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RECORDS AND REPORTING

September 20, 2000

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

HAND DELIVERY

Re: Docket Nos. 990455-TL, 990456-TL, 990457-TL and 990517-TL

Dear Ms. Bayo:

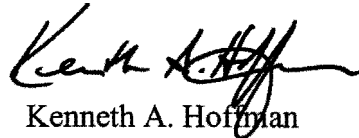
Enclosed herewith for filing in the above-referenced docket on behalf of Verizon Wireless ("Verizon") are the following documents:

1. Original and fifteen copies of Verizon's Petition for Leave to Intervene; and
2. A disk in Word Perfect 6.0 containing a copy of the document.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me.

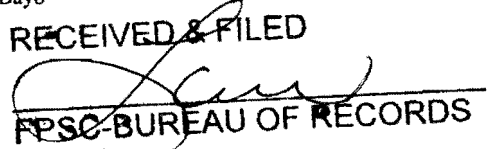
Thank you for your assistance with this filing.

Sincerely,


Kenneth A. Hoffman

APP _____
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 COM _____
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 PAI _____
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Done 9/27/00

DOCUMENT NUMBER-DATE

11840 SEP 20 00

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for review of)
proposed numbering plan relief)
for the 305/786 area code - Dade)
County and Monroe County/Keys)
Region.)
_____)

Docket No. 990455-TL

In re: Request for review of)
proposed numbering plan relief)
for the 561 area code.)
_____)

Docket No. 990456-TL

In re: Request for review of)
proposed numbering plan relief)
for the 954 area code.)
_____)

Docket No. 990457-TL

In re: Request for review of)
proposed numbering plan relief)
for the 904 area code.)
_____)

Docket No. 990517-TL

Filed: September 20, 2000

VERIZON WIRELESS' PETITION FOR LEAVE TO INTERVENE

Verizon Wireless ¹, by and through its undersigned counsel, and pursuant to Rules 25-22.039 and 28-106.205, Florida Administrative Code, hereby petitions the Florida Public Service Commission ("Commission") for leave to intervene in the above-referenced dockets. Verizon Wireless recognizes that this Petition is filed after the final hearing and the Staff Memorandum dated August 24, 2000 ("Staff Memorandum"), setting forth Staff's recommendations for the disposition of the issues in these dockets. For the reasons set forth below, Verizon Wireless maintains that there

¹Verizon Wireless is the successor to GTE Wireless, Bell Atlantic Mobile, AirTouch Cellular and PrimeCo Personal Communications. Verizon Wireless provides wireless voice, data, and messaging services in the major metropolitan areas of Florida through various partnerships and Verizon Wireless Messaging Services.

Done 9/27/00

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11840 SEP 20 00
FPSC-RECORDS/REPORTING

is good cause to permit Verizon Wireless to intervene and for the Commission to consider Verizon Wireless' positions on a limited number of issues prior to the Commission's consideration of the Staff Memorandum at the September 29, 2000 Special Agenda Conference. In support of this Petition, Verizon Wireless states as follows:

1. The name and address of the Petitioner is:

Verizon Wireless
180 Washington Valley Road
Bedminster, NJ 07921

2. All pleadings, notices, staff recommendations, orders and other documents filed or served in these proceedings should be directed to the following on behalf of Verizon Wireless:

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A. GROUND SUPPORTING INTERVENTION

3. Verizon Wireless is a commercial mobile radio services provider authorized to provide wireless telecommunications services by the Federal Communications Commission ("FCC") in the State of Florida. Verizon Wireless holds a substantial number of NXX codes in the State of Florida and provides facilities based wireless services in every numbering plan area ("NPA") in the State of Florida, including the 305, 786, 954, 561 and 904 NPAs.

4. As a provider of wireless communications services and holder of a substantial number of NXX codes in the State of Florida, including NXX codes in the NPAs at issue in these

proceedings, Verizon Wireless' substantial interests are affected by the determinations that will be made by the Commission concerning area code relief for the 305, 786, 954, 561 and 904 area codes and the recommended implementation of specific number conservation measures throughout these area codes. Verizon Wireless seeks intervention to provide input to the Commission only on specific proposed number conservation measures recommended by the Staff in the Staff Memorandum. As a statewide wireless carrier, Verizon Wireless will be substantially affected by specific recommended number conservation measures which are proposed to be implemented throughout the NPAs at issue in these proceedings and would likely provide precedent for consistent application in the remaining NPAs in the State of Florida.

5. Verizon Wireless recognizes that both Rules 25-22.039 and 28-106.205, Florida Administrative Code, require the filing of a Petition for Leave at least five days in the case of Rule 25-22.039 or at least twenty days in the case of Rule 28-106.205 before the final hearing. Rule 28-106.205 does provide a window for a late-filed intervention upon demonstration of "good cause shown."

6. Verizon Wireless maintains that there is good cause for the Commission to allow Verizon Wireless to intervene at this stage of the proceeding to consider Verizon Wireless' input and arguments concerning specific proposed number conservation measures. Verizon Wireless is the successor to GTE Wireless, Bell Atlantic Mobile, AirTouch Cellular and PrimeCo Personal Communications. Verizon Wireless was not providing wireless telecommunications services in Florida on a statewide basis until July 10, 2000, subsequent to the final hearing in these dockets. Moreover, the generic "rulemaking" nature of certain number conservation measures recommended by Staff was not evident from the testimony or prehearing statements of the parties and became

apparent only after the issuance of the Staff Memorandum. For the reasons set forth below, Verizon Wireless will be substantially and adversely affected by approval of three of the number conservation measures if implemented in the manner recommended in the Staff Memorandum.

7. Verizon Wireless maintains that the substantial and adverse effects of three of the Staff's proposed number conservation measures on Verizon Wireless' substantial interests and operations throughout the State justify intervention and participation through comments by Verizon Wireless, notwithstanding the late filing of this Petition. As previously stated, Verizon Wireless did not even begin operations in Florida until July, 2000 and, clearly, the impacts and effects of the three recommended number conservation measures discussed below were simply not known until the issuance of the Staff Memorandum. In addition, Verizon Wireless posits that the Commission would benefit from the input and arguments of Verizon Wireless prior to making its final decisions in these dockets. At least some of the proposed number conservation measures recommended by Staff were not addressed in the testimony stipulated into the record, raise significant legal issues concerning the Commission's authority to adopt such measures, may properly be the subject of rulemaking affecting the entire wireless industry in Florida, including Verizon Wireless.

B. THE COMMISSION'S AUTHORITY TO IMPLEMENT NUMBER CONSERVATION MEASURES

8. Verizon Wireless supports the Commission's efforts to conserve numbering resources within the grant of authority delegated by the FCC to the Commission. In response to the Commission's petition filed with the FCC requesting authority to implement a wide range of number conservation measures, on September 15, 1999, the FCC issued Order No. FCC-99-249 ("Florida Delegation Order") granting in part the Commission's petition for delegation of additional authority

to implement number conservation measures. In the Florida Delegation Order, the FCC granted the Commission interim authority to:

- (a) Institute 1,000-block pooling by all Local Number Portability-capable carriers in Florida;
- (b) Reclaim all unused and reserved NXX codes;
- (c) Maintain rationing procedures for six months following area code relief;
- (d) Set numbering allocation standards;
- (e) Request number utilization data from all carriers; and
- (f) Implement NXX code sharing.

9. In the Florida Delegation Order, the FCC cautioned the Commission:

Although we grant the Florida Commission interim authority to institute many of the optimization measures in the Petition, we do so subject to the caveat that this grant will be superseded by forthcoming decisions in the *Numbering Resource Optimization* proceeding that will establish national guidelines, standards, and procedures for numbering optimization.

Florida Delegation Order, at par. 6.

10. On March 31, 2000, the FCC issued its Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 99-2000, FCC Order No. 00-104. Consistent with its pronouncement in the Florida Delegation Order, the FCC noted:

Although we grant the state public utility commissions interim authority to institute many of the optimization measures they requested in their petitions, we did so subject to the caveat that these grants would be superseded by forthcoming decisions in this proceeding including this *Report and Order* (footnote omitted).

FCC Order No. 00-104, at par. 7.

11. Accordingly, Verizon Wireless maintains that the Commission's authority to implement specific proposed number conservation measures outlined in the Staff Memorandum is limited to the number conservation measure authority delegated by the FCC to the Commission pursuant to the Florida Delegation Order, and, in some cases, that authority has been superseded by the FCC's Order No. 00-104.

C. SPECIFIC NUMBER CONSERVATION MEASURES RECOMMENDED BY STAFF.

12. Verizon Wireless has concerns with the recommended implementation of: (a) a 75% utilization threshold for all non-pooling carriers; and (b) specific time frames for aging numbers in jeopardy versus non-jeopardy situations - - in the 305, 786, 954, 561 and 904 area codes. Verizon Wireless strongly opposes the recommended limitation on the allocation of NXX codes through rationing to 3 NXX codes per month, with only 1 of the 3 NXX codes available to wireless carriers, in the 561, 954 and 904 area codes until all NXX codes in these area codes reach exhaust.

13. These three number conservation measures are agency statements of general applicability in the telecommunications industry that implement, interpret or prescribe Commission policy and are required to be adopted as rules pursuant to the rulemaking procedures set forth in Section 120.54, Florida Statutes. Rulemaking for these measures is clearly feasible in view of the Commission's prior efforts, experience, adjudications and number conservation decisions gained through its Petition filed with the FCC and resulting Florida Delegation Order and the Commission's implementation of the Florida Delegation Order in Order Nos. PSC-00-0543-PAA-TP and PSC-00-1046-PAA-TP issued in Docket No. 981444-TP. Rulemaking is also practicable in light of the general criteria and standards available to the Commission in implementing the three broad number

conservation measures which will have general applicability in the area codes at issue and should be implemented in the area codes at issue and the remaining area codes in Florida pursuant to the rulemaking process. See Fla.Stat. §120.54(1)(a).

14. Verizon Wireless further maintains that the Commission should decline to implement the three number conservation measures discussed above in the manner recommended by Staff for the following reasons:

Implementation of a 75% Utilization Threshold for all Non-Pooling Carriers in the 305, 786, 954, 561 and 904 Area Codes.

15. On page 79 of the Staff Memorandum, Staff recommends implementation of a 75% utilization threshold for all non-pooling carriers in the 305, 786, 954, 561 and 904 area codes. Verizon Wireless supports a *lower* percentage utilization threshold if the term "utilization" is defined correctly and a "safety valve" procedure is established that will allow a carrier below the utilization threshold the right to obtain growth codes by demonstrating actual need. In addition, any appropriately defined percentage utilization threshold for non-pooling carriers in the area codes at issue should be viewed as "interim guidelines" pending the FCC's adoption of a nationwide utilization threshold for non-pooling carriers beginning January 1, 2001.

16. There is no evidence in the record providing a definition of the term "utilization." If the "utilization" threshold is based on "assigned numbers" as presently under consideration by the FCC, then the Commission should reject the 75% utilization threshold proposed by Staff and implement an interim utilization threshold of 60% which is at the lower end of the range currently under consideration by the FCC. Clearly, a 75% utilization threshold based on assigned numbers is too high and will leave CMRS carriers in the untenable position of not being able to meet high

seasonable demand.

17. Verizon Wireless supports the implementation of an interim percentage utilization threshold for non-pooling carriers so long as: (a) the calculation of "utilization" is clarified and wireless carriers are not penalized for numbers that while not "assigned" to their own retail customers, are not readily available for assignment to customers; (b) a "safety valve" procedure is established; and (c) that the utilization percentage is reduced to 60%. There are several categories of numbers that are not assigned but are not also readily available for assignment to customers, including:

- Numbers in NXX codes set aside for specialized services, when provision of such services requires a separate code;
- Numbers in NXX codes that may not generally be used to accommodate growth for valid public policy or technical reasons, such as codes that have not yet been converted from Type 1 of Type 2 interconnection;
- Intermediate numbers, such as those allocated to resellers, which are, by definition, not available to the underlying carrier for assignment to customers; and
- Aging, reserved, and administrative numbers, which are part of a carriers' inventory but are not available for assignment to customers.

18. Should the Commission clarify the definition of "utilization" and implement an interim percentage utilization fill rate, Verizon Wireless emphasizes the importance of establishing a "safety valve" procedure for rapidly growing carriers as recommended by Sprint witness Ludwikowski (Tr. 70). While a utilization threshold should ensure that carriers can timely obtain needed NXX codes in *typical* cases, it is critical to make provisions for a "safety valve" that would

allow carriers who do not meet the threshold to present the North American Numbering Plan Administrator with any and all relevant evidence of *bona fide* need. Bona fide need may be demonstrated in any number of ways including a customer order, projected growth rates and/or demand, proof of a new service or marketing campaign, or a months-to-exhaust worksheet.

19. Finally, the superseding FCC Order No. 00-104 expressly provides that the FCC intends to adopt a nationwide utilization threshold for non-pooling carriers beginning January 1, 2001. This specific nationwide utilization rate or range is being addressed through the FCC's further notice of proposed rulemaking issued as part of FCC Order No. 00-104. It may indeed be too burdensome and inefficient to implement any utilization threshold for non-pooling carriers which would likely be subject to change effective January 1, 2001. However, should the Commission elect to implement a percentage utilization threshold, it should establish an interim utilization threshold of 60% (the lower end of the range under consideration by the FCC), and only after correctly defining "utilization" as outlined above and establishing a "safety valve" procedure.

Implementation of Specific Time Frames for Aging Numbers in Jeopardy versus Non-Jeopardy Situations in the 305, 786, 954, 561 and 904 Area Codes.

20. Staff also recommends implementation of specific time frames for aging numbers in jeopardy versus non-jeopardy situations. No such authority was granted to the Commission pursuant to the Florida Delegation Order. Moreover, the FCC has expressly adopted the Industry Numbering Committee guidelines - - an upper limit of 90 days for residential numbers and 365 days for business numbers² - - without reference to jeopardy versus non-jeopardy situations. See FCC Order No. 00-104, at Par. 29 and fn. 60. Since the FCC has already addressed the issue of guidelines and time

²Per Erratum released by the FCC on July 11, 2000.

frames for aging numbers and the Commission must conform with the decision of the FCC Number Resource Optimization Order No. 00-104, at par. 29, there appears to be no need for the Commission to address this measure.

The Limitation on the Allocation of NXX Codes Through Rationing to 3 NXX Codes Per Month, With Only 1 Available to Wireless Carriers, in the 561, 954 and 904 Area Codes Until All NXX Codes in These Area Codes Reach Exhaust.

21. Finally, Staff recommends limiting the allocation of NXX codes through rationing to three NXXs per month in the 561, 954 and 904 area codes until all NXX codes in these area codes reach exhaust. Staff further recommends that only one of the three NXXs in the old area code be provided to non-pooling carriers per month until the area code reaches exhaust. See pages 87-88 Staff Memorandum. This proposal has no support in the record, violates the Commission's delegated interim authority, and discriminates against wireless carriers such as Verizon Wireless.

22. Verizon Wireless notes that the Staff Memorandum is unclear as to whether the increased rationing (i.e., reduction in number of NXX codes rationed per month) recommended by Staff would apply only to NXX codes in the old Numbering Plan Area or in the old and new Numbering Plan Areas. Staff also speculates "that once pooling takes place in the 561, 954 and 904 area codes, the demand for 1,000-blocks will decline." Staff Memorandum, at 87. There is no evidence in the record supporting such speculation. Demand for full NXX codes may decline because pooling participants will obtain numbering resources in 1,000 number increments, but demand for 1,000 blocks is likely to remain the same on an overall basis. Moreover, it would seem unlikely that demand will decline in these area codes (561, 954 and 904) where rationing has been in place for more than a year. To the contrary, a reservoir of mounting but unsatisfied demand could

well increase the demand for numbers.

23. There is absolutely no rationale or evidentiary support for the Staff Recommendation to limit wireless carriers to one NXX code per month until (presumably) all NXX codes in the 954, 561 and 904 area codes reach exhaust. The Staff Memorandum fails to address the demands of wireless carriers who must continue to receive numbers in full NXX codes, not 1,000 number blocks. The Staff Memorandum appropriately recognizes the FCC's mandate that all carriers must have adequate access to numbering resources and that numbering administration, including a rationing plan, should not discriminate against a particular segment of the industry. See Staff Memorandum, at 95, citing FCC Order No. 96-333 issued on August 8, 1996 in CC Docket No. 96-98, at Par. 278. A one NXX Code per month rationing measure for wireless carriers clearly violates this FCC mandate.

24. Finally, the Florida Delegation Order limits the Commission's authority, in the case of an area code split (the 904 NPA) to:

direct that whatever rationing plan was in place prior to area code relief continue to be applied in both the newly implemented area code and the relieved area code for a period of up to six months following the area code relief date.

In the case of an overlay (954 and 561 NPAs), the Florida Delegation Order authorizes the Commission only to:

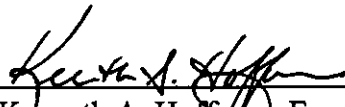
direct that the pre-existing rationing plan be applied to both the overlay code and the relieved code for a period of six months following the area code relief date.

Florida Delegation Order, at par. 28. The Staff's recommendation to restrict rationing for an unspecified period of time to three NXX codes per month, with only one NXX code available to a non-pooling carrier, is outside the limited interim authority granted to the Commission pursuant to

the Florida Delegation Order.

WHEREFORE, Verizon Wireless respectfully requests that the Commission grant this Petition for Leave to Intervene and deny those portions of the Staff Memorandum recommending the implementation of the three specific number conservation measures addressed in this Petition by Verizon Wireless.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Verizon Wireless' Petition for Leave to Intervene was furnished by U. S. Mail this 20th day of September, 2000, to the following:

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