and a review of Verizon’s cited authority will confirm--the UNE proceedings in which the ALECs have produced their internal costs of capital information are *virtually identical* to the Florida UNE proceeding. While the venues may differ, UNE proceedings seek to identify the forward-looking costs of providing UNEs and combinations of UNEs in a particular state. As such, each regulatory commission is tasked with analyzing and evaluating a cost model (or models) and establishing the propriety of its platform methodologies, input values, underlying assumptions, and, of course, the accuracy of the cost estimates produced. Regardless of the venue, the appropriateness and accuracy of the cost of capital used is absolutely essential to this analysis.

Likewise, the Commission should dismiss the ALEC Coalition’s empty assertion that, simply because its members will not provide UNEs on a scale comparable to that of Verizon, somehow their cost of capital information is not relevant to the cost of capital issues to be addressed in this proceeding. The ALEC Coalition has missed the point. Throughout the course of this proceeding, the ALEC Coalition has asserted that its proposed cost of capital reflects the forward-looking cost of capital that an efficient provider should adopt when providing UNEs in Florida. Undoubtedly, information

regarding the internal cost of capital used by presumably efficient carriers, such as members of the ALEC Coalition, is thus highly relevant to Verizon's (and the Commission's) assessment of the ALEC Coalition's claim. These figures, and more importantly the methods used to derive them, provide a benchmark against which Verizon (and the Commission) can gauge the propriety of the ALEC Coalition's allegedly forward-looking cost of capital figures. Any purported differences between the size of Verizon's and the ALECs' networks, and the scale of their respective operations, in no way affect this comparative analysis.



Indeed, the vigor with which the ALEC Coalition attempts to conceal its members' internal cost of capital information is astonishing. The information Verizon seeks is no mystery--Verizon, the ALECs, the FCC, and numerous state regulatory commissions are all familiar with the cost of capital information being requested. (Again, it is only by virtue of the protective agreements pursuant to which Verizon is bound--not unlike the protective agreement entered into by the parties in this case--that prevent the use of the cost of capital information in this proceeding.) Nevertheless, it appears that the ALEC Coalition is determined to keep this information from the Commission. In doing so, however, the ALEC Coalition prevents Verizon and the Commission from conducting a full and complete analysis of the cost of capital values (and underlying methodologies) the ALEC Coalition would have this Commission adopt for Verizon by precluding an analysis of, and comparison to, the values (and underlying methodologies) used by the member companies themselves. Given that the relevance of the requested data has already been conceded by the ALEC Coalition's members, and acknowledged by their witnesses, the Commission should reject the ALEC Coalition's attempt to withhold the

very cost of capital information that other federal and state regulatory commissions have found highly probative. The ALEC Coalition's production of this extremely relevant and useful cost of capital information is long overdue.

CONCLUSION

The ALEC Coalition's cost of capital information is highly relevant and probative of the issues to be resolved in the instant proceeding. For the foregoing reasons, Verizon respectfully requests that the Commission deny the ALEC Coalition's Motion for Protective Order and order the ALEC Coalition to provide immediately a full and complete response to Interrogatory No. 25 of Verizon's Second Set of Interrogatories.

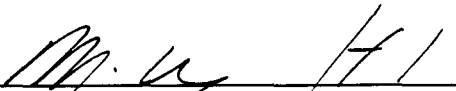
Respectfully submitted on April 3, 2002.

By: 
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Attorney for Verizon Florida Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Response to the ALEC Coalition's Motion for Protective Order in Docket No. 990649B-TP were sent via electronic mail and/or U.S. mail on April 3, 2002 to the parties on the attached list.



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