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February 9, 2001

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Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 990362-TI

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of Citizens' Motion to Determine Scope of Proceeding.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Charles J. Beck
Deputy Public Counsel

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Initiation of Show Cause Proceeding)	Docket 990362-TI
Against GTE Communications)	
Corporation for Apparent Violation of)	
Rule 25-4.118, F.A.C., Local, Local)	
Toll, or Toll Provider Selection.)	Filed: February 9, 2001
_____)	

MOTION TO DETERMINE SCOPE OF PROCEEDING

The Citizens of Florida (Citizens), by and through Jack Shreve, Public Counsel, request the Prehearing Officer to determine whether this proceeding will encompass all willful slamming violations by Verizon Select Services, Inc. (Verizon) during the period December 15, 1997 through September 30 1999, or whether it will be limited to the 209 complaints filed at the Commission

1. This docket began on March 18, 1999, when staff filed a document with the Division of Records and Reporting to initiate show cause proceedings against GTE Communications Corporation (GTECC) for apparent violation of rule 25-4.118, Florida Administrative Code. Staff later concluded that the Commission received 209 complaints against GTECC during the period December 15, 1997, through September 30, 1999, that were apparent violations of the PSC rule on slamming. GTECC submitted a settlement offer to staff on November 23, 1999.

2. At staff's urging, the Commission tentatively accepted a modified settlement offer by GTECC. Proposed agency action order no. PSC-00-1348-PAA-TI reflects that tentative acceptance. On August 18, 2000, Citizens filed a protest of the order and asked for a hearing to be held pursuant to section 120.57, Florida Statutes.

3. Thereafter, the parties met informally and agreed to a set of issues. Those agreed upon issues are found in the Prehearing Officer's order establishing procedure, order no. PSC-00-1835-PCO-TI issued October 6, 2000. The issues are framed as follows:

(a) During the time period of December 15, 1997 through September 30 1999, did GTE Communications Corporation, (n/k/a Verizon Select Services, Inc.) willfully violate Rule 25-4.118, *Florida Administrative Code*, which prohibits unauthorized carrier changes?

(b) If so, how many willful violations were there, and what is the appropriate action, penalty, and/or fine amount to be imposed by the Commission for any such violations?

4. Although the wording of the issues is plainly not limited to the 209 complaints identified by staff, Verizon now claims that the proceeding may not look at any claims of slamming other than the 209 complaints. In the testimony of Joseph P. Caliro filed on January 31, 2001, Verizon claims that slamming complaints other than the 209 are not relevant to the issues to be resolved in this case (Caliro testimony, page 11, lines 23-24). Mr. Caliro further claims that "as a legal matter, the Commission cannot consider anything other than the 209

Commission complaints Staff closed as apparent violations of the Commission's slamming rule" (Caliro testimony, page 14, lines 3-6) and states that "this legal point will be addressed in the posthearing brief." (Caliro testimony, page 14, lines 5-6).

5. Verizon agreed to the issues contained in the order establishing procedure, but the company has apparently changed its mind. If Verizon wishes to claim that the proceeding is limited to the 209 complaints, Citizens suggest that the issues be re-written to conform to that claim. Then, Citizens will file a petition to investigate instances of slamming during the time period other than the 209 complaints identified by staff.

6. There is good reason to conclude that the extent of slamming by Verizon during the time period of December 15, 1997 through September 30 1999, far exceeds the number of complaints received by the Commission. The direct and supplemental direct testimony of R. Earl Poucher, along with the accompanying exhibits, provide the Commission with considerable additional information and provide an estimate of the extent of the violations.¹

7. The Commission should not be just a passive arbiter of complaints filed at the Commission. Instead, it is incumbent on the Commission to

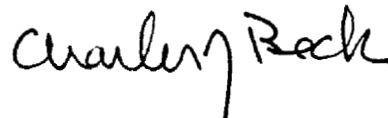
¹ For example, see the voluminous exhibit attached to the supplemental direct testimony of R. Earl Poucher. The documents contained in the exhibit should have been provided in response to requests for production of documents served on January 24, 2000, and July 14, 2000, but they were not provided until December 15, 2000.

investigate the full extent of willful violations by Verizon and impose an appropriate sanction.

8. Citizens suggest that if Verizon persists with its claim that this docket is limited to only 209 complaints identified by staff, another proceeding can be used to investigate other instances of slamming by Verizon.

Respectfully submitted,

JACK SHREVE
Public Counsel
Fla. Bar. No. 73622



Charles J. Beck
Deputy Public Counsel
Fla. Bar. No. 217281

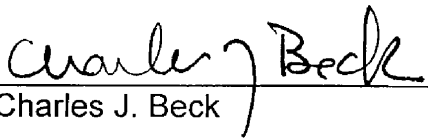
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Attorneys for the Citizens
of Florida

DOCKET NO. 990362-TI
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by
U.S. Mail or hand-delivery to the following parties on this 9th day of February,
2001.


Charles J. Beck

Lee Fordham
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