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September 7, 2004

Via Electronic Filing

Mrs. Blanca S. Bayo
Director, Division of Commission Clerk and Administrative Services
Florida Public Service Commission
2450 Shumard Oak Boulevard
Tallahassee, Florida 32399

Re: Docket No. 040779-TP

Dear Mrs. Bayo:

This letter briefly responds to BellSouth Telecommunications Inc.'s ("BellSouth's") September 2, 2004 filing in this proceeding of the FCC's Order and Notice of Proposed Rulemaking, *In the Matter of Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313 and CC Docket No. 01-338 (rel. Aug. 20, 2004) ("Order and NPRM"). In its transmittal letter, BellSouth asserts without explanation that this FCC Order and NPRM "bears directly on the issues in this docket."

Be that as it may, Z-Tel Communications, Inc. ("Z-Tel") believes that this Commission should recognize at least three things regarding the Order and NPRM proffered by BellSouth. First, the Order and NPRM places absolutely no limit or restriction on the ability of competitors to adopt in their entirety existing interconnection agreements pursuant to section 252(i) of the Communications Act ("Act"), 47 U.S.C. § 252(i). Second, the entire purpose of the Order on and NPRM is to "require [BellSouth and others] to continue providing unbundled access to switching, enterprise market loops, and dedicated transport under the same rates, terms and conditions that applied under their interconnection agreements as of June 15, 2004." Order and NPRM at ¶ 1 (citations omitted). Third, the Order and NPRM becomes effective only after publication in the Federal Register, which as of the writing of this letter has not occurred. Indeed, the Order and NPRM is not now effective, nor was it effective when BellSouth filed its September 2 letter with the Commission.

For all of these reasons, to the extent the Order and NPRM “bears directly on the issues in this docket,” it supports Z-Tel, not BellSouth. Accordingly, the Commission should approve Z-Tel’s adoption of the Network Telephone Interconnection Agreement, and reject BellSouth’s obviously unlawful effort to preclude Z-Tel from exercising its rights under section 252(i) of the Communications Act and the FCC’s implementing rules and orders.

Respectfully submitted,

s/ Michael B. Hazzard
Counsel to Z-Tel Communications, Inc.

cc: All Parties of Record (via overnight mail)
Thomas (Jeff) Bates, Div. of Competitive Markets & Enforcement (via email)

Certificate of Service

I, Edilma Carr, hereby certify that a true and correct copy of the attached document in Docket No. 040779-TP was delivered by Fedex overnight mail this 7th September 2004 to the individuals on the following list:

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in Docket 040779:**

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s/ Edilma M. Carr