

HOPPING GREEN & SAMS
PROFESSIONAL ASSOCIATION

ATTORNEYS AND COUNSELORS

123 SOUTH CALHOUN STREET

POST OFFICE BOX 6526

TALLAHASSEE, FLORIDA 32314

(850) 222-7500

FAX (850) 224-8551

www.hgss.com

JAMES S. ALVES
BRIAN H. BIBEAU
RICHARD S. BRIGHTMAN
DIANE W. CARR
KEVIN B. COVINGTON
T. SPENCER CROWLEY, III
BRIAN A. CRUMBAKER
PETER C. CUNNINGHAM
RALPH A. DeMEO
WILLIAM H. GREEN
MATTHEW L. HICKS
WADE L. HOPPING
GARY K. HUNTER, JR.
JONATHAN T. JOHNSON
ROBERT A. MANNING
FRANK E. MATTHEWS
RICHARD D. MELSON
KYLE V. MITCHELL

ANGELA R. MORRISON
ERIC T. OLSEN
GARY V. PERKO
MICHAEL P. PETROVICH
DAVID L. POWELL
CAROLYN S. RAEPPEL
DOUGLAS S. ROBERTS
D. KENT SAFRIET
GARY P. SAMS
TIMOTHY G. SCHOENWALDER
DAN R. STENGLE
CHERYL G. STUART
JENNIFER A. TSCHETTER
VICTORIA L. WEBER
—
OF COUNSEL
ELIZABETH C. BOWMAN
REX D. WARE

Writer's Direct Dial No.
(850) 425-2313

April 26, 2002

BY HAND DELIVERY

Blanca Bayó
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

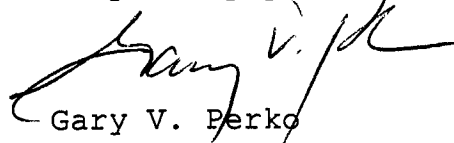
Re: Docket No. 990649B-TP

Dear Ms. Bayó:

Enclosed for filing on behalf AT&T Communications of the Southern States, Inc., MCI WorldCom, Inc. and Florida Digital Network (collectively the "ALEC Coalition") are the original and fifteen copies of ALEC Coalition's Response to Verizon's Request For Reconsideration of Order No. PSC-02-0510-PCO-TP.

By copy of this letter, copies have been furnished to the parties shown on the attached certificate of service. If you have any questions regarding this filing, please give me a call at 425-2359.

Very truly yours,



Gary V. Perko

GVP/jlm
Enclosures
cc: Certificate of Service

DOCUMENT NUMBER-DATE

04619 APR 26 8

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 990649B-TP

Filed: April 26, 2002

**ALEC COALITION'S RESPONSE TO VERIZON'S
REQUEST FOR RECONSIDERATION OF ORDER NO. PSC-02-0510-PCO-TP**

AT&T Communications of the Southern States, LLC ("AT&T"), MCI WorldCom, Inc. ("WorldCom"), and Florida Digital Network ("FDN") (collectively the "ALEC Coalition") hereby file their response in opposition to Verizon's Motion for Reconsideration ("Motion") of Order No. PSC-02-0510-PCO-TP ("Discovery Order"). In opposition to Verizon's Motion, the ALEC Coalition states:

BACKGROUND

The Discovery Request

1. Verizon's Interrogatory No. 25 to the ALEC Coalition asked:

What cost of capital does each member of the ALEC Coalition use to evaluate local exchange projects. As to each member of the ALEC Coalition, please specify whether this cost of capital is after-tax or before tax. Please fully describe the cost of equity models that each member of the ALEC Coalition uses to develop the cost of capital and specify all model assumptions and inputs.

The Discovery Standard

2. The scope of permissible discovery is governed by Rule 1.280(b), Florida Rules of Civil Procedure, which provides in pertinent part:

Parties may obtain discovery regarding any matter, not privileged, that is *relevant to the subject matter of the pending action*, . . . It is not ground for objection that the information sought will be inadmissible at trial, if the

information sought *appears reasonably calculated to lead to the discovery of admissible evidence.* (Emphasis added)

ALEC Coalition's Response and Objections

3. In its February 25 preliminary objections and its March 5 response to Verizon's interrogatories, the ALEC Coalition objected to Interrogatory No. 25 on the grounds that the information sought "is not relevant or reasonably calculated to lead to the discovery of admissible evidence." The ALEC Coalition's objection thus invoked both tests in Rule 1.280(b): relevancy to the subject matter of the proceeding and the likelihood of leading to the discovery of admissible evidence.

Verizon's Motion to Compel

4. On March 20, Verizon moved to compel a response to Interrogatory No. 25, arguing that information on the ALEC's cost of capital was relevant to the subject matter of the proceeding because (a) similar information had been produced in proceedings in other states and (b) an AT&T witness had made a statement in a hearing in another jurisdiction suggesting that all information should be used and considered so that the full spectrum is looked at. While Verizon's motion argued that the information requested by Interrogatory No. 25 was relevant to the subject matter of the proceeding, it did not respond to the ALEC Coalition's objection that the information was not reasonably calculated to lead to the discovery of admissible evidence.

ALEC Coalition's Motion for Protective Order

5. The ALEC Coalition filed a response to Verizon's motion to compel and a motion for protective order on March 27, seeking to protect the cost of capital information from discovery. In that pleading, the ALEC Coalition submitted that the production of similar information in other jurisdictions did not speak to the issue under Florida rules as to whether the

information is relevant to the subject matter of this proceeding, and that the out-of-context statement by an AT&T witness did not demonstrate such relevancy. The ALEC Coalition also pointed out that Verizon had made no effort to show how the requested information was reasonably calculated to lead to the discovery of admissible evidence.

Verizon's Response to Motion for Protective Order

6. In a second bite at the apple, Verizon on April 3, 2002 filed a response to the ALEC Coalition's motion for protective order in which it again argued that information about ALEC cost of capital was relevant because it had been produced in similar proceedings in other states and because it would provide a benchmark against which to measure the appropriate cost of capital for Verizon.

The Discovery Order

7. On April 12, 2002, the Commission entered its Discovery Order in which it denied Verizon's motion to compel as to Interrogatory 25 and a parallel motion to compel the production of similar cost of capital information by Z-Tel, another ALEC participating in this docket. In that order, the Commission set forth the arguments made by all parties in their respective pleadings, then ruled with respect to Z-Tel that:

Z-Tel correctly points out that the issue in this proceeding is the forward looking cost of capital for Verizon. Any 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.

The Commission then ruled with respect to Interrogatory No. 25 that:

As stated above [in the Z-Tel ruling] any CLEC's 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.

8. By these rulings, the Commission clearly and specifically ruled in the ALEC Coalitions' favor on both prongs of its objection: that the information sought is not relevant to the subject matter of the proceeding (i.e. the determination of cost of capital for Verizon as part of establishing cost based rates for UNEs) and that the information sought is not reasonably calculated to lead to the discovery of admissible evidence.

Verizon's Motion for Reconsideration

9. On April 23, Verizon filed its Motion for Reconsideration, arguing that 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." (Motion at 2-3)

STANDARD OF REVIEW

10. The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which the Commission overlooked or failed to consider in rendering its order. *Diamond Cab Co. v. King*, 146 So.2d 889 (Fla. 1962). As demonstrated below, Verizon's Motion fails to meet that standard. Even if the Commission were to ignore the standard for reconsideration, and consider the discovery issue *de novo*, the Discovery Order is correct and should not be disturbed.

ARGUMENT

11. Verizon has not shown that the Commission overlooked or failed to consider any matter raised by Verizon's pleadings. First, Verizon claims that the Commission "failed to employ the correct standard of discoverability" by finding that the cost of capital information was "irrelevant." (Motion at 5) Verizon is simply wrong. The scope of discovery is expressly limited by the first sentence of Rule 1.280 to information that is "relevant to the subject matter of the

pending action." The Commission's order was clear: information on CLEC cost of capital is not relevant to the establishment of UNE rates for an ILEC such as Verizon.


12. Second, Verizon alleges that the order fails to account for Verizon's arguments supporting the discoverability of the ALEC Coalitions' cost of capital information because it does not contain a detailed discussion or analysis of the arguments for and against relevance. (Motion at 6) Verizon then reiterates the same arguments regarding relevancy that were contained in its original motion to compel and in its response to the ALEC Coalitions' motion for protective order. (Motion at 6-9) None of this discussion supports Verizon's claim that the Commission overlooked or failed to consider Verizon's prior arguments regarding relevancy. The Order clearly reflects that the Commission considered both Verizon's original Motion to Compel (Order at 2) and Verizon's subsequent Response to the ALEC Coalition's Motion for Protective Order (Order at 3). Verizon cannot claim that the Commission failed to consider these pleadings -- at most it can claim that it is not satisfied with the level of detail with which the Commission recited and disposed of its arguments. That, however, is not a valid basis for reconsideration. To hold otherwise would subject any Commission order to reconsideration if the Commission failed to recite, analyze, and dispose of every specific argument raised by any party.

13. In summary, it is Verizon's Motion for Reconsideration, not the Commission's order, which applies the wrong legal standard for discovery by seeking to write out of the discovery rule the requirement that the information requested must be "relevant to the subject matter of the pending action." Further, the Motion does little more than express Verizon's dissatisfaction with the Commission's ruling, and reiterate arguments that were previously considered and rejected by the Commission. Such reargument is not the proper subject of a motion for reconsideration. The motion should therefore be denied.

WHEREFORE, the ALEC Coalition urges the Commission to deny Verizon's Motion for Reconsideration of the Discovery Order.

RESPECTFULLY SUBMITTED this 26th day of April, 2002.

HOPPING GREEN & SAMS, P.A.

By: 
Richard D. Melson
Gary V. Perko
P.O. Box 6526
Tallahassee, FL 32314
(850) 225-7500

and

Donna C. McNulty
MCI WorldCom, Inc.
325 John Knox Road
The Atrium, Suite 105
Tallahassee, FL 32303

Attorneys for MCI WorldCom, Inc.

Tracy Hatch
Floyd R. Self
Messer Caparello & Self
215 South Monroe Street, Suite 701
Tallahassee, FL 32301
(850) 222-0720

Attorneys for AT&T Communications of the Southern States, LLC

Matthew Feil
Florida Digital Network, Inc.
390 North Orange Avenue, Suite 2000
Orlando, Florida 32801

Attorney for Florida Digital Network, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following parties by U.S. Mail, and/or e-mail (*) this 26th day of April, 2002.

AT&T Communications of the Southern
States, Inc. (GA)
Virginia Tate*
1200 Peachtree St., Suite 8068
Atlanta, GA 30309

Ausley Law Firm
Jeffrey Wahlen/John Fons*
P.O. Box 391
Tallahassee, FL 32302

BellSouth Telecommunications, Inc.
Ms. Nancy B. White*
c/o Nancy H. Sims
150 South Monroe Street, Suite 400
Tallahassee, FL 32301-1556

Covad Communications Company
Ms. Catherine F. Boone*
10 Glenlake Parkway, Suite 650
Atlanta, GA 30328-3495

Development Specialists, Inc.
Norton Cutler*
c/o Steve Victor
70 West Madison Street, Suite 2300
Chicago, IL 60602-4250

Florida Cable Telecommunications Ass'n
Michael A. Gross*
246 E. 6th Avenue, Suite 100
Tallahassee, FL 32303

Florida Competitive Carriers Assoc.
c/o McWhirter Law Firm
Joseph McGlothlin*/Vicki Kaufman*
117 S. Gadsden St.
Tallahassee, FL 32301

Florida Digital Network, Inc.*
390 North Orange Ave., Suite 2000
Orlando, FL 32801

KMC Telecom Inc.
Mr. John D. McLaughlin, Jr.
1755 North Brown Road
Lawrenceville, GA 30034-8119

Katz, Kutter Law Firm
Charles Pellegrini/Patrick Wiggins*
12th Floor
106 East College Avenue
Tallahassee, FL 32301

Kelley Law Firm
Genevieve Morelli/Eric Jenkins
1200 19th St. NW, Suite 500
Washington, DC 20036

Kelley Law Firm
Jonathan Canis*/Michael Hazzard
1200 19th St. NW, Fifth Floor
Washington, DC 20036

MCI WorldCom
Ms. Donna C. McNulty*
325 John Knox Road, Suite 105
Tallahassee, FL 32303-4131

MCI WorldCom, Inc.
Mr. Brian Sulmonetti
Concourse Corporate Center Six
Six Concourse Parkway, Suite 3200
Atlanta, GA 30328

Messer Law Firm
Norman Horton*/Floyd Self*/Tracy Hatch*
215 South Monroe Street, Suite 710
Tallahassee, FL 32302

Network Access Solutions Corporation
Mr. Don Sussman
Three Dulles Tech Center
13650 Dulles Technology Drive
Herndon, VA 20171-4602

Pennington Law Firm
Marc W. Dunbar
P.O. Box 10095
Tallahassee, FL 32302

SBC Telecom, Inc.
Mr. Kevin Chapman
13th Floor
300 Convent Street
San Antonio, TX 78205-3702

Shook, Hardy & Bacon LLP
Rodney L. Joyce*
600 14th Street, N.W., Suite 800
Washington, DC 20005-2004

Sprint-Florida, Incorporated
Charles J. Rehwinkel*
1313 Blairstone Road
Tallahassee, FL 32301-3021

Supra Telecommunications and Information
Systems, Inc.
Mark E. Buechele
Koger Center - Ellis Bldg.
1311 Executive Center Dr., Suite 200
Tallahassee, FL 32301-5027

Swidler Berlin Friedman, LLP
Michael Sloan*
3000 K St. NW, #300
Washington, DC 20007-5116

Time Warner Telecom of Florida, L.P.
Carolyn Marek*
233 Bramerton Court
Franklin, TN 37069

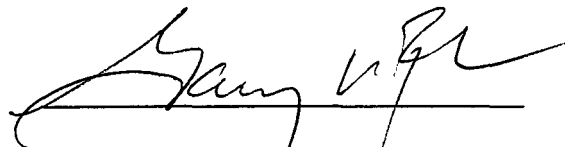
Verizon Select Services Inc.
Kimberly Caswell*
P.O. Box 110, FLTC0007
Tampa, FL 33601-0110

Z-Tel Communications, Inc.
George S. Ford*
601 S. Harbour Island Blvd.
Tampa, FL 33602-5706

Nanette Edwards
Director-Regulatory , Sr. Attorney
ITC^DeltaCom
4092 S. Memorial Parkway
Huntsville, AL 35802

William H. Weber*
Covad Communications Company
19th Floor, Promenade II
1230 Peachtree Street, NE
Atlanta, GA 30309

Jason Fudge*
FL Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850



Attorney