

EX PARTE OR LATE FILED

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

TYSONS CORNER

8000 TOWERS CRESCENT DRIVE

SUITE 1200

VIENNA, VIRGINIA 22182

(703) 918-2300

ORIGINAL

September 19, 2001

ORIGINAL
RECEIVED

SEP 19 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

(703) 918-2450

www.kelleydrye.com

DIRECT LINE (703) 918-2316

E-MAIL: mhazard@kelleydrye.co

NEW YORK, NY
WASHINGTON, DC
LOS ANGELES, CA
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ
BRUSSELS, BELGIUM
HONG KONG

AFFILIATE OFFICES
BANGKOK, THAILAND
JAKARTA, INDONESIA
MANILA, THE PHILIPPINES
MUMBAI, INDIA
TOKYO, JAPAN

BY FACSIMILE AND HAND DELIVERY

Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Ex Parte, CC Docket No. 01-138, Z-Tel Communications, Inc.

Ms. Salas:

During this proceeding, Verizon has put to the test the Commission's "complete when filed" rule. Z-Tel Communications, Inc. ("Z-Tel") and numerous other carriers have pointed out the problems associated with the Commission's increased proclivity to rely on late-filed data and all-too-numerous *ex parte* communications in making its Section 271 determinations. The Commission's reliance on late-filed data and excessive *ex parte* communications prejudices the Department of Justice's statutory role and the interests of third parties.

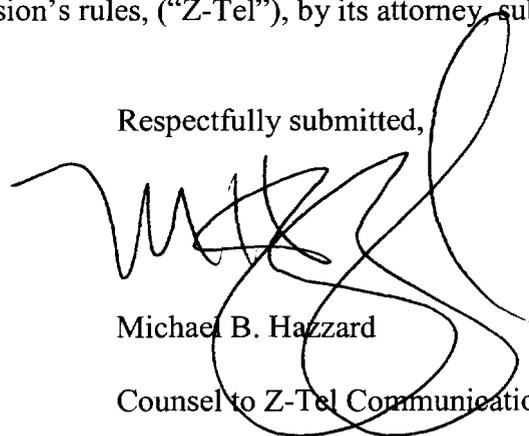
As one recent example, Verizon's September 7, 2001 *ex parte* (which Z-Tel did not receive until September 14, 2001) provided confidential information related to a report generated by Pricewaterhouse Coopers, LLP ("PwC"), which purports to demonstrate the accuracy of Verizon's electronic bills. In reviewing that report, Z-Tel has determined that PwC did not review Z-Tel's bill, nor did PwC review the bills of several other important carriers. In setting the parameters for this report, Verizon directed PwC to review "bills generated from August 1, 2001 to August 15, 2001." As Verizon knows, Z-Tel's bills are generated on the 28th of each month, and as such, Z-Tel's bill was not reviewed by PwC. This is, at a minimum, unfortunate, as Z-Tel has been among the most active participants in this proceeding on billing issues. More importantly, it underscores the dangers of relying on late-filed evidence in important adjudicatory proceedings, including Section 271 proceedings.

Magalie R. Salas, Secretary
September 19, 2001
Page Two

As the Commission noted in its March 23, 2001 procedural notice on its Section 271 processes, "it is highly disruptive to our processes to have a record that is constantly evolving." Verizon's attempt to rely on late-filed evidence has created such a "constantly evolving" proceeding to the detriment of the Commission, the Department of Justice, and to interested third parties, such as Z-Tel. The Commission must remember that Verizon controls completely when it files a Section 271 application, and the Commission should not sacrifice its "complete when filed" rule when faced with an obviously premature Section 271 application.

Pursuant to the Commission's rules, ("Z-Tel"), by its attorney, submits an original and two copies of this *ex parte*.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read "Michael B. Hazzard". The signature is written over the typed name and title below it.

Michael B. Hazzard

Counsel to Z-Tel Communications, Inc.

cc: Chairman Powell (by facsimile)
Commissioner Abernathy (by facsimile)
Commissioner Copps (by facsimile)
Commissioner Martin (by facsimile)
Matt Brill (by facsimile)
Kyle Dixon (by facsimile)
Paul Margie (by facsimile)
Monica Shah Desai (by facsimile)
Dorothy Attwood (by facsimile)
Jeffrey Carlisle (by facsimile)
Brent Olson (by facsimile)
Robert Tanner (by facsimile)
Trey Hanbury (by facsimile)
Qualex International (by facsimile)
Clint Odom (Verizon) (by facsimile)