

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against GTE Communications Corporation (n/k/a Verizon Select Services Inc.) for apparent violation of Rule 25-4.118, F.A.C., Local, Local Toll, or Toll Provider Selection.

DOCKET NO. 990362-TI
ORDER NO. PSC-01-1179-PHO-TI
ISSUED: May 23, 2001

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on March 12, 2001, in Tallahassee, Florida, before Commissioner Lila A. Jaber, as Prehearing Officer.

APPEARANCES:

KIMBERLY CASWELL, ESQUIRE, VICE PRESIDENT AND GENERAL COUNSEL, Southeast Legal Department, FLTC0007, 201 North Franklin Street, Post Office Box 110, Tampa, Florida 33601-0110
On behalf of Verizon Select Services, Inc.

CHARLIE BECK, ESQUIRE, Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, FL 32399-1400
On behalf of The Citizens of Florida.

C. LEE FORDHAM, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission Staff.

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

DOCUMENT NUMBER DATE

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FPSC-RECORDS/REPORTING

II. CASE BACKGROUND

On November 23, 1995, Verizon Select Services Inc. (F/k/a GTE Communications Corporation "Verizon") received Certificate Number 4080 to operate as an interexchange telecommunications company in Florida. As a result of complaints filed, on March 18, 1999, this docket was opened to investigate apparent unauthorized carrier change complaints against Verizon. On December 16, 1999, Verizon submitted a revised settlement offer, which was accepted by this Commission in Order No. PSC-00-1348-PAA-TI, issued July 26, 2000. On August 16, 2000, the Office of Public Counsel (OPC) protested the Order, and this Docket is set for evidentiary hearing on June 1, 2001.

The Commission has jurisdiction under Section 364.285, Florida Statutes. Also, pursuant to Section 364.603, Florida Statutes, the Commission is authorized to promulgate rules to prevent the unauthorized changing of a subscriber's telecommunications service. Rule 25-4.118, Florida Administrative Code, was promulgated by the Commission setting forth the guidelines for toll provider selection and authorizing the Commission to enforce those guidelines.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times.

The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to

appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
Ray Kennedy (Direct only)	Staff	1
Carol Ann Broome (Direct Only)	OPC	1
R. Earl Poucher (Direct, Supplemental)	OPC	1
Christopher D. Owens (Rebuttal Only)	Verizon	1
Joseph P. Caliro (Rebuttal Only)	Verizon	1
R. Earl Poucher (Rebuttal)	OPC	1

VII. BASIC POSITIONS

VERIZON:

Verizon did not willfully violate Rule 25-4.118, which prohibits unauthorized carrier changes, and there is no basis for imposing fines or other penalties upon VSSI. There is no evidence that Verizon in any way encouraged, facilitated, ratified, or otherwise approved of slamming. Substantially all of the complaints at issue arose from the actions of Synder Communications, Inc. (Snyder) one of Verizon's independent contractors. There is no evidence of any system-wide problem; this is the first time the Commission has investigated Verizon for slamming complaints; VSSI itself informed the Commission of the Synder situation and its plan for remedy; Verizon cooperated fully with the Staff in its investigations of the complaints at issue; and Verizon expeditiously resolved these complaints, giving customers in most cases full credit for Verizon charges.

This docket investigating unauthorized carrier changes is no different from any other that has come before the Commission and settled without incident-except perhaps that the mitigating circumstances are more compelling. The Commission's July 26, 2000 order approving Verizon's proposed settlement in this case was fully consistent with other settlement offers the Commission has accepted for apparent slamming violations. Verizon thus urges the Commission to dismiss the Office of Public Counsel's Protest of the July Order, thus permitting that Order to become final.

OPC: Verizon allowed its agent Snyder Communications, Inc., to forge the signatures of thousands of Floridians during 1998 and to commit other fraudulent acts. Verizon knew about the widespread frauds being perpetrated by its agent, but it failed to take decisive action to end them over a nine month period. Verizon's desire to expand the number of customers and revenues in its newly formed long distance company overshadowed its concern about the frauds.

Verizon failed to track the vast majority of slamming complaints it received. Instead, it only performed complete investigations of complaints to regulators or higher

management. We will therefore never accurately know the total number of Floridians subjected to these fraudulent activities, but a conservative, low-end estimate is that 3000 Floridians were willfully slammed by Verizon.

The Commission should give serious consideration to revoking Verizon's certificate to provide long distance service in Florida. If the Commission does not revoke the company's certificate, it should fine Verizon no less than \$5,225,000.

STAFF:

Staff believes that Verizon, during the period December 15, 1997, through September 30, 1999, appears to have been in violation of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection, which requires that a customer's toll provider shall not be changed without the customer's authorization. During the period in question, staff has determined that Verizon committed 209 unauthorized carrier changes in apparent violation of Rule 25-4.118, Florida Administrative Code.

VIII. ISSUES AND POSITIONS

ISSUE 1: (a) During the time period of December 15, 1997 through September 30 1999, did Verizon 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?

POSITIONS

VERIZON:

(a) No. To assess any penalties in this case, the Commission must examine each of the complaints at issue to determine whether Verizon deliberately and intentionally changed individuals' long-distance carriers without authorization. There is no evidence of this kind of

willful conduct. To the contrary, Verizon uniformly took appropriate steps to remedy the effects of claimed unauthorized changes, and to curb apparent problems with unauthorized changes when such problems were detected.

- (b) As explained above, there were no willful violations, so no fines or other penalties are justified.

OPC: (a) Yes, Verizon willfully violated rule 25-4.118, Florida Administrative Code.

- (b) There were at least 3,000 willful violations, and probably a lot more. The Commission should give serious consideration to revoking Verizon's certificate to provide long distance service in Florida. If the Commission does not revoke the company's certificate, it should fine Verizon no less than \$5,225,000.

STAFF:

- (a) Staff believes that Verizon did willfully violated Rule 25-4.118, Florida Administrative Code.
- (b) Staff closed 209 consumer complaints against Verizon as apparent infractions of Rule 25-4.118, Florida Administrative Code. Staff had previously recommended, and the Commission had accepted, a settlement offer of \$1,000 per documented slam, for a total of \$209,000. That remains the position of staff.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Ray Kennedy	Staff	<hr/> (RK-1)	Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection, Effective Prior to December 28, 1998.
		<hr/> (RK-2)	Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection, Effective December 28, 1998.
		<hr/> (RK-3)	List of Consumer Complaints Closed as Apparent Slamming Infractions.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Carol Ann Broome	OPC	_____	CATS (customer activity tracking system) forms relating to the slamming complaints about Verizon Select Services received by the Commission
		(CAB-1)	
R. E. Poucher	OPC	_____	Snyder Complaints
		(REP-1)	
		_____	Snyder Slamming Complaints
		(REP-2)	
		_____	Snyder Daily Volume
		(REP-3)	
		_____	Regulatory Slamming Complaints
		(REP-4)	
_____	Customer Escalation Fraudulent LOA's		
(REP-5)			
_____	Fraudulent Slamming Complaints		
(REP-6)			
_____	customer Escalation Form		
(REP-7)			
_____	FCC Fine for forgeries		
(REP-8)			

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
R. E. Poucher	OPC	_____ (REP-9)	Commons ' Deposition
		_____ (REP-10)	Snyder Regulatory Complaints
		_____ (REP-11)	600 Orders; 600 Slams
		_____ (REP-12)	20 Slams Per Day
		_____ (REP-13)	32% Florida complaints
		_____ (REP-14)	40,000 Sales per month
		_____ (REP-15)	40,000 Sales, \$3 million Commission
		_____ (REP-16)	Citizens ' First Set of Requests for Production of documents to GTE
		_____ (REP-17)	Citizens ' Fifth Set of Requests for Production of Documents to GTE
		_____ (REP-18)	Slamming complaints Received 12/15/2000
		_____ (REP-19)	What Constitutes Fraud

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
R. E. Poucher	OPC	_____ (REP-20)	V e r i z o n Investigation
		_____ (REP-21)	V e r i z o n Fraudulent Slams
		_____ (REP-22)	Forgery - 5 LOA's
		_____ (REP-23)	Fraud with D e c e a s e d Customers
		_____ (REP-24)	Z i e l e w i c z Forgery
		_____ (REP-25)	Caliro Job Description
		_____ (REP-26)	Withholding Information F r o m Commission
		_____ (REP-27)	BellSouth No Fault PIC Changes
		_____ (REP-28)	S t r a t e g i c Partners - GTE/Snyder August 1998 Review
Christopher D. Owens	Verizon	_____ (REP-29)	S a l e s Objectives For E t h n i c Marketing Project
		_____ (CDO-1)	S n y d e r policies

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Joseph P. Caliro	Verizon	_____	Synder systems changes
		(JPC-1)	
		_____	meeting agenda excerpts
		(JPC-2)	

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. PENDING CONFIDENTIALITY MATTERS

There are no pending confidentiality matters at this time.

XIII. OTHER MATTERS

A. Parties shall be allowed ten minutes for opening statements.

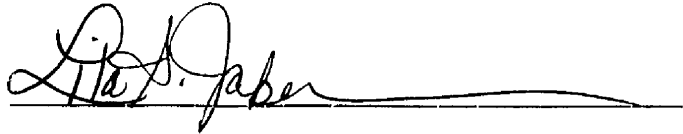
B. OPC may introduce as an exhibit the recent settlement between Verizon and The Office of the Attorney General.

It is therefore,

ORDERED by Commissioner Lila A. Jaber, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

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By ORDER of Commissioner Lila A. Jaber, as Prehearing Officer,
this 23rd Day of May, 2001.

A handwritten signature in black ink, appearing to read "Lila A. Jaber", is written over a horizontal line.

LILA A. JABER
Commissioner and Prehearing Officer

(S E A L)

CLF

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(i), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in

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the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.