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COMMISSION  
CLERK

April 8, 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 Z-Tel Communications, Inc.'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

KC:tas  
Enclosures

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- CAF \_\_\_\_\_
- CMP \_\_\_\_\_
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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: April 8, 2002  
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**VERIZON FLORIDA INC.'S RESPONSE TO  
Z-TEL COMMUNICATIONS, INC.'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 Z-Tel Communications, Inc. ("Z-Tel") on March 27, 2002. For the reasons stated herein, Z-Tel's Motion for a Protective Order should be denied and Verizon's Motion to Compel a full and complete response to Interrogatory No. 1 of Verizon's First Set of Interrogatories should be granted.

**BACKGROUND**

On February 13, 2002, Verizon served Z-Tel with its First Set of Interrogatories. Interrogatory No. 1 asked Z-Tel to 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 Z-Tel uses to develop the cost of capital and specify[ing] all model assumptions and inputs." Z-Tel objected to Interrogatory No. 1, claiming that the information sought was not relevant, not reasonably calculated to lead to the discovery of admissible evidence, "confidential," and "intended to harass Z-Tel." Z-Tel's Objections to Verizon's First Set of Interrogatories (filed February 21, 2002); see *also* Motion for Protective Order (filed March 27, 2002). Moreover, in response to Verizon's Motion to Compel, Z-Tel moved for a protective order to prevent the disclosure of the

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very information that Competitive Local Exchange Providers (“CLECs”) have voluntarily produced to Verizon in other recent regulatory proceedings addressing the pricing of unbundled network elements (“UNEs”).

### **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).

Z-Tel confuses this lenient discovery standard with the novel claim that it need not produce the requested cost of capital information because Verizon has not demonstrated that Z-Tel and Verizon “are similar in terms of their sizes, business endeavors and business risks.” Motion for Protective Order at 2-3. Z-Tel is mistaken. Verizon is under no obligation to establish a direct nexus between Z-Tel’s and Verizon’s specific cost of capital assumptions, nor their overall business and operational realities. Rather, Verizon need only demonstrate that the cost of capital information requested is relevant, or reasonably calculated to lead to the discovery of admissible evidence. Verizon has amply satisfied this standard.

### **ARGUMENT**

Z-Tel’s objections to the relevancy of the requested information ring hollow. Z-Tel erroneously asserts that, because it is a “small,” “special niche” provider, the cost of

capital assumptions pursuant to which it operates are somehow irrelevant to the cost of capital issues to be addressed in this proceeding. Motion for Protective Order at 2. Z-Tel is wrong. Regardless of its size, the scale of its operations, or its access to capital markets, Z-Tel's cost of capital information is plainly relevant to the cost of capital issues to be decided by the Commission.<sup>1</sup> Throughout the course of this proceeding, Z-Tel has asserted that the cost of capital it proposes for Verizon 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 Z-Tel, is thus highly relevant to Verizon's (and the Commission's) assessment of Z-Tel's claim. The company's internal cost of capital values, and the methods used to derive them, provide a benchmark against which Verizon (and the Commission) can gauge the propriety of the allegedly forward-looking cost of capital values, and the methodologies used to derive them, that Z-Tel seeks to impose *upon Verizon*. Any purported differences between the size of Verizon's and Z-Tel's networks, the range of their respective operations, or their ability to attract outside capital in no way affect this comparative analysis.

Indeed, the relevance of Z-Tel's internal cost of capital information has already been acknowledged by other, similarly-situated, CLECs that have produced such information *repeatedly* in recent UNE proceedings; and, a number of state and federal regulatory commissions have found such information to be relevant and probative of the

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<sup>1</sup> Even if the scale of Z-Tel's operations was relevant -- which it is not -- Z-Tel's assertion that it is a tiny provider offering a limited range of services (Motion for Protective Order at 3) is belied by its cost of capital witness Dr. George S. Ford's testimony, which states that Z-Tel operates in *thirty-five states*, with plans to "offer competitive service to the residential consumers of every state, and provides a vast array of services, including "voicemail, email, fax, Internet, PDAs [Personal Digital Assistants], and local and long distance telecommunications" -- "*not* just a simple bundle of traditional telecommunications services."<sup>1</sup> Revised Direct Testimony Dr. George S. Ford at 2-3 (emphasis added).

issues to be addressed in 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, state and federal regulatory commissions have not only deemed the cost of capital information sought by Verizon to be relevant, but found that it met the more stringent standard concerning the *admissibility* of information into evidence. Given that the relevance of the requested data has already been acknowledged by CLECs -- and found to be highly probative by state and federal regulatory commissions -- the Commission should reject Z-Tel's attempt to withhold its cost of capital information.

The fact that this information was produced in other proceedings by allegedly "larger CLECs" (Motion for Protective Order at 2) does not undercut the relevancy of the information requested. As the Commission is well aware, the relevancy of the requested information does not turn on the size of the respective company from which it is requested. Regardless of the size and scope of a carrier's operations, the appropriateness and accuracy of the cost of capital (and core assumptions) *that carrier*

*utilizes* are relevant to the cost of capital (and core assumptions) *that carrier seeks to impose upon other providers.*

Perhaps recognizing that the requested information is relevant and highly probative of the issues to be decided by the Commission, Z-Tel makes the curious claim that its internal cost of capital must be protected from disclosure because it is confidential. Z-Tel's Objections to Verizon's First Set of Interrogatories at 2; *see also* Motion for Protective Order at 4. Z-Tel's argument is simply a red herring, designed to distract the Commission's attention from the undeniable relevancy of the requested data. As the Commission, Z-Tel and the other parties to this proceeding are well aware, protective agreements -- like ones entered into by the parties in this case -- are designed to safeguard the confidentiality of just this type of information. Indeed, both Verizon and Z-Tel have signed such agreements, thereby ensuring that, when it is eventually produced, Z-Tel's cost of capital information will not be divulged to third parties or compromised in any way. Indeed, the efficacy of these protective agreements has already been proven -- it is precisely these types of protective agreements that have prevented Verizon from introducing into evidence the cost of capital information produced by CLECs in other UNE proceedings.<sup>2</sup> Thus, Z-Tel's concerns about the proprietary nature of its cost of capital information are baseless.

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<sup>2</sup> See Verizon Response to the ALEC Coalition's Motion for Protective Order at 5-6.

## CONCLUSION

In the end, there can be no dispute, as many other regulatory commissions have recognized, and CLECs (like Z-Tel) have implicitly acknowledged, that Z-Tel's cost of capital information is highly relevant and undeniably probative of the issues to be resolved in the instant proceeding -- its production is long overdue. For the foregoing reasons, Verizon respectfully requests that the Commission deny Z-Tel's Motion for Protective Order and order Z-Tel to provide immediately a full and complete response to Interrogatory No. 1 of Verizon's First Set of Interrogatories.

Respectfully submitted on April 8, 2002.

By: Kimberly Caswell/dm  
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Attorney for Verizon Florida Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Response to Z-Tel Communications, Inc.'s Motion for Protective Order in Docket No. 990649B-TP were sent via electronic mail and/or U.S. mail on April 8, 2002 to the parties on the attached list.

  
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