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April 23, 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. 990619B-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 Request for Reconsideration of Commission Order No. PSC-02-0510-PCO-TP 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/dm
Kimberly Caswell

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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: April 23, 2002
_____)

**VERIZON FLORIDA INC.'S REQUEST FOR RECONSIDERATION
OF COMMISSION ORDER NO. PSC-02-0510-PCO-TP**

Verizon Florida Inc. ("Verizon"), by and through undersigned counsel, and pursuant to Rule 25-22.060 of the Florida Administrative Code, hereby seeks reconsideration of portions of the Florida Public Service Commission's ("Commission") Ruling on Verizon's Motion to Compel Discovery Responses from Z-Tel Communications, Inc. ("Z-Tel"). *Order Denying Verizon's Motion to Compel Discovery Response from Z-Tel; Granting, in part, Verizon's Motion to Compel Discovery Responses from ALEC Coalition; and Denying ALEC Coalition's Motion for Protective Order*, Docket No. 990649B-TP, Order No. PSC-02-0510-PCO-TP (April 12, 2002) ("Order"). Verizon requests that the Commission reverse certain aspects of the Order (as described below) and order Z-Tel to respond fully to Interrogatory No. 1 of Verizon's First Set of Interrogatories.

BACKGROUND

As described in Verizon's Motion to Compel and its Response to Z-Tel's Motion for Protective Order, the cost of capital information requested by Interrogatory No. 1 has previously been produced by other competitive local exchange carriers ("CLECs") in other recent regulatory proceedings addressing the pricing of unbundled network

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elements (“UNEs”).¹ See Verizon’s Motion to Compel Discovery to Z-Tel (filed March 20, 2002); Verizon’s Response to Z-Tel’s Motion for Protective Order (filed April 8, 2002). Verizon was unable to use the cost of capital information in this docket, however, because of protective orders issued in the other proceedings. Notwithstanding the recent voluntary production of the requested data in other UNE pricing proceedings, Z-Tel objected to Interrogatory No. 1 on the grounds that the information requested was not relevant or reasonably calculated to lead to the discovery of admissible evidence (Z-Tel’s Objection to Verizon’s First Set of Interrogatories (filed February 21, 2002); see *also* Z-Tel’s Motion for Protective Order (filed March 27, 2002)) and moved for a protective order to prevent the disclosure of its internal cost of capital information -- data that is, no doubt, similar to that already in Verizon’s possession and indeed has already been compiled by Z-Tel. See Verizon Motion to Compel Discovery to Z-Tel at 3; Transcript of Deposition of Dr. George Stirling Ford at 28 (March 1, 2002).

On April 12, 2002, the Commission denied Verizon’s Motion to Compel Discovery to Z-Tel, thereby refusing to order Z-Tel to produce the requested, and highly relevant, cost of capital information. Notably, the Commission did not explain the basis for its decision or even address the arguments made by Verizon in its initial Motion to Compel (filed March 20, 2002) and its subsequent response to Z-Tel’s Motion for Protective Order (filed April 8, 2002). Reconsideration of the Order is thus warranted because the Order overlooked or failed to consider key facts and the relevant law. In addition, the Order is arbitrary and capricious for its failure to explain or justify its ruling.

¹ Specifically, 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.” Verizon’s First Set of Interrogatories, Interrogatory No. 1.

For the reasons described below, the cost of capital information requested in this Motion for Reconsideration is relevant to this proceeding (in fact, it is critical to Verizon's ability to rebut the case presented by Z-Tel) and meets the Commission's discovery standards; therefore, the Commission should compel Z-Tel to provide a full and complete response to Interrogatory No. 1.

STANDARD OF REVIEW

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So.2d 315 (Fla. 1974); *Diamond Co. v. King*, 146 So.2d 889 (Fla. 1962); and *Pingree v. Quaintance*, 394 So.2d 161 (Fla. 1st DCA 1981). This is certainly the case here. Reconsideration is justified because the Commission's Order fails to apply the appropriate standard for the discovery of information; and fails to consider or even acknowledge that other CLECs have effectively conceded the relevancy of their internal cost of capital values in other Verizon UNE pricing proceedings of the same nature as this one.

ARGUMENT

In this proceeding to establish the appropriate prices for Verizon's UNEs Verizon is entitled to the discovery of relevant, non-privileged information.² For the reasons noted in Verizon's prior Motion to Compel and Response to Z-Tel's Motion for Protective Order, as well as the reasons discussed more fully below, Verizon has amply demonstrated that the requested cost of capital information is relevant, or reasonably

calculated to lead to the discovery of admissible evidence. The Commission's failure to apply the appropriate discovery standard, and account for the arguments made by Verizon supporting the discoverability of the requested cost of capital information, require that its Order be reconsidered. Indeed, the Commission failed to provide *any* basis for its conclusion that Z-Tel's cost of capital is irrelevant to establishing Verizon's cost of capital. Nowhere in the Order does the Commission address or account for the fact that other CLECs have voluntarily and repeatedly produced this information elsewhere.³ Similarly, the Commission's Order ignores Verizon's contention that Z-Tel's cost of capital is necessary to analyze fully the cost of capital proposals and methodologies made by Z-Tel. Accordingly, those portions of the Commission's Order denying the production of Z-Tel's cost of capital information should be reversed.

A. The Commission Failed to Employ the Correct Standard of Discoverability in Concluding that Z-Tel's Cost of Capital Information Is Not Relevant.

As the Commission is well aware, the discovery of relevant, non-privileged information generally will be required:

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.*

² See Florida Rules of Civil Procedure, Rule 1.280(b)(1).

³ Indeed, because CLEC cost of capital information is already known to Verizon and other state and federal regulatory commissions, and it is only by virtue of protective agreements that its use here is precluded, the Commission's Order would have the additional consequence of denying both Verizon and the Commission the benefit of meaningful data that have proved so insightful elsewhere.

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

In its Order, the Commission--apparently inadvertently--raises the bar of this otherwise lenient standard in finding that the cost of capital information requested by Verizon was "irrelevant," and therefore Z-Tel was not required to produce it. Order at 2 and 4. However, as the foregoing makes clear, Verizon was not required to demonstrate the *relevancy* of Z-Tel's cost of capital information. Rather, Verizon needed only to establish that the information sought was *reasonably calculated to lead to the discovery of admissible evidence*. Verizon has fully satisfied this comparatively lenient standard.

If, upon production, the Commission does not find Z-Tel's cost of capital information particularly compelling, it is, of course, free to accord it the weight the Commission believes it deserves. However, it is unfair to decide now that the information is not useful and deny Verizon the opportunity to prove its relevance. At this pre-hearing stage, when the discovery of any potentially relevant information is critical, it would be unfair (as well as inconsistent with the Florida discovery standard) to deny Verizon the right to build a full record in support of its position.

B. The Commission Failed to Account for Verizon's Arguments Supporting the Discoverability of Z-Tel's Cost of Capital Information.

The Commission's Order improperly fails to account for Verizon's arguments supporting the discoverability of Z-Tel's cost of capital information. Indeed, the Commission's Order is devoid of any explanation as to why the requested cost of capital information is allegedly not relevant or likely to lead to the discovery of admissible evidence. Without any discussion or analysis of the arguments in favor of--or, for that

matter, opposing--the relevancy of the requested information, the Commission summarily concludes that “[a]ny CLECs’ cost of capital information is irrelevant to establishing the appropriate cost of capital for Verizon, nor is the information reasonably calculated to lead to the discovery of admissible evidence.” Order at 2. Thus, the Commission’s Order fails to contain the requisite analysis essential to reasoned and principled administrative decisionmaking.

In doing so, the Commission ignores the fact that other CLECs have effectively *conceded* the relevance of their internal cost of capital information by producing it *repeatedly and voluntarily* in at least three recent UNE pricing 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. It is not reasonable, or consistent with relevant legal standards, to conclude that, while the cost of capital information sought by Verizon was deemed relevant--and, in fact, met the higher standard for the *admission* of information into evidence elsewhere--the same information when requested here did not even satisfy the lower threshold for discovery in Florida.

Contrary to the Commission's summary conclusion, Z-Tel's cost of capital information is highly relevant to the development of Verizon's case. Verizon contends that the cost of capital advocated by Z-Tel does not represent a realistic depiction of the cost of capital that would be realized in a forward-looking environment. See Rebuttal Testimony of James H. VanderWeide at 28-35. Verizon has explained that its cost model properly reflects a realistic, forward-looking cost of capital for the network that would actually be built and operated by an efficient service provider in a competitive market. Relevant to that inquiry is a review of the costs of capital actually employed by Z-Tel. To the extent that Z-Tel's cost of capital, and the methods used to derive it, is inconsistent with the cost of capital and methodology advocated by Z-Tel in this proceeding, this fact would undermine the credibility of Z-Tel's cost of capital proposals, thereby supporting Verizon's position that the cost of capital advocated by Z-Tel grossly understates the cost of capital that would actually be employed by an efficient carrier. Z-Tel's size, the scale of its operations, whether it provides UNEs, or its access to capital markets are utterly irrelevant to this determination. For this reason alone, the information sought regarding Z-Tel's cost of capital is relevant and Z-Tel should be compelled to provide the requested data.

Furthermore, the Commission has accepted the Federal Communications Commission's ("FCC") forward-looking economic cost standard for setting UNE rates. The FCC determined in its Local Competition Order that UNE rates should correct economic signals to new entrants in the UNE market. See e.g., *Implementation of the Local Competition Provisions in the Telecomm. Act of 1996*, 11 FCC Rcd 15499, at ¶ 620. If the Commission adopts a cost of capital input in this proceeding that is less than

the costs of capital of new entrants, such as Z-Tel, these companies would be better off leasing UNEs rather than building their own facilities, even if they were otherwise the most efficient provider of telecommunications services. Thus, information regarding Z-Tel's cost of capital is a relevant consideration if the Commission wants to send correct economic signals for entry decisions.

For the foregoing reasons, the application of the appropriate relevance standard to the information sought by Verizon leads to the inescapable conclusion that Z-Tel's cost of capital information will tend to support or undermine the credibility and reasonableness of the cost of capital values proffered by Z-Tel, as well as the methods used to derive them. Since the information will "tend[] to prove or disprove an alleged fact" (*Black's Law Dictionary*, Abridged Sixth Edition, at 894), it meets the definition of relevance and is therefore discoverable. Accordingly, the Commission's Order with respect to Z-Tel's cost of capital information should be overturned and Z-Tel should be ordered to respond to Interrogatory No. 1 immediately.

CONCLUSION

Z-Tel's cost of capital information is relevant and probative of the issues to be resolved in the instant proceeding, and is plainly discoverable under the Commission's lenient discovery standard. For the foregoing reasons, Verizon respectfully requests that the Commission to reverse its finding in Order No. PSC-02-0510-PCO-TP and order Z-Tel to provide immediately a full and complete response to Interrogatory No. 1 of Verizon's First Set of Interrogatories.

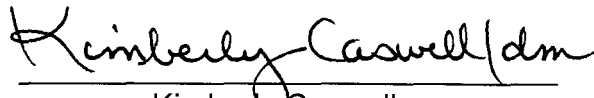
Respectfully submitted on April 23, 2002.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Request for Reconsideration of Commission Order No. PSC-02-0510-PCO-TP in Docket No. 990649B-TP were sent via electronic mail and/or U.S. mail on April 23, 2002 to the parties on the attached list.



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