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Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

RECEIVED-FPSC
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RECORDS AND REPORTING

DATE: JUNE 29, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (FORDHAM) *ckf BK*
DIVISION OF COMPETITIVE SERVICES (KENNEDY) *REK*

RE: DOCKET NO. 990362-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST GTE COMMUNICATIONS CORPORATION FOR APPARENT VIOLATION OF RULE 25-4.118, F.A.C., LOCAL, LOCAL TOLL, OR TOLL PROVIDER SELECTION.

AGENDA: 07/11/00 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\990362.RCM

CASE BACKGROUND

- November 23, 1995 - GTE Communications Corporation (GTE) received Certificate Number 4080 in order to operate as an interexchange telecommunications company in Florida.
- March 18, 1999 - Staff opened this docket to investigate apparent unauthorized carrier change complaints against GTE.
- May 26, 1999 - Staff met with GTE to discuss concerns with the number of consumer complaints being received about unauthorized carrier changes.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

DATE: June 29, 2000

- December 15, 1997 - September 30, 1999 - Commission staff received 209 complaints against GTE that have been determined to be apparent unauthorized carrier changes.
- November 23, 1999 - GTE submitted its settlement offer in lieu of proceeding with the show cause process.
- December 16, 1999 - GTE requested a deferral of its proposed settlement offer from the December 21, 1999 Agenda Conference in order to submit a revised settlement offer.
- December 16, 1999 - GTE submitted its revised settlement offer. (Attachment A, Pages 6-10)
- January 6, 2000 - Staff filed its recommendation to address GTE's revised settlement offer.
- January 14, 2000 - OPC filed a notice of intervention.
- January 18, 2000 - Staff requested this item be deferred from the January 18, 2000 Agenda Conference in order to allow OPC time to determine if they want to pursue further action in this case as an intervenor.

Staff was notified shortly after opening this docket that the Attorney General's (AG's) Office is conducting an investigation into the marketing practices of GTE. Further, after staff filed its recommendation for the January 18 Agenda Conference, OPC, on January 14, 2000, filed a notice to intervene in this proceeding. In order to allow OPC an opportunity to review the case and investigate the slamming complaints, staff requested a deferral of the item from the January 18th agenda conference. Subsequent to that time, staff has contacted OPC several times to inquire about the status of their investigation and has been unable to determine when the OPC may take action. Staff believes that the Commission should take action on GTE's proposed settlement and that such action will not adversely affect either the investigation of the AG or that of the OPC. The AG's office has indicated that it is not opposed to the PSC acting on the settlement offer since the offer includes language stating that the settlement does not in any way preempt, preclude or resolve any matters under review by any other state agencies or departments. Further, OPC has indicated that it will have the opportunity to protest the PAA order if it believes the settlement is not sufficient.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept the settlement offer proposed by GTE Communications Corporation to resolve the apparent violations of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection?

RECOMMENDATION: Yes. The Commission should accept the company's settlement proposal. Any contribution should be received by the Commission within ten business days from the issuance date of the Commission Order and should identify the docket number and company name. The Commission should forward the contribution to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the company fails to pay in accordance with the terms of the settlement offer, the company's certificate should be canceled, and this docket should be closed. **(Biegalski)**

STAFF ANALYSIS: On May 26, 1999, staff met with GTE to discuss its concerns regarding the number of complaints being received regarding apparent unauthorized carrier changes. GTE expressed the same of concern and stated that the consumer complaints stem from the actions of one marketing firm (Snyder Communications, Inc. or Snyder) and that this firm has terminated all face-to-face marketing on behalf of GTE.

Thereafter, on November 23, 1999, GTE submitted its offer of settlement. On December 16, 1999, GTE requested a deferral of its settlement proposal from the December 21, 1999 Agenda Conference in order to submit a revised settlement offer. In its revised settlement offer, GTE agreed to the following:

- GTE has required Snyder (marketing firm) to terminate all face-to-face marketing. In addition, GTE will suspend all face-to-face marketing in Florida indefinitely, and will not reinstitute this type of marketing without first notifying the FPSC staff.
- GTE will formally acknowledge that its previously established warm transfer process, by which complaining customers may be transferred directly to GTE's toll-free number, will be used to accommodate customer complaints of unauthorized PIC changes. Personnel assigned to respond to such transfers are

already trained and authorized to resolve PIC change complaints.

- GTE will promptly address and resolve all customer inquiries and complaints, and will continue to closely cooperate with the FPSC and its staff.
- GTE will make a contribution of \$209,000 to the General Revenue Fund of the State of Florida, with no admission of liability or wrongdoing.
- GTE understands that this settlement does not in any way preempt, preclude or resolve any matters under review by any other state agencies or departments.

Staff supports GTE's proposal to terminate all face-to-face marketing agreements with Snyder. GTE has informed staff that Snyder will only be conducting non-sales activities such as systems development and certain customer service functions. Staff also supports GTE's use of the warm transfer system. Staff believes this will allow expedited resolution to consumer complaints. Staff supports GTE's proposal to timely respond to customer complaints. Staff believes as a certificated telecommunications company, GTE must continue to adhere to the rules of the Florida Public Service Commission.

Staff believes that the settlement offer submitted by GTE to be considered by the Commission is consistent with other settlement offers related to apparent slamming violations. Over the past two years, the Commission has approved settlement offers from first-time slamming violators that ranged from \$800.00 per violation to \$2,127.00 per violation. Staff also considers other non-monetary factors when negotiating settlements with companies for specific rule violations. One of these factors considered in this docket was that since September 30, 1999, the Commission has received 36 complaints against GTE pertaining to slamming. Of these complaints, one has been closed as slamming, and the other 35 are still pending.

Therefore, staff believes the terms of the settlement agreement as summarized in this recommendation are fair and reasonable and supports the voluntary contribution to the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes, in the amount of \$209,000. Any contribution should be received by the Commission within ten business days from the issuance date of the Commission's Consummating Order and should identify the docket number and company name. The Commission should forward the

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contribution to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the company fails to pay in accordance with the terms of its settlement offer, the company's certificate should be canceled, and this docket should be closed.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. If no person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the proposed agency action order, the Order will become final upon issuance of a Consummating Order, but this docket should remain open pending the remittance of the \$209,000 voluntary contribution. Upon remittance of the settlement payment, this docket should be closed. If the company fails to pay in accordance with the terms of the Commission Order, the company's certificate should be canceled administratively, and this docket should be closed. **(Fordham)**

STAFF ANALYSIS: If no person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the proposed agency action order, the Order will become final upon issuance of a Consummating Order, but this docket should remain open pending the remittance of the \$209,000 voluntary contribution. Upon remittance of the settlement payment, this docket should be closed. If the company fails to pay in accordance with the terms of the Commission Order, the company's certificate should be canceled administratively, and this docket should be closed.

June 29, 2000

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ATTACHMENT A

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Miami	Washington, D.C.
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December 16, 1999

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VIA HAND DELIVERY

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

Re: Initiation of show cause proceedings against GTE
Communications Corporation for apparent violation of Rule
25-4.118, FAC. Local, Local Toll or Toll Provider Selection,
Florida Public Service Commission Docket Number 990362-
TI.

Dear Ms. Bayo:

GTE Communications Corporation ("GTECC"), by its undersigned attorneys, respectfully submits its settlement offer in the above-referenced matter. This offer supercedes the previous settlement proposals submitted by GTECC on June 24 and November 23, 1999, and is intended to finally resolve all alleged violations of Rule 25-4.118, Florida Administrative Code pending as of today. This offer is made with the express understanding that staff will recommend that the Florida Public Service Commission ("FPSC") approve the settlement without modification at its January 18, 2000 agenda conference.

BACKGROUND

GTECC, through its GTE Long Distance (GTELD) division, provides interexchange service in all 50 states. GTELD received its certification to provide interexchange service in Florida on November 1, 1995, by FPSC Order No. PSC-951335-FOF-TI. GTELD currently serves approximately 400,000 Florida customers.

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GTELD uses independent contractors to market its services. GTELD trains these entities and requires them to comply with its marketing policies and procedures, including those related to federal and state regulation of primary interexchange carrier (PIC) change requirements. Substantially all of the FPSC slamming complaints against GTELD closed to date arose from the activity of one of these independent contractors, Snyder Communications, Inc. (Snyder). GTELD had hired Snyder primarily to help execute a business strategy focusing on multicultural markets.

GTELD first became aware of an increase in FPSC slamming complaints in late May of 1998. As soon as GTELD determined Snyder to be the cause of this increase, it required Snyder to implement enhanced anti-slaming protections. By September it became apparent that stepped-up quality control efforts were not working, and that more drastic action was needed. Thus, GTECC, GTELD, and Snyder officials met in early October. As a result of that meeting, Snyder began to close down its face-to-face Florida sales operation, which had been identified as the source of virtually all unauthorized PIC change complaints in Florida. By the end of November the Florida shutdown was complete. Snyder's entire nationwide, face-to-face marketing/sales operation on behalf of GTELD was shut down a few months later.

In December of 1998, GTELD proactively initiated a conference call with the FPSC Staff to apprise them of the situation and of GTELD's plan for remedy. Thus, before the FPSC began formal proceedings, GTELD had demonstrated its commitment to regulatory compliance by self-reporting a serious problem (while in the process of rectifying it) and accepting full responsibility for both the problem and the solution.

At that time, GTELD established a "warm transfer" process through which customer complaints telephoned into the FPSC could be resolved more quickly and efficiently. Specifically, when a customer called the FPSC with any type of complaint about GTELD (not just a slamming complaint), GTELD made available a customer contact to discuss the problem immediately with the customer and the Staff member on the line. This enabled the FPSC Staff member, on a toll-free basis, to link GTELD into the call with the customer as soon as the customer contacted the FPSC. The GTELD contact is available during GTELD business hours (9:00 a.m. to 6:00 p.m., EST), Monday through Friday. This warm transfer process is designed to reduce formal complaints and save consumers, the FPSC, and Staff, time and other resources spent in resolving problems.

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Virtually none of the slamming complaints against GTELD involve letters of authorization (LOAs) signed after the face-to-face multicultural sales effort was voluntarily terminated in November, 1998. It is important to note that, since January 1, 1999, the average interval between the date of signing the LOA and the date a complaint has been received by GTELD is approximately 200 calendar days. This interval accounts for the pipeline effect where some aged complaints continue to come in even though the source of the complaints has been shut down.

GTELD has a zero tolerance slamming policy. GTELD believes it has, at all times, acted consistently with this policy. As a result of its diligence in addressing the Snyder situation, GTLD has eliminated the impetus for virtually all slamming complaints. Prior to the FPSC opening this docket, it had received and forwarded to GTELD the vast majority of the complaints at issue. To date, GTELD has responded to and resolved all of them. GTELD's response to most customer complaints included confirmation of 100% credit of the GTELD bills. For the small number of other complaints, GTELD re-rated the customer's bill to reflect the difference between GTELD's rates and the rates of the prior carrier.

GTELD provided Staff earlier in the year with a set of all refund letters issued at the time, reflecting credits and payments totaling approximately \$20,000.00. GTELD has provided these materials promptly and without objection. GTELD has expeditiously resolved customer complaints and has fully cooperated with staff in the investigation of these complaints.

SETTLEMENT PROPOSAL

Even though GTELD has made good faith efforts to comply with the FPSC's regulatory requirements and promptly respond to complaints, it recognizes that the activities of its contractor created problems for Florida consumers and imposed demands on the time and resources of the FPSC and its Staff. In recognition of these effects, GTELD believes that the interests of the public, the FPSC, and GTELD itself can best be served through an appropriate settlement of this matter. Thus, in return for the FPSC approving the settlement offer without modification and closing the docket, GTELD, with no admission of liability or wrongdoing, agrees to take the following actions:

- GTELD has required Snyder to terminate all face-to-face marketing. In addition, GTELD will suspend all face-to-face marketing to multicultural markets in Florida indefinitely, and will not reinstitute that type of marketing without first notifying the FPSC Staff.

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- GTELD will formally acknowledge that its previously established warm transfer process, by which complaining customers may be transferred directly to GTELD's toll-free line, will be used to accommodate customer complaints of unauthorized PIC changes. Personnel assigned to respond to such transfers are already trained and authorized to resolve PIC change complaints.
- GTELD will promptly address and resolve all customer inquiries and complaints, and will continue to closely cooperate with the FPSC and its Staff.
- GTELD will make a contribution of \$209,000 to the General Revenue Fund of the State of Florida, with no admission of liability or wrongdoing, and with the intention that all slamming complaints pending before the FPSC on November 23, 1999 will be resolved by this action and will not be subject to further enforcement proceedings by the FPSC.

GTELD believes this settlement offer fully and appropriately addresses the fundamental issues in this matter. As detailed above, GTELD took steps several months ago to correct the problems created by Snyder, the primary source of the slamming complaints. GTELD voluntarily, quickly and decisively policed itself by terminating Snyder's face-to-face sales efforts and resolving the customer complaints long before the opening of this docket and the threat of FPSC action.

As explained, these steps have proven effective in eradicating most slamming complaints. The warm transfer process should largely eliminate (or at least streamline the processing of) slamming complaints that may arise from time-to-time, as well as address non-slamming complaints.

GTELD also believes that the proposed voluntary contribution recognizes the FPSC's serious commitment to addressing unauthorized PIC changes, while also reflecting the unique mitigating factors in this case. The mitigating factors include GTELD's longstanding regulatory compliance efforts (this is the first show cause proceeding ever initiated against the Company) and its own early, self-initiated, and ultimately successful efforts to report and remedy the problem giving rise to this docket.

GTELD understands that this settlement does not in anyway preempt, preclude or resolve any matters under review by any other state agencies or departments. For all of the foregoing reasons, GTELD respectfully requests that

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ATTACHMENT A

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Staff recommend that the FPSC approve the settlement offer and close the docket.

If you have any questions, or wish to discuss the matter further, please do not hesitate to contact us. Thank you for your consideration.

Sincerely,

HOLLAND & KNIGHT LLP



D. Bruce May

DBM:kjg

cc: Kelly Biegalski (via hand-delivery)
Rick Moses (via hand-delivery)
Beth Keating (via hand-delivery)
Rick Wolfe
Robin Blackwood
Kim Caswell

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