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April 12, 2002

VIA HAND DELIVERY

Blanca S. Bayo, Director
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Betty Easley Conference Center
4075 Esplanade Way
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Re: Docket No.: 990649A-TL

Dear Ms. Bayo:

On behalf of the Z-Tel Communications, Inc., enclosed for filing and distribution is the original 15 copies of Post-Hearing Statement of Issues and Positions and Post-Hearing Brief of 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

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into)
pricing of unbundled network)
elements)
_____)

Docket No. 990649A-TP

Filed: April 12, 2000

**POST-HEARING STATEMENT OF ISSUES AND POSITIONS AND
POST-HEARING BRIEF OF Z-TEL COMMUNICATIONS, INC.**

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PRELIMINARY STATEMENT

Pursuant to rule 28-106.215, Florida Administrative Code, Z-Tel Communications, Inc. files its Post-Hearing Brief and its Post-Hearing Statement of Issues and Positions

The following abbreviations are used in this brief. Z-Tel Communications, Inc. is referred to as Z-Tel. BellSouth Telecommunications, Inc. is referred to as BellSouth. References to the transcript are designated (Tr.)

INTRODUCTION

This phase of the proceeding provides the Commission with a unique and valuable opportunity. The Commission has the ability to “take a step back” and analyze whether the rates, which it set for BellSouth in an earlier phase, are logical and proper. The sanity test offered by Z-Tel’s witness, Dr. George Ford, is a highly instructive tool, which the Commission can utilize to that end. The sanity test provides this Commission with a valid means with which to determine whether the loop rates set in this proceeding bear a quantitative relationship with loop rates in other BellSouth states that is consistent with the corresponding relationships of the underlying costs of providing the loops in those states. Since the UNE rates must be cost-based, it is logical to expect a reasonable correlation between the ratios of rates to related costs. Any significant departure from this relationship would flag a need to understand and, where warranted, act on the discrepancy. The FCC’s “Hybrid Proxy Cost Model,” which the FCC uses to make multimillion-dollar judgments in Universal Service dockets, makes possible the measurement of the costs between the subject states on a consistent and uniform basis. Dr. Ford’s “TELRIC test” is a helpful tool with which the Commission can gauge whether the Florida loop rate would comply with the FCC’s TELRIC standard. Further, this TELRIC Test likely will be used to evaluate BellSouth-Florida’s UNE rates in the context of a federal 271

application.

Based upon the evidence of Dr. Ford's application of this sanity test, the Commission will find that the ratio of the Florida rate and rates in other reference states is inconsistent with the corresponding ratios of forward-looking costs. The comparison shows a skewed rate-to-cost ratio that indicates the Florida loop rate is overstated relative to the cost relationship. Accordingly, the assumptions and algorithms used to estimate the forward-looking costs of unbundled loops in the BellSouth region of Florida should be examined further. The detailed examination conducted by John Donovan and Brian Pitkin, who testified for AT&T and WorldCom, bears out the indication of the sanity test that the loop rate is overstated, and provides detailed instructions on how to remedy this serious problem. After applying Dr. Ford's sanity test, and after conducting a review of the testimony of Messrs. Donovan and Pitkin, the Commission should reevaluate the loop rates set for BellSouth and modify them accordingly.

ARGUMENT

ISSUE 1

(a) Are the loop cost studies submitted in BellSouth's 120-day filing compliant with Order No. PSC-01-1181-FOF-TP?

(b) Should BellSouth's loop rate or rate structure, previously approved in Order No. PSC-01-2051-FOF-TP, be modified? If so, to what extent, if any, should the rates or rate structure be modified?

Z-Tel's Position: *BellSouth's statewide average loop rate fails the "sanity test" — a test of whether UNE rates between states are consistent with relative cost differences between states as measured by the HCPM model. The "test" indicates that BellSouth's UNE rates are overstated. The testimony of the ALEC witnesses proves this assertion.*

The testimony of Dr. George Ford establishes that BellSouth's loop rate fails to pass a "sanity test" (or "TELRIC test"— the sanity test is an indicator of whether a UNE rate meets the

TELRIC standard).¹ (R. 396). The TELRIC test was developed by the FCC. The FCC uses it in Section 271 proceedings to determine whether an ILEC's UNE rates comply with the FCC's TELRIC standard. *See, In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, 16 FCC Rcd 6237 (Jan. 2001); *In the Matter of Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, 16 FCC Rcd 8988 (Apr. 2001); *In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri*, 16 FCC Rcd 20719 (Nov. 2001); *In the Matter of Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, 16 FCC Rcd 17419 (Sep. 2001). Dr. Ford used his sanity test, which, like the FCC's test, utilizes the FCC's Hybrid Cost Proxy Model (HCPM or USF model), to assess the relative costs of unbundled loops across three states in which BellSouth does business accurately and uniformly. (TR-386, 393). Using the UNE cost data supplied by the HCPM, he compared the ratio of UNE costs to UNE rates between two states. (TR-393). If the ratio of UNE rates is less than or equal to the ratio for

¹While Dr. Ford's "sanity test" is an effective tool in analyzing whether a rate complies with TELRC, it should not be used to arrive at a specific rate value. In the FCC's view, the HCPM model is appropriate only for relative cost comparisons in the context of TELRIC studies.

UNE costs between two states, the UNE rate passes the sanity test.

Dr. Ford performed his sanity test by comparing BellSouth's loop rate to the BellSouth statewide average loop rate in Louisiana and Georgia.² The results of the test show that BellSouth's loop rate is at least 23% higher than the corresponding cost relationships would warrant. (TR-393) This upward skewing of the loop rate relative to costs and rates elsewhere in the BellSouth region indicates that BellSouth's rate should be reviewed closely.

Witnesses John Donovan and Brian Pitkin, who testified on behalf of AT&T and WorldCom, conducted a detailed review of BellSouth's cost model. Their analysis led them to conclude that BellSouth's latest filed cost model failed to meet the Commission's requirements set forth in Order No. PSC-01-1181-FOF-TP. (TR.-572-73). The errors in BellSouth's cost model are more fully developed and discussed in the witnesses' testimony. Importantly, their testimony validates Dr. Ford's initial indication that BellSouth's loop rate is overstated.

BellSouth sought to discredit Dr. Ford's application of the sanity test in this proceeding. The efforts were singularly unsuccessful. During cross-examination of Dr. Ford, BellSouth attempted to imply that Dr. Ford's application of the sanity test to this proceeding was improper because Dr. Ford (a professional economist who has extensive experience in the telecommunications industry) is not an expert in computerized cost modeling, or an expert in the engineering of telecommunications networks. (R-400). However, the sanity test is based on a completely analogous procedure that was created by the FCC and its experts, not by Dr. Ford. The application of the test is straightforward. It does not require an engineer/modeler. For the purpose, the FCC utilizes the same cost model that it employs to steer millions of dollars to and

²It is noteworthy that neither Louisiana nor Georgia's loop rate has been certified as TELRIC compliant, and neither does Dr. Ford endorse these rates as TELRIC compliant. Nevertheless, these rates are useful in making a comparison to the rate in this case. (R. 397).

from carriers in the universal service fund proceedings, and to make critical decisions about UNE rates in important 271 proceedings. Further, the HCPM output reports needed to make the comparisons are publicly available. The FCC uses the HCPM and the ratios of UNE rates and costs as a litmus test in Section 271 proceedings. Dr. Ford merely adapted the FCC's tool to apply a similar test in the context of this proceeding. The test is methodologically sound. The fact that the FCC uses the same tools to accomplish essentially the same task certainly establishes the credibility of Dr. Ford's approach and of his conclusions.

BellSouth also asked Dr. Ford to read from the FCC's order in the Arkansas - Missouri 271 case. The part of the order which he read states:

The Commission has stated that when a state commission does not apply TELRIC or does so improperly (e.g., it made a major methodological mistake or incorrect input or several smaller mistakes or incorrect inputs that collectively could render rates outside the reasonable range that TELRIC would permit), then we will look to rates in other section 271-approved states to see if rates nonetheless fall within the range that a reasonable TELRIC-based ratemaking would produce.

In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri, 16 FCC Record 20719, (Nov. 2001); (R. 409-410). With this excerpt, BellSouth sought to imply that the sanity test "would be applied only after the Commission or someone determines that TELRIC has not been applied properly." BellSouth begs the question. The FCC uses the benchmark test to determine whether TELRIC principles were properly applied. Interestingly, BellSouth's witness acknowledged that the FCC *applied the TELRIC test in the very order that he quoted*. (TR-69). In fact, the applicant ILEC voluntarily discounted the state-approved UNE rates in order to pass the FCC's TELRIC test.

(TR-70).

In the Rhode Island 271 proceeding the FCC applied the sanity test without conclusive proof of any evidence that the Rhode Island Commission had incorrectly applied TELRIC. The FCC stated:

Assuming *arguendo* that WorldCom's other claims regarding flawed assumptions are valid, we conclude that the alleged errors do not result in rates outside the reasonable range that a correct application of TELRIC principles would produce. Applying our benchmark analysis to New York and Rhode Island loop rates, we conclude that Rhode Island loop rates fall within the range that a TELRIC-based rate proceeding would produce.

In the Matter of Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Rhode Island, Release Number FCC 02-063 at para. 57, CC Docket 01-324 (Feb. 2002).

Further, the FCC statement in the Arkansas - Missouri order merely clarified that in the context of 271 proceedings, the FCC will review state established rates *if* TELRIC was not applied or was not properly applied. However, the FCC did not state that the sanity test can be validly applied *only* when a state has not applied TELRIC or has done so improperly; nor does it state that the sanity test can be validly applied *only* in the context of 271 proceedings. The Commission should reject BellSouth's baseless and erroneous interpretation of the proper application of the TELRIC test.

BellSouth contends that during the 120-day phase of this docket, the parties are limited to presenting evidence on whether BellSouth's "bottoms-up" cost study creates a basis for modification of the BellSouth rates previously approved in Order No. PSC-01-2051-FOF-TP.

However, as Issue 1(b) states, the question is simply: “Should BellSouth’s loop rate or rate structure, previously approved in Order No. PSC-01-2051-FOF-TP, be modified?” Nothing in the framing of the issue prevents the application of a “sanity test” in conjunction with and in support of the bottoms-up review; nor should it. The plain language of the Issue demonstrates that Dr. Ford’s insight is relevant and responsive to the issue framed by the Commission.

ISSUE 2

(a) Are the ADUF and ODUF cost studies submitted in BellSouth's 120-day compliance filing appropriate?

(b) Should BellSouth's ADUF and ODUF rates or rate structure, previously approved in Order No. PSC-01-2051-FOF-TP, be modified? If so, to what extent, if any, should the rates or rate structure be modified?

Z-Tel’s Position: *No separate ADUF or ODUF rate is justified. Even if there is a basis for deriving a rate, BellSouth has overstated the rate by understating the projection of ALEC messages. BellSouth has not met its burden of supporting its proposed ADUF and UDUF rates.*

BellSouth witness Caldwell testified that the DUF rates are derived by quantifying the costs of providing the data and spreading the costs over the projected number of ALEC messages through a rate expressed in terms of a cost per message. She acknowledged that as the number of projected messages increases, the cost per message decreases. (TR-356). She also acknowledged that a projection that understates ALEC demand could have the ‘self-fulfilling’ effect of overstating the DUF rate and, to the extent that the DUF rate affects the ALECs’ costs, decreasing demand. (TR-356-57).

Ms. Caldwell agreed with the concept that the relationship of the projected ALEC demand (expressed in terms of the total ALEC messages) to the overall number of messages handled by BellSouth would in effect be a quantification of the degree of ALECs’ market penetration. (TR-351-52). When she was unable to relate her projection of ALEC demand to the corresponding number of total BellSouth messages on the stand, Z-Tel asked for a late filed

exhibit showing the relationship. (TR-358). The request was allowed, over the objection of counsel for BellSouth. (TR-360-61). However, Late-filed Exhibit 52 shows only the ALEC demand by year. When questioned about the omission of total BellSouth messages, counsel for BellSouth said – not that the value for overall BellSouth messages was unavailable, which counsel for Z-Tel understood to be the only caveat to the requirement that BellSouth furnish the exhibit -- but that Z-Tel’s description of the information to be included in the exhibit was “unclear.”

A review of ARMIS data, which the FCC requires BellSouth to report, establishes that the requested data is readily available for periods covered by the report. Under the circumstances, Z-Tel requests the Commission to take official recognition of BellSouth’s reported ARMIS entries for the year 2001. The ARMIS entries for 2001 show 101 billion total BellSouth messages. Even when this 2001 figure for BellSouth is related to the 2011 projection of only 2.674 billion ALEC messages in late-filed Exhibit 52, the assumed or implicit ALEC market penetration is only 2.7%. To the extent that growth in total BellSouth messages over the next 10 years would increase the 2001 value significantly, the increase would of course reduce the indicated ALEC percentage share. In other words, in the projection of ALEC demand upon which the proposed DUF rate relies, BellSouth has included a value for ALEC demand that is absurdly low on its face. Even without the complete exhibit, then, it is clear that BellSouth is engaging in a self-serving prophecy of ALEC failure and equally clear that BellSouth has overstated the DUF rates.

In the event the Commission does not take official recognition of the 2001 ARMIS data, Z-Tel submits that BellSouth has not justified the reasonableness of its DUF rate with proper evidence.

ISSUE 3

(a) Is the UCL-ND loop cost study submitted in BellSouth's 120-day filing compliant with Order No. PSC-01-1181-FOF-TP?

(b) What modifications, if any, are appropriate, and what should the rates be?

Z-Tel's Position: *No position*

ISSUE 4

(a) What revisions, if any, should be made to NIDs in both the BSTLM and the stand-alone NID cost study?

(b) To what extent, if any, should the rates or rate structure be modified?

Z-Tel's Position: *For its statement of position on this issue, Z-Tel hereby adopts the respective positions taken by AT&T and WorldCom.*

ISSUE 5

(a) What is a "hybrid copper/fiber xDSL-capable loop" offering, and is it technically feasible for BellSouth to provide it?

(b) Is BellSouth's cost study contained in the 120-day compliance filing for the "hybrid copper/fiber xDSL-capable loop offering appropriate?

(c) What should the rate structure and rates be?

Z-Tel's Position: *No position.*

ISSUE 6

In the 120-day filing, has BellSouth accounted for the impact of inflation consistent with Order No. PSC-01-2051-FOF-TP?

Z-Tel's Position: *For its statement of position on this issue, Z-Tel hereby adopts the respective positions taken by AT&T and WorldCom.*


ISSUE 7

Apart from Issues 1-6, is BellSouth's 120-day filing consistent with the Orders in this docket?

Z-Tel's Position: *No position.*

CONCLUSION

The Commission should act on the analyses conducted by the ALECs in this case. The “sanity test” of BellSouth’s loop rates conducted by Dr. George Ford of Z-Tel, indicates that these rates are severely overstated. Dr. Ford’s conclusion is borne out by the detailed analysis of BellSouth’s cost model conducted by Mr. Pitkin and Mr. Donovan. Mr. Pitkin and Mr. Donovan provide evidence that BellSouth’s cost model is fraught with error and fails to comply with the standards set by the Commission. Based on the evidence provided, the Commission should therefore lower BellSouth’s UNE rates.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Post-Hearing Statement of Issues and Positions and Post-Hearing Brief of Z-Tel Communications, Inc, has been furnished by (*) hand delivery, U.S. Mail and Email this 12th day of April 2002, to the following:

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