STATE OF FLORIDA
PUBLIC SERVICE COMMISSION

In re Petition For Arbitration of Interconnection Terms and Conditions and Related Arrangements with Verizon Florida Inc. Pursuant to Section 252(b) of the Telecommunication Act 1996	)))))	Case 040156-TP

MOTION TO DISMISS AND
RESPONSE OF Z-TEL COMMUNICATIONS, INC.

Verizon's Petition for Arbitration with Z-Tel Communications Inc. ("Z-Tel") should be dismissed by virtue of its failure to comply with the terms of the Interconnection Agreement between Z-Tel and Verizon and its failure to comply with the requirements of its Interconnection Agreement with Z-Tel and Section 252 of the Act. This Petition, part of Verizon's multistate legal blitzkrieg against Z-Tel and other entrants, should be rejected and dismissed without further regard by the Florida Public Service Commission ("Commission").

I. VERIZON'S PETITION AGAINST Z-TEL SHOULD BE DISMISSED BECAUSE IT DOES NOT COMPLY WITH THE NOTICE, CHANGE IN LAW, AND DISPUTE RESOLUTION PROVISIONS OF THE INTERCONNECTION AGREEMENT BETWEEN THE PARTIES

Verizon has filed this Arbitration Petition against Z-Tel **without there being any negotiation or request for negotiation between the parties.** In fact, Verizon has failed to follow the process spelled out in detail in the clear language in the interconnection agreements between Verizon and Z-Tel. As a result, Verizon's Petition should be summarily dismissed as an attempt by Verizon to bootstrap Z-Tel into negotiation disputes that may or may not have arisen between Verizon and other CLECs.

A. The Z-Tel/Verizon Interconnection Agreement Specifically Provides for a Change in Law Renegotiation Process that Verizon Has Not Followed

Z-Tel and Verizon have executed a series of Section 252 interconnection agreements that cover all of the states in which Verizon operates as an incumbent LEC, including this state (the "Z-Tel Agreement"). While those agreements have different dates of execution, they all share the same clauses relating to renegotiation, dispute resolution, and changes in law. By including Z-Tel in its blitzkrieg arbitration filing, Verizon has not followed the provisions of the Z-Tel Agreement. As a result, the Commission should dismiss its petition against Z-Tel.

Section 4.6 of the Z-Tel Agreement provides that good faith negotiations result from any change in Applicable Law:

> If any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in Applicable Law, materially affects any material provision of this Agreement . . . the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law.

Section 4.6 provides a specific process in which either Z-Tel or Verizon may initiate these good faith change-in-law renegotiations:

> Either party may initiate such good faith negotiations in writing upon the issuance of any relevant decision, order, determination or action, or any change in Applicable Law.

Finally, Section 4.6 also specifically discusses the process that ensues if those negotiations fail:

> If the Parties have been unable to negotiate an amendment to this Agreement within forty-five (45) days of the date of the initiating Party's written notice, either party may pursue any remedies available to it under this Agreement, at law, in equity, or otherwise, including, but not limited to, instituting an appropriate proceeding before the [state] Commission, the FCC, or a court of competent jurisdiction.

The "remedy available to it under this Agreement" contemplated by Section 4.6 of the Agreement is the Dispute Resolution procedure described in Section 14. Section 14.1 states that in the event of a dispute between the parties,

> a Party must provide the other Party written notice of the dispute that includes both a detailed description of the dispute or alleged nonperformance and the name of an individual who will serve as the initiating Party's representative in the negotiation. . . . The Parties' representatives shall meet at least once within 45 days after the date of the initiating Party's written notice in an attempt to reach a good faith resolution of the dispute.

In other words, the Agreement between Z-Tel and Verizon provides for a clear process for negotiating changes in Applicable Law. First, a Party may initiate (via a valid Notice under the Agreement) a 45-day good faith negotiation process (Section 4.6). In the event those negotiations fail, the Dispute Resolution process of Section 14.1 becomes applicable, in which another 45-day negotiation period is triggered if a Party files a valid and detailed notice of dispute.

Verizon did not follow that process with Z-Tel. All Verizon has done, by its own admission, is send an oblique and generic October 2, 2003 "industry letter" and, four months later, file this Arbitration Petition. Since those actions are inconsistent with Verizon's obligations under the Z-Tel Agreement, the Petition against Z-Tel should be dismissed.

Verizon's October 2, 2003 industry-wide letter did not initiate change-in-law renegotiations pursuant to Section 4.6 of the Z-Tel Agreement for several reasons. Most importantly, the effective date of the *Triennial Review Order*[1] did not constitute a "change in law" under the Z-Tel Agreement because at that time, it had been appealed by dozens of state commissions, ILECs, and CLECs, Verizon and Z-Tel included. The *Triennial Review Order*

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[1] Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) ("*Triennial Review Order*"), *rev'd in part and remanded, United States Telecom Ass'n v. FCC*, Nos. 00-1012, 00-1015, 03-1310 *et al.* (D.C. Cir. March 2, 2004) ("*USTA II*").

was not and is still not (in the wake of the recent *USTA II* decision) a final and unappealable legal judgment or order. As a result, any invocation of Section 4.6 of the Z-Tel Agreement by Verizon on October 2, 2003 would have been premature.

Moreover, the October 2, 2003 letter is not a valid request for good faith change-in-law negotiations under Section 4.6 the Z-Tel Agreement. The October 2 letter was titled "Notice of Discontinuation of Unbundled Network Elements and Notice of Availability of Contract Amendment." The majority of the letter deals with network elements that Verizon believed it was under no legal obligation to provide Z-Tel (and which Section 4.7, a different provision of the Z-Tel Agreement, discusses). The letter itself does not reference Section 4.6 of the Z-Tel Agreement, the change-in-law renegotiation process.

With regard to change-in-law negotiations, the October 2 letter is oblique:

> [T]his letter serves as confirmation that Verizon is prepared to comply with all other provisions of the Triennial Review Order, provided it has not otherwise been stayed or reversed on appeal, subject to negotiation and execution of an appropriate amendment to your interconnection agreement that applies the changes in law effected by the Triennial Review Order to the specifics of the commercial environment.
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> To the extent notice of such changes in law, or notice of termination of service/facilities availability, is required under your interconnection agreement, this letter shall serve as such notice....Carriers seeking to amend their interconnection agreements should review the draft amendment and contact Verizon to proceed with completion of the contracting process.

Verizon October 2, 2003 letter.

Verizon's October 2 letter does not constitute an initiation of good faith negotiations required by Section 4.6 of the Z-Tel Agreement. While Verizon's letter states that the letter "shall serve as notice" of a "change in law", it does not request that Z-Tel enter into negotiations to implement changes in law. Instead, the letter notes that it has posted a proposed amendment on its industry-wide website and states that "*[c]arriers seeking to amend their interconnection*

agreements" should review Verizon's proposal and contact Verizon. It was reasonable for Z-Tel to interpret the October 2 for what it appeared to be – a notice of termination of certain UNEs (none of which are ordered by Z-Tel) and a notice that an amendment was available for review by "[c]arriers seeking to amend their interconnection agreements." Importantly, Verizon did not subsequently act as if the October 2 letter were an official notice under Section 4.6 of the Z-Tel Agreement, because Verizon engaged in no further requests or negotiations within the specific 45-day window provided for by Section 4.6.

Even if Verizon's October 2 letter constituted a notice under Section 4.6, it is clear that Verizon's next course of action with Z-Tel would have been to invoke the Dispute Resolution provisions of Section 14 of the Z-Tel Agreement. Verizon has not done so. As a result, arbitration at this time is clearly unwarranted, as Verizon has failed to exhaust its remedies under the Z-Tel Agreement.

Z-Tel behaved reasonably in this episode. At no time did Verizon dispute Z-Tel's approach and Verizon did not seek out negotiations before slamming Z-Tel with this multistate arbitration petition. Z-Tel regarded Verizon's October 2 letter for what it was: a general industry-wide notification to CLECs that Verizon was willing to negotiation changes in law as a result of the *Triennial Review Order* if CLECs so chose to engage in such discussions. In addition, the final paragraph in the October 2 letter's that references the FCC's default timetable was inapplicable to Z-Tel, as the Z-Tel Agreement specifically provides for a different process under Sections 4 and 14 of the Z-Tel Agreement (two 45-day windows of negotiation).[2]

In short, Verizon did not avail itself of the renegotiation and dispute resolution processes set forth in detail in the Z-Tel Agreement. As a result, Verizon's rush to arbitration is improper and should be dismissed by this Commission.

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2 *See* Section I.B, *infra.*

B. The FCC's "Guidance" and "Default Timetable" Discussed in Paragraphs 701-705 of the *Triennial Review Order* Are Not Applicable to the Z-Tel/Verizon Agreement, Which Has Its Own Specific Change-in-Law Process

In its October 2 letter and Petition, Verizon points to passages in the FCC *Triennial Review Order* that, in Verizon's view, cause October 2, 2003 to be a sort of "universal renegotiation" date under Section 252. But the FCC Order and section 252 in fact do not such thing. What the FCC Order states was that for interconnection agreements *that were "silent"* on a renegotiation process, the FCC established a "default timetable" for renegotiations pegged to the "effective date" of the *Triennial Review Order.* The Z-Tel Agreement is not silent with regard to change-in-law renegotiations; as a result, the FCC's "default timetable" is inapplicable. Moreover, as discussed more fully in Section II below, a plain reading of section 252(b)(1) indicates that the 135/160 arbitration window is pegged to "the date on which an incumbent local exchange carrier receives a request for negotiation under" section 252. The section 252 arbitration window does not open by reference to a date of Verizon's choosing – the window opens after a CLEC makes a request for interconnection and negotiations stall. That has not happened in this instance.

In the *Triennial Review Order,* the FCC recognized that as a primary matter, the specific provisions of existing interconnection agreements should govern implementation of the new *Triennial Review* rules. In doing so, the FCC recognized that the process set forth by Congress in the 1996 Act specifically contemplated that ILECs and CLECs would engage in binding, contracts as a matter of first resort:

> [M]any of our decisions in this Order will not be self-executing. Indeed, under the statutory construct of the Act, the unbundling provisions of section 251 are implemented to a large extent through interconnection agreements between individual carriers. The negotiation and arbitration of new agreements, and modification of existing agreements to reflect these new rules, cannot be

> accomplished overnight. We recognize that many interconnection agreements contain change of law provisions that allow for negotiations and some mechanism to resolve disputes about new agreement language implementing new rules. Although some parties believe that the contract modification process requires Commission intervention in this instance, we believe that individual carriers should be allowed the opportunity to negotiate specific terms and conditions necessary to translate our rules into the commercial environment . . .

Triennial Review Order ¶ 700. As a result, the FCC, continued,

> [t]o the extent our decision in this Order changes carriers' obligations under section 251, we decline the request of several BOCs that we override the section 252 process and unilaterally change all interconnection agreements to avoid any delay associated with renegotiation of contract provisions. Permitting voluntary negotiations for binding interconnection agreements is the very essence of section 251 and 252.

Id. ¶ 701.

In its Petition, Verizon focuses upon the "guidance" (¶ 702) that the FCC offered in the event that an interconnection agreement does not contain a specific renegotiation process. That FCC guidance "require[s] incumbent and competitive LECs to use section 252(b) as a default timetable for modification of interconnection agreements *that are silent concerning change of law and/or transition timing.*" *Id.* ¶ 703 (emphasis added). However, as discussed above, the Z-Tel Agreement does, in fact, have its own detailed timetable for modification of interconnection agreements relating to change of law. As a result, the FCC's "guidance" related to a "default timetable" is inapplicable to the Z-Tel Agreement.[3]

Moreover, the FCC specifically contemplates in ¶ 704 of the *Triennial Review Order* that other negotiation and arbitration timeframes would apply, stating that "[o]nce a contract change is requested by either party, we expect that negotiations and *any timeframe* for resolving the

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[3] Indeed, all of the FCC's "guidance" in paragraph 703 is predicated upon this "default timetable" for ILEC-CLEC interconnection agreements "that are silent." For example, the FCC's guidance that "the effective date of the rules we adopt in this Order shall be deemed the notification or request date for contract amendment negotiations *under this default approach,*" is inapplicable to the Z-Tel Agreement. *Id.* ¶ 703 (emphasis added).

dispute would commence immediately." As Z-Tel noted above, no such contract change has been requested by Verizon of Z-Tel, even though the Z-Tel Agreement provides a specific process for negotiating and implementing such changes.

Finally, the FCC's *dicta* in ¶ 705 of the *Triennial Review Order* is inapplicable to the Z-Tel Agreement. In that paragraph, the FCC offered an interpretation of a specific interconnection agreement change-in-law clause presented to the FCC by SBC, Qwest and BellSouth. That clause is not present in the Z-Tel Agreement. In addition, to the extent that ¶ 705 provides an interpretation of any particular agreement language, the FCC has no statutory authority to interpret or construe language in an interconnection agreement. Regardless, since the Z-Tel Agreement does not have the clause raised by SBC, Qwest and BellSouth, ¶ 705 is inapplicable to this Petition.

In summary, the Z-Tel Agreement provides for a specific (and expedited) change-in-law renegotiation and dispute resolution timetable. As a result, the FCC's "default timetable" is inapplicable. As a result, the Petition against Z-Tel is untimely and should be dismissed.

C. Z-Tel Acted Reasonably In Deferring Negotiations Until Appeals and State Impairment Proceedings Had Run Their Course

Z-Tel's actions with regard to its agreement with Verizon in the past few months have been entirely reasonable, especially in light of the bevy of litigation and legal uncertainty that the *Triennial Review Order* has spawned.

As discussed above, Z-Tel's Agreement with Verizon provides for a very specific and expedited renegotiation process in the event either party seeks to modify the Agreement because of a change in law. Both Verizon and Z-Tel appealed the FCC's *Triennial Review Order* – as a result, no final and unappealable change in law had occurred on October 2, 2003. In addition, the release of the *Triennial Review Order* set in motion proceedings related to unbundled loops,

switching and transport in *before every state commission* in the Verizon and Z-Tel service areas. Those state impairment proceedings were to be completed in nine months. Z-Tel reasonably believed that it would be reasonable to await the outcome of the *Triennial Review* appeals and those state proceedings before expending resources renegotiating terms of access to network elements. As a result, Z-Tel did not invoke the Section 4.6 change-in-law provision of its Agreement with Verizon.[4]

For the same reasons, Z-Tel had good reason to believe that Verizon was taking the same approach to the Z-Tel Agreement. As discussed above, Verizon's October 2, 2003 letter was *not* a valid request for change-in-law renegotiations under Section 4.6 of the Z-Tel Agreement – the letter itself states only that "carriers seeking to amend their interconnection agreements" should contact Verizon. Equally importantly, Verizon did not act as though its letter was such a request under the Z-Tel Agreement – there was no request by Verizon to meet and discuss within 45 days (as Section 4.6 requires), and there was no subsequent notice of dispute pursuant to Section 14. Moreover, because of the FCC's statements concerning "default timetables" for interconnection agreements spelled out in ¶ 703 of the *Triennial Review Order,* Z-Tel reasonably interpreted the October 2, 2003 letter as a generic industry letter that had primary relevance (if at all) to CLEC interconnection agreements that did not have their own specific renegotiation timetable.

Throughout this period, Verizon had the right to invoke Section 4.6 of the Agreement and institute a 45-day good faith negotiation window. It also had the right after 45 days to invoke the Section 14 Dispute Resolution provision of the Z-Tel Agreement. Verizon took neither action. Instead, Verizon decided to "sue first, negotiate later." In doing so, Verizon has breached its

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[4] Indeed, given the pending *vacatur* of the *Triennial Review Order,* it appears that Z-Tel's course of action in this interim 9-month time period was, in fact, more than reasonable.

interconnection agreement with Z-Tel by pursuing arbitration before this Commission without engaging in the two 45-day "good faith" negotiation windows. As a result, Verizon's Petition against Z-Tel should be summarily dismissed.

II. VERIZON'S PETITION DOES NOT SATISFY THE REQUIREMENTS OF SECTION 252

Even if the Commission disregards Verizon's failure to comply with the Z-Tel Agreement and incorrectly rules that Verizon was within its rights to file for arbitration, Verizon's Petition should be dismissed for its failure to comply with Section 252 of the 1996 Act, 47 U.S.C. 252.

The timelines and pleading burdens in the arbitration provisions of Section 252 are relatively specific for a reason. All parties need to follow all procedural steps required by Congress because of the tight 9-month deadline section 252 imposes upon state commissions. Given the sheer number and complexity of potential issues, it is clear that Congress did not want to establish a process in which a party could file an arbitration petition as a form of "notice pleading" that is common in federal district courts. Verizon has disregarded these pleading requirements and has done little more than attach a proposed amendment and state that it believes that some CLECs (Z-Tel included) may disagree with some of the proposals in the proposed amendment.[5] Such an action is woefully inadequate under section 252.

Verizon has failed to meet the "duty" required of a section 252 arbitration petitioner. Section 252(b)(2) places the following "duty" on all arbitration petitioners:

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[5] Verizon cannot state for a fact that all CLECs named in its Petition agree or disagree with any particular provision because it is evident that negotiations have not happened between Verizon and all CLECs. With regard to Z-Tel, because Verizon has not engaged in any negotiations, Verizon cannot state what Z-Tel's position on any particular proposed clause is or may be.

(2) DUTY OF PETITIONER.—

(A) A party that petitions a State commission under paragraph (1) shall, at the same time as it submits the petition, provide the State commission *all relevant documentation* concerning—

(i) the unresolved issues;

(ii) the position of each of the parties with respect to those issues; and

(iii) any other issue discussed and resolved by the parties.

(B) A party petitioning a State commission under paragraph (1) shall provide a copy of the petition and any documentation to the other parties not later than the day on which the State commission receives the petition.

With respect to Z-Tel, Verizon did not meet any of these duties. Verizon's Petition does not even attempt to list any particular "unresolved issue" between Verizon and Z-Tel, let alone summarize its positions on every such unresolved issue. The Petition does not provide any documentation, let alone "all relevant documentation," over those unresolved issues. The Petition does not address or summarize the position of Z-Tel on any issue – indeed, such discussion would be a metaphysical impossibility given that there have been no negotiations between Z-Tel and Verizon on any of these issues.

Verizon has also failed to show that it has engaged in at least 135 (but not more than 160) days of negotiation with Z-Tel. 47 U.S.C. 252(b)(1). Again, no negotiations have occurred between the parties. As discussed in Section I above, it was reasonable for Z-Tel to interpret Verizon's October 2 industry letter as not applying to the Z-Tel Agreement and not as a request for renegotiation pursuant to Section 4.6 of the Z-Tel Agreement. In addition, section 252(b)(1) specifically pegs the 135/160 day arbitration window to interconnection requests *from* CLECs to ILECs like Verizon. Verizon has failed to show that it has received a "request for interconnection, services, or network elements" from Z-Tel. 47 U.S.C. 252(a)(1) that would permit it to file the Petition at this time. Section 252 is a one-way ratchet; it only provides for a process in which a CLEC may "request" access to the network of an ILEC. Section 252 does not

confer rights upon an incumbent LEC to request a renegotiation of the terms of that action.[6] Section 252 does not give an ILEC a right to renegotiate an interconnection agreement; renegotiation rights, if any, would need to arise from the four-corners of the agreement itself.

Finally, Verizon has not complied with its duty to provide Z-Tel a copy of any such Petition "no later than the day on which the State commission receives the petition." 47 U.S.C. 252(b)(2)(B). It appears from postmarks that Verizon simply dropped copies of its multi-state petitions in the mail to Z-Tel. Z-Tel received copies of some petitions a few days after the date the petitions were filed before state commissions. Again, given the tight deadlines contemplated by Congress in section 252, Verizon's failure to comply with even the simplest of procedural rules defies explanation.

III. VERIZON SHOULD BE DENIED LEAVE TO AMEND ITS PETITION TO ACCOUNT FOR *USTA II* OR OTHER SUBSEQUENT DEVELOPMENTS

Verizon's Petition was filed prior to the D.C. Circuit's decision in *USTA v. FCC II.*[7] In its Petition, Verizon reserved the right to modify its positions and draft amendments to reflect that court review of the *Triennial Review Order.*[8] Verizon's reservation of rights is legally infirm and any and all such post-Petition modifications of Verizon's position should be rejected by the Commission. As discussed above, the Section 252 interconnection agreement arbitration process specifically contemplates that a Petitioner provide the state commission and parties "all relevant documentation" and positions of the parties concerning all "unresolved issues." There is no room in Congress's statutory process for Verizon to file an arbitration petition yet reserve its

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6 *See also* 47 U.S.C. 252(b)(1) (providing for arbitration window only "[d]uring the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section"). As Z-Tel discussed above, no such request has occurred.

7 *See* note 1, *supra.*

8 Petition at 4-5.

rights to introduce new issues, yet still hold the parties and this Commission to the nine-month statutory deadline.

Section 252 arbitration proceedings are specific and detailed administrative proceedings with tight timelines, including twenty-five days for responses and nine months for final state commission action. Congress did not contemplate "notice pleading" of the sort that Verizon seeks. Therefore, the Commission should dismiss any attempt by Verizon to expand issues subject to arbitration by virtue of the *USTA II* decision or any other subsequent event.

The unraveling of the FCC's *Triennial Review Order* by the D.C. Circuit requires that Verizon's Petition for Arbitration (ostensibly predicated upon the changes in law caused by the *Triennial Review Order*) be unraveled as well. Quite simply, if rules that constitute a "change in law" are vacated by a court, there has been no net change in law, and the parties should return to the *status quo ante*, which is the terms and conditions of interconnection agreements in place at the time of the change in law. In the event the FCC or a subsequent court takes a further action regarding the Section 251 unbundling rules, that further action may possibly qualify as yet another "change in law." It was this legal uncertainty that led Z-Tel to take the reasonable position that it did with regard to Section 4.6 of the Z-Tel/Verizon Agreement.[9]

Moreover, this Commission is without jurisdiction to include for consideration matters not raised by Petitioner or Respondent in their initial filings. Congress specifically limited the matters into which this Commission may consider in Section 252 arbitration petitions, stating in section 252(b)(4)(A) that a state commission "shall limit its consideration" of a Section 252 arbitration "to the issues set forth in the petition and in the response." 47 U.S.C. 252(b)(4)(A). Verizon cannot subsequently "amend" its Petition for Arbitration with any "new" proposed

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9 *See* Section I.C, *supra*.

amendment or changes that purport to conform to the *USTA II* decision, and section 252(b)(4)(A) prohibits this Commission from considering any subsequent proposals or filings.

There is, of course, a logical way to sort out these issues. Especially in light of the uncertainty regarding FCC unbundling rules caused by *USTA II*, the Commission should dismiss Verizon's Petition against Z-Tel because Verizon had failed to comply with the Z-Tel Agreement and the Section 252 process. The Commission could state (a) that it expects parties to abide by the terms of their interconnection agreements in the interim period, (b) that parties may invoke renegotiation provisions in those agreements, and (c) that if a Section 252 arbitration process is applicable, the Commission stands ready to arbitrate "any open issue" brought before it at the appropriate time.

IV. CONCLUSION

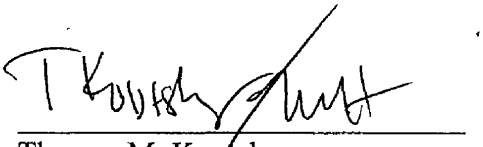
The Commission should summarily dismiss Verizon's Petition against Z-Tel. Verizon did not follow the specific provisions in its Interconnection Agreement with Z-Tel that provide for change-in-law and dispute resolution. In particular, Sections 4.6 and 14 of the Z-Tel Agreement require that Verizon engage in two 45-day good faith negotiation periods prior to taking action as this arbitration petition. Verizon has not done so.

The "guidance" offered by the FCC in paragraphs 703-705 of the *Triennial Review Order* is not applicable to the Z-Tel Agreement. In particular, the FCC's "default timetable" for section 252(b) arbitration applies only to interconnection agreements that are "silent" with regard to change-in-law renegotiation processes. The Z-Tel/Verizon Agreement applicable in this state is not silent. Moreover, the FCC's construction of a change-in-law clause submitted by BellSouth, Qwest and SBC (¶ 705) is inapplicable to the Z-Tel Agreement, which does not contain the clause in question.

Z-Tel has acted reasonably. Both Z-Tel and Verizon appealed the *Triennial Review Order*, and that Order also instituted scores of granular proceedings before this state commission and others with regard to loops, transport and switching. Given the short change-in-law renegotiation timeframes in the Z-Tel Agreement, it was reasonable not to pursue aggressive change-in-law negotiations until those appeals and state impairment proceedings had been resolved. Verizon did not aggressively seek or pursue negotiations with Z-Tel during this interim period as well and did not invoke either of the two 45-day good faith negotiation windows available to it in the Z-Tel Agreement. Verizon's conduct led Z-Tel to believe that it shared Z-Tel's reluctance to renegotiate while legal appeals and impairment cases were pending.

Instead, it turns out instead that Verizon was simply laying in wait, preparing to open yet another front on its war against competitors, this time with dozens of state-by-state interconnection agreement arbitration filings. Verizon's blitzkrieg on February 20, 2004 and subsequent days should be seen for what it is – an attempt to drive CLECs to the point of exhaustion with endless litigation. In doing so, Verizon ignored the Z-Tel Amendment and the pleading requirements of Section 252 of the Act. The Petition should be dismissed.

Sincerely,



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