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ORIGINAL

August 16, 2000

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RECORDS AND REPORTING

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

RE: Docket No. 990362-TI

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of the Office of Public Counsel's Petition Requesting Section 120.57 Hearing and Protest of Proposed Agency Action for filing in the above referenced docket.

Also enclosed is a 3.5 inch diskette containing the Petition in MS Word. Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,

Charles J. Beck
Deputy Public Counsel

CJB/dsb

Enclosures

- APP _____
- CAF _____
- CMP Kennedy
- COM _____
- CTR _____
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Done 8/18/00

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DOCUMENT NUMBER-DATE
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FPSC-RECORDS/REPORTING

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Initiation of Show Cause Proceeding)	
Against GTE Communications)	Docket 990362-TI
Corporation for Apparent Violation of)	
Rule 25-4.118, F.A.C., Local, Local)	Filed: August 16, 2000
Toll, or Toll Provider Selection.)	
_____)	

PETITION REQUESTING SECTION 120.57 HEARING AND PROTEST OF PROPOSED AGENCY ACTION

Pursuant to Rules 25-22.029 and 28-106.201, Florida Administrative Code, the Citizens of Florida (Citizens), by and through Jack Shreve, Public Counsel, file this petition to protest proposed agency action order no. PSC-00-1348-PAA-TI issued July 26, 2000, and request an evidentiary hearing under section 120.57, Florida Statutes (1999).

1. Section 350.0611, Florida Statutes (1999) provides that it shall be the duty of the Public Counsel to provide legal representation for the people of the state in proceedings before the Commission. It specifically provides the Public Counsel the power to appear, in the name of the state or its citizens, in any proceeding or action before the Commission and urge therein any position which he or she deems to be in the public interest.

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2. The Citizens filed a notice of intervention in this docket on January 14, 2000. The action taken by the Florida Public Service Commission in its proposed agency action order no. PSC-00-1348-PAA-TI (PAA Order) affects the substantial interests of petitioner because GTE Communications Corporation (GTE) willfully violated Commission rule 25-4.118 by changing the presubscribed interexchange carrier of hundreds of Florida's citizens without authorization . The fine ordered by the Commission is an insufficient penalty given the circumstances of the actions described more fully in this petition.

3. The name, address and telephone numbers of petitioner are as follows: Jack Shreve, Public Counsel, Charles J. Beck, Deputy Public Counsel, c/o Florida Legislature, 111 West Madison Street, room 812, Tallahassee, FL 32399-1400, telephone 850-488-9330, fax 850-488-4491. Petitioner received notice of the Commission's decision by downloading a copy of order no. PSC-00-1348-PAA-TI from the Commission's web site on or about July 28, 2000.

4. Verizon Select Services, Inc., f/k/a GTE Communications Corporation, holds Florida Public Service Commission certificate number 4819 as an alternative local exchange telecommunications company and Florida Public Service Commission certificate 4080 as a switchless rebiller and prepaid debit card provider. The Commission has jurisdiction over the company pursuant to chapter 364, Florida Statutes (1999).

BACKGROUND

5. Effective January, 1998, GTE retained Snyder Communications Inc. (Snyder) as its sales agent to implement a marketing program targeted at minority communities. The program involved the use of both telemarketing and “foot sales” to convince people to change their presubscribed interexchange carrier to GTE. Much of the effort in Florida focused on the Hispanic community in Southeast Florida.

6. Over the period of January through November, 1998, GTE, through its sales agent Snyder, forged the signatures of hundreds of customers on letters of authorization purporting to authorize a change of the customer’s presubscribed interexchange carrier. GTE had abundant evidence of the widespread forgeries by April, 1998, yet failed to take effective action to stop the forgeries for more than six months.

7. GTE’s slamming is not limited only to its sales agent Snyder, as indicated in the PAA Order. Employees of GTE Florida, Inc., the local exchange company, have also slammed customers at the phone centers it operates in Florida.

8. Although GTE ended the foot sales of Snyder on November 25, 1998, GTE continues to use Snyder for telemarketing to this day. And the Commission continues to receive slamming complaints from these activities.¹

THE FCC TAKES STONG ACTION IN CASES INVOLVING FORGERIES OF CUSTOMER SIGNATURES

9. The Federal Communications Commission takes strong action in cases where it discovers the use of forgery by companies slamming customers. For example, on March 2 of this year the FCC imposed a one million dollar forfeiture against Brittan Communications International, Inc. (BCI). The FCC received 254 complaints in a seven month period alleging slamming. It found that 16 of the slams involved forgeries; BCI contested 2 of the 16 forgeries. Finding forgery to be a particularly egregious action, the FCC imposed the million dollar forfeiture against BCI and stated that it would continue to impose a higher forfeiture amount for slamming violations involving forgery.

10. On February 9 of this year the FCC imposed a \$1.36 million forfeiture against Arner-I-Net for slamming customers through the use of forged authorization forms. In this case the FCC received 251 consumer complaints about slamming by Amer-I-Net. It found

¹ For example, see the complaint of Ramon A. Briceno filed at the Commission on June 1, 2000. Staff closed the complaint on July 18, 2000, as an apparent slamming rule violation.

that Amer-I-Net had violated FCC rules by switching the long distance service of 18 customers without their consent. 16 of the violations involved the use of forged LOAs.²

THE PSC SHOULD ORDER A LARGER FINE AGAINST GTE

11. The PSC's order found many more slamming violations than did the FCC's orders concerning BCI and Amer-I-Net. Yet the amount of the fine in the PAA Order pales in comparison to the forfeitures ordered by the FCC.

12. Section 364.285(1), Florida Statutes (1999) provides that:

(1) The commission shall have the power to impose upon any entity subject to its jurisdiction under this chapter which is found to have refused to comply with or to have willfully violated any lawful rule or order of the commission or any provision of this chapter a penalty for each offense of not more than \$25,000, which penalty shall be fixed, imposed, and collected by the commission; or the commission may, for any such violation, amend, suspend, or revoke any certificate issued by it. Each day that such refusal or violation continues constitutes a separate offense. Each penalty shall be a lien upon the real and personal property of the entity, enforceable by the commission as a statutory lien under chapter 85. Collected penalties shall be deposited in the General Revenue Fund unallocated.

² Other FCC forfeitures this year include a \$2 million forfeiture against Long Distance Direct, Inc., on February 17, 2000, for slamming and cramming customers; a \$3.5 million forfeiture against MCI Worldcom on June 6, 2000, for slamming customers; and a \$1.5 million fine against Qwest on July 21, 2000, for slamming customers.

13. The usual meaning assigned to the term "willful" is that an entity has intentionally done an act of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow. *Metropolitan Dade County v. Florida Department of Environmental Protection*, 714 So.2d 512 (Fla. 3d D.C.A. 1998).

14. Here, GTE willfully violated the Commission's rules governing slamming. Widespread forgery of customer signatures took place over the course of almost a year. GTE knew about the widespread forgeries, yet deliberately took no action to halt foot sales by its agent Snyder until almost a year had passed. It continues to use Snyder for telemarketing its long distance services despite Snyder's history of forging customer signatures on letters of authorization. In addition, the 209 instances where the Commission found slamming are only part of the picture; hundreds of other slamming complaints went straight to the company or to other agencies. Lastly, although GTE's sales agent Snyder is the largest single source of slamming, employees of GTE Florida, Inc., also slam customers. Imposition of a fine of up to \$25,000 for each of the 209 instances of slamming would be warranted under these circumstances.

DISPUTED ISSUES OF MATERIAL FACT, POLICY, AND LAW

15. Petitioner submits the following disputed issues of material fact, policy, and law for resolution in a hearing conducted under section 120.57, Florida Statutes (1999):

a. Did GTE willfully violate rule 25-4.118, Florida Administrative Code, by changing the presubscribed interexchange carrier of customers without the customers' authorization?

b. If so, in how many instances did GTE willfully violate this rule?

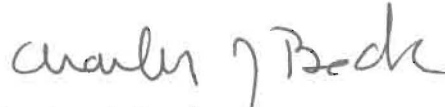
c. Are there matters in extenuation or aggravation concerning these willful violations? If so, what are they?

d. What fine, if any, should the Commission impose for these willful violations of the Commission's rule?

WHEREFORE, the Citizens protest the Commission's proposed agency action order no. PSC-00-1348-PAA-TI issued July 26, 2000, and request an evidentiary hearing to be held pursuant to §120.57, Florida Statutes (1999), as described in this petition.

Respectfully submitted,

JACK SHREVE
Public Counsel
Fla. Bar No. 73622



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

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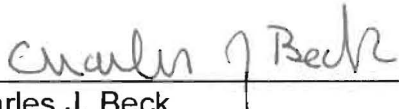
(850) 488-9330

Attorneys for Florida's Citizens

**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 16th day of August, 2000.



Charles J. Beck

Lee Fordham
Division of Legal Services
Fla. Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

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Tampa, FL 33601-0110