

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: May 5, 2008

TO: Office of Commission Clerk (Cole)

For BWS

FROM: Office of the General Counsel (Gervasi) *RS SMC. [Signature]*
Division of Competitive Markets & Enforcement (Dowds)

RE: Docket No. 080065-TX – Investigation of Vilaire Communications, Inc.'s eligible telecommunications carrier status and competitive local exchange company certificate status in the State of Florida.

AGENDA: 05/06/08 – Regular Agenda – Decision on Motion for Reconsideration of Non-Final Order – Participation Dependent Upon Commission's Vote on Issue 1

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Skop

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\080065.RCM.DOC

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Case Background

By Order No. PSC-08-0090-PAA-TX, issued February 13, 2008, in this docket, the Commission proposed to rescind Vilaire Communications, Inc.'s (VCI or company) eligible telecommunications carrier (ETC) status and to cancel its certificate (PAA Order). On March 5, 2008, VCI timely filed a protest of the Order and a petition for formal hearing. Therefore, this matter is scheduled for a formal hearing on June 4, 2008. An Order Establishing Procedure, Order No. PSC-08-0194-PCO-TX, was issued on March 26, 2008, and included a Tentative List of Issues which is attached to this recommendation as Attachment A.

On March 31, 2008, the prosecutorial staff served its First Set of Interrogatories (Nos. 1-38) and First Request for Production of Documents (POD Nos. 1-10) on VCI. A copy of these discovery requests is attached to this recommendation as Attachment B. VCI timely filed general

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and specific objections thereto on April 7, 2008, and a partial discovery response on April 15, 2008, which was the due date for VCI to respond to staff's first set of discovery. On April 22, 2008, prosecutorial staff filed a Motion to Compel Discovery (Motion to Compel), seeking full and complete responses to its first set of discovery requests by 12 p.m. on April 30, 2008.

By Order No. PSC-08-0258-PCO-TX (Discovery Order), issued April 25, 2008, the Prehearing Officer found that time did not allow for VCI to file a response in opposition to the Motion to Compel, granted the Motion to Compel, and required VCI to respond to Staff's First Set of Discovery within seven days of the issuance date of the Order, by May 2, 2008. On May 2, 2008, VCI instead filed a Motion for Reconsideration of the Discovery Order and a Request for Oral Argument. Prosecutorial staff filed a Response to the Motion for Reconsideration on May 5, 2008.

Because of the nature of the issues involved in this proceeding (see Attachment A), and the need for immediate resolution of the pending discovery dispute in order for the parties to fully prepare for the June 4, 2008, hearing, staff believes there is good cause to add this item to the May 6, 2008, agenda conference pursuant to section 120.525(2), Florida Statutes (F.S.). This recommendation addresses VCI's Request for Oral Argument and Motion for Reconsideration, and the prosecutorial staff's Response thereto.

Discussion of Issues

Issue 1: Should VCI's Request for Oral Argument be granted?

Recommendation: Yes, the Request for Oral Argument should be granted. VCI and the prosecutorial staff should be allowed 10 minutes per side to address the Commission on the matter. (Gervasi)

Staff Analysis: Pursuant to Rule 25-22.0022(1), Florida Administrative Code (F.A.C.), VCI filed its Request for Oral Argument by separate written request filed concurrently with its Motion for Reconsideration that is the subject of Issue 2 of this recommendation. VCI states that oral argument would be beneficial in that the complexity of the Motion for Reconsideration is heightened by the fact that VCI was not provided an adequate opportunity to respond to the underlying Motion to Compel. VCI further states that the Commission may benefit from further explanation as to the difficulties associated with providing some of the information requested. VCI requests that parties be allowed 10 minutes per side to address the Commission.

In its Response, the prosecutorial staff states that it does not believe oral argument is appropriate, given that VCI's Motion for Reconsideration is insufficient on its face as a matter of law. The prosecutorial staff does not believe that oral argument would assist the Commission in rendering a decision. Based on the arguments set forth in the Motion for Reconsideration, prosecutorial staff believes VCI's Request for Oral Argument is an attempt to argue the merits of its case and should be denied.

Rule 25-22.0022(3), F.A.C., provides that granting or denying a request for oral argument is within the sole discretion of the Commission. Advisory staff believes oral argument may aid the Commission in its decision on the Motion for Reconsideration, and therefore recommends that the Commission grant VCI's Request for Oral Argument and allot VCI and prosecutorial staff ten minutes per side to address the Commission on the matter.

Issue 2: Should VCI's Motion for Reconsideration of Order No. PSC-08-0258-PCO-TX be granted?

Recommendation: No, the Motion for Reconsideration should be denied. VCI should be ordered to submit its full and complete responses to Staff's First Set of Interrogatories (Nos. 1-38) and First Request for Production of Documents (Nos. 1-10) by the close of business on Friday, May 9, 2008. (Gervasi, Dowds)

Staff Analysis:

I. Standard of Review

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law that the Commission overlooked or failed to consider in rendering its Order.¹ This is the "sole and only purpose" of a motion for reconsideration.² Moreover, in a motion for reconsideration, it is not appropriate to reargue matters that have already been considered.³ Reconsiderations granted based on rearguing facts and evidence available to the Commission at the time the Motion to Compel was granted is a reversible error on appeal.⁴ A motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review."⁵

II. Motion for Reconsideration

A. Jurisdiction/Notice of Intent to Seek Relief

In its Motion for Reconsideration, VCI acknowledges that jurisdiction has been identified as an issue for resolution in this proceeding. However, VCI maintains that the Commission lacks subject matter jurisdiction to inquire into matters concerning its operations as an Eligible Telecommunications Carrier (ETC). In its Motion for Reconsideration, VCI "provides notice to the Commission of its intent to file a motion, in due course, seeking dismissal of this proceeding on that ground, or in the alternative, abeyance pending resolution of the jurisdictional questions in Federal District Court." The discovery requests that are most directly impacted by such a motion to dismiss are Interrogatory Nos. 2, 4, 5, 7, 8-32, 35, 36, and 38 and POD Nos. 2-9.

B. Issuance of Discovery Order without Benefit of Response

The Discovery Order did not allow for VCI to file a response or otherwise identify a date by which VCI needed to provide an expedited response in order to have it considered. VCI argues that, therefore, a fundamental legal and factual error was created regarding the very

¹ See Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981).

² State ex. Rel Jaytex Realty Co. v. Green, 105 So. 2d 817, 818 (Fla. 1st DCA 1958).

³ Sherwood v. State, 111 So. 2d 96 (Fla. 3d DCA 1959) (citing State ex. rel. Jaytex Realty Co. v. Green, supra).

⁴ Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317-318 (Fla. 1974).

⁵ Id. at 317.

issuance of the Order. VCI believes that the timing of the issuance of the Discovery Order was contrary to the plain language of Rule 28-106.204, F.A.C., and an abrogation of its due process rights. The Discovery Order was issued just three days after the prosecutorial staff filed its Motion to Compel, without the benefit of VCI's response thereto. VCI acknowledges that under Rule 28-106.204, F.A.C., a response may be filed within seven days, if time allows. VCI states that the only rationale offered in the Discovery Order for its expedited issuance was that this matter is set for hearing on June 4, 2008, a full six weeks from the date the Discovery Order was issued. The discovery cut off date in this matter is not until May 22, 2008. As such, VCI argues that there is no compelling reason that the Discovery Order had to be issued on an expedited basis without allowing VCI to respond to the Motion to Compel. Citing Keys Citizens for Responsible Gov't, Inc. v. Florida Keys Aqueduct Auth.⁶ and Massey v. Charlotte County,⁷ VCI asserts that procedural due process requires fair notice and a real opportunity to be heard.

VCI further argues that the Discovery Order fails to consider the applicability of Rule 28-106.206, F.A.C., which specifically incorporates the requirements of Rules 1.280 through 1.400, Florida Rules of Civil Procedure, in providing that parties may obtain discovery by any means appropriate under those rules. According to VCI, the Prehearing Officer erred by overlooking Rule 28-106.206, F.A.C., and consequently, Rule 1.380, Florida Rules of Civil Procedure, as well as the cases interpreting it. Rule 1.380 requires that a party be provided "reasonable notice" that a party will seek an order compelling discovery. VCI states that courts have determined that this requirement contemplates a reasonable opportunity to be heard with regard to a motion to compel discovery, unless the party from whom discovery is being sought has altogether failed to respond or object to the subject requests. "Where those conditions are not met, Florida Rules of Civil Procedure 1.380(a) and 1.090(d) apply, requiring that the motion not be heard without proper notice."⁸ VCI properly and timely responded to the prosecutorial staff's discovery requests by filing valid objections.

C. Burdensome or Overly Broad Discovery Requests

VCI argues that the Discovery Order concludes, without support, that "[t]his Commission has consistently recognized that discovery is proper and may be compelled if it is not privileged and is, or likely will lead to, relevant and admissible evidence."⁹ VCI argues that although the scope of discovery is broad, it is not entirely without bounds. It states that the Discovery Order errs by assuming that unless a privilege has been specifically asserted, any information, regardless of scope, burden, or relationship to the issues in the case, is discoverable. Discovery requests must be narrowly crafted to the issues of the case.¹⁰ Furthermore, VCI states that page 34, lines 15-23, and page 38, line 11, of staff witness Robert Casey's prefiled direct testimony shows that prosecutorial staff seeks expansive discovery for purposes beyond this proceeding.

⁶ 795 So. 2d 940, 948 (Fla. 2001).

⁷ 842 So. 2d 142, 146 (Fla. 2d DCA 2003).

⁸ Waters v. American General Corp., 770 So. 2d 1275 (Fla. 4th DCA 2000) (citing American Cas. Ins. Co. v. Bly Elec. Const. Serv., Inc., 562 So. 2d 825 (Fla. 4th DCA 1990) (quashing order compelling discovery, and remanding for hearing to entertain objections to interrogatories on the merits)).

⁹ Order No. PSC-08-0258-PCO-TX at p. 2.

¹⁰ Redland Co. v. Atlantic Civil, Inc., 961 So. 2d 1004, 1007 (Fla. 3d DCA 2007).

1. Interrogatory Nos. 2 and 32 and POD Nos. 1 and 10

VCI argues that POD Nos. 1 and 10 and Interrogatory Nos. 2 and 32 are overly broad. VCI states that providing the full scope of the information requested does not appear necessary for proving up any issue in the case. POD No. 1 seeks copies of all monthly bills since VCI became an ETC and Interrogatories Nos. 2 and 32 ask for an exhaustive analysis of these bills. Similarly, POD No. 10 seeks all remittance payments to the Florida Telecommunications Relay, Inc. (FTRI) for the two-year period since VCI has been a designated ETC. The company states that the process of providing all of VCI's monthly bills in Florida in paper format would be burdensome due to the number of bills at issue over the time period requested. In order to respond to POD No. 1, VCI asserts that it would have to incur an unreasonable amount of time, expense and effort to produce and copy between 18,000 and 25,000 paper bills issued to VCI customers over 18 months. Compliance with POD No. 10 would be equally burdensome. Moreover, VCI states that its billing system will not permit the download of bills into electronic format. It further states that Florida courts have quashed discovery orders permitting production of voluminous documents not limited in scope and time, finding such requests to be unduly oppressive, burdensome and overbroad.¹¹

The affidavit of Stanley Johnson, VCI President, attached to the Motion for Reconsideration, attests to this. Mr. Johnson estimates that it will take VCI staff a minimum of one week to print out and organize the bills, and three to four weeks for VCI staff to review each bill and input the information requested in Interrogatory No. 2 into an excel spreadsheet for review by Commission staff. Mr. Johnson states that he hoped the Commission staff would agree to the production of a random sampling of bills. However, staff did not disclose the possibility of reducing the scope of POD No. 1 to four months until filing the Motion to Compel.

VCI argues that the Discovery Order seems to give weight to the prosecutorial staff's mention that it had informed VCI at the Issue Identification meeting that it would be seeking the billing information, and that therefore VCI "had as much notice as possible." VCI did not realize the difficulty it would have in providing the number of bills covered by the discovery requests and the related analysis sought until the prosecutorial staff served them.

VCI further argues that it seems unlikely that prosecutorial staff could effectively review and synthesize the information from each and every one of the thousands of bills sought by the discovery requests in time for the June 4, 2008, hearing. VCI argues that one might reasonably assume that the staff has propounded these extremely broad discovery requests either to hinder VCI's ability to prepare for the hearing by seeking a "data dump," or to provide the prosecutorial staff with a deep pool in which to "fish" for other violations apparently anticipated by the prosecutorial staff, whether at issue in this proceeding or not. VCI states that the courts have found that discovery may not be so expansive as to authorize a "fishing expedition" through which a party could uncover potential other causes of action.¹²

¹¹ Union Fidelity Life Ins. Co. v. Seay, 378 So. 2d 1268, 1269 (Fla. 2d DCA 1979) (finding that tax information requested over an unreasonably broad timeframe and wholesale turnover of documents without regard to issues was overbroad). See also Redland Co. v. Atlantic Civil, Inc., *supra*, note 8, at 1006-1007.

¹² See State Farm Mut. Auto. Inc. Co. v. Parrish, 800 So. 2d 706, 707 (Fla. 5th DCA 2001).

2. Interrogatory Nos. 1 and 12 and POD Nos. 4, 5, and 7

VCI argues that the prosecutorial staff has already obtained the documents sought in POD Nos. 4, 5, and 7 either from VCI or from third parties, as staff disclosed to VCI in documents produced in response to VCI's public records request. Regarding Interrogatory No. 1, which requests VCI to define the term "resale," that definition may be obtained as easily by staff as VCI. VCI provided the staff auditor with copies of invoices for Lifeline advertising (POD No. 4) and FCC Forms 497 (POD No. 5). VCI asserts that prosecutorial staff has already obtained and continues to receive copies of VCI's FCC Forms 497 directly from the Universal Service Administrative Company (Interrogatory No. 12 and POD No. 5). VCI provided copies of its interconnection agreement and local wholesale complete agreement with ATT-Florida to the staff auditor and the wholesale agreement is currently on file, under seal, with the Commission Clerk's Office. (POD No. 7). The company states that providing duplicative responses would be unduly burdensome.

D. Relevancy

VCI argues that there must be a readily apparent and reasonably calculated causal connection between the information sought through discovery and evidence relevant to the issues in the case.¹³ If the causal connection is not readily apparent, the party seeking discovery must point out the reasoning process using facts and inferences.¹⁴ VCI states that arguments that irrelevant inquiries might lead to evidence that would be relevant to the issues of a case, and that would be admissible, are insufficient.

1. Interrogatory Nos. 2, 30, and 32 and POD Nos. 1 and 10

VCI argues that there is no rational basis for the discovery requested by Interrogatory Nos. 2, 30, and 32 and POD Nos. 1 and 10 because the 911 issue has been resolved and no further discovery is warranted. VCI has admitted overcharging customers the 911 surcharge. VCI has submitted a spreadsheet to staff disclosing the number of customers who overpaid the 911 surcharge and the amount of the overcharge, as well as a plan for refunding or crediting the customers who overpaid. In response to Interrogatory No. 14, VCI stated that the company has compensated customers who overpaid the 911 fee. Because VCI has not offered a vigorous defense to the 911 issue, the company argues that the scope of the discovery request should be more appropriately tailored to confirming that VCI has satisfactorily resolved the issue. If the tribunal determines review of VCI's bills is necessary to verify that VCI has corrected the surcharge amount, staff could determine this fact by examining one or two recent bills for each county where VCI's customers reside.

VCI further argues that these requests are not likely to lead to the discovery of admissible evidence on the late payment charge issue, nor has any causal connection been established to warrant the production of all of its bills on the late payment charge issue. Only one VCI customer has complained to the Commission that he was incorrectly assessed a late payment fee,

¹³ Calderbank v. Cazares, 435 So. 2d 377, 379 (Fla. 5th DCA 1983).

¹⁴ Id.

and that customer admitted that his payments were made after the payment due date.¹⁵ While prosecutorial staff has alleged that VCI has incorrectly charged other customers, staff has thus far refused to provide VCI with identifying information for those customers. VCI asserts that such information should have been produced by staff in response to VCI's public records request submitted to the Commission on February 7, 2008, for, among other things, all documents regarding complaints by Florida consumers against VCI. The company states that prosecutorial staff seeks information that might lead to relevant evidence and is engaging in an inappropriate "fishing expedition."

VCI argues that if the Commission determines that some amount of information or documents sought by these discovery requests is responsive on the late payment issue, the scope of the request should be narrowed significantly. Moreover, prosecutorial staff should be ordered to produce identifying information about those customers it believes have been mischarged by VCI, as should have been done pursuant to the public records request.

2. Interrogatory Nos. 6, 11, 29(a), 34, 35, and 36 and POD Nos. 8- 10

Interrogatory No. 6 and POD Nos. 8 and 10 seek a list of VCI's payments to ATT-Florida for service and corporate income tax returns for reconciliation with VCI's regulatory assessment fee (RAF) form, as well as information and documents regarding VCI's FTRI payments. VCI states that neither VCI's RAFs nor its FTRI payments are at issue in this proceeding. Furthermore, it asserts that prosecutorial staff may not bring any additional charges at this point in the proceeding without significant modifications to the schedule to allow VCI a full and adequate opportunity to respond to said charges. It states that an agency cannot find a defendant in violation of an issue not charged in the original complaint against the defendant.¹⁶

3. Interrogatory Nos. 11, 29(a), 35, and 36 and POD No. 9

Interrogatory Nos. 11, 29(a), 35, and 36 and POD No. 9 seek information about VCI's operations in states other than Florida, as well as documents and information filed in an FCC proceeding regarding VCI's operations in states other than Florida. VCI argues that its operations in states other than Florida are not at issue in this proceeding and the Commission has no jurisdiction to inquire into VCI's operations in states other than Florida.

4. Interrogatory Nos. 2, 9, 32, and 34 and POD No. 7

Interrogatory No. 9 and POD No. 7 request information and documents regarding VCI's business relationships with third parties who have supplied or are supplying VCI with equipment or services. VCI argues that the quality or quantity of VCI's provision of service to its customers is not an issue identified in this proceeding, nor does the Commission have jurisdiction to inquire into the details of VCI's business relationship with third parties.

Interrogatory No. 34 seeks information about VCI employees and subcontractors and VCI states that it should have been rejected for these same reasons. VCI argues that

¹⁵ See Exhibit No. SJ2-A to the prefiled direct testimony of Stanley Johnson.

¹⁶ Willner v. Department of Professional Regulation, 563 So. 2d 805 (Fla. 1st DCA 1990).

prosecutorial staff lumped this interrogatory under its general argument that essentially says that “all roads lead to Lifeline and Linkup issues.”¹⁷ VCI states that it is unfathomable how information about its employees and subcontractors can possibly lead to relevant, admissible information about its provision of Lifeline and Linkup services.

Interrogatory Nos. 2 and 32 request information about VCI customers’ disconnect dates. VCI argues that there is no identifiable causal relationship between the information sought and matters at issue, and that these requests are simply further casts of the fly in the prosecutorial staff’s ongoing fishing expedition.

E. Jurisdiction

Interrogatory Nos. 4-10, 15-31, 34, 38, and 39 and POD Nos. 2, 3, 7, and 9 seek, among other things, copies of ATT-Florida bills to VCI, the number of lines purchased under a private contract with ATT-Florida, and details of the ongoing operations between VCI and ATT-Florida and VCI and other third parties, including the Universal Service Administrative Company (USAC). VCI argues that nothing in Chapter 364, F.S., approximates Federal law regarding ETC operations, authorizes the Commission to adopt rules similar to, or permits the Commission to enforce the FCC’s universal service rules relied upon by prosecutorial staff as the basis for their prosecution of this matter. A state agency is simply not authorized to take administrative action based upon federal statutes.¹⁸ Prosecutorial staff’s pursuit of information regarding VCI’s compliance with Federal rules reaches beyond the scope of the Commission’s authority, and consequently, beyond the scope of discovery as provided in Rule 1.280, Florida Rules of Civil Procedure, and Section 364.183, F.S.

VCI also argues that the Commission cannot unilaterally inquire into the mechanics of the business relationship between a competitive carrier and its underlying carrier. These parties’ business relationship is governed by the provisions of an interconnection agreement. Section 364.162, F.S., grants the Commission authority to arbitrate disputes between parties to an interconnection agreement if the parties so request. VCI asserts that, in this case, its interconnection agreement with ATT-Florida has been approved by the Commission and neither party to that agreement has requested arbitration. It further asserts that the ongoing implementation of the agreement and business operations of the parties in accordance with it is not subject to Commission jurisdiction or oversight.

Further, VCI argues that it intends to seek resolution of the jurisdictional questions prior to the hearing. Thus, according to VCI, the Discovery Order is in error to the extent it compels discovery over the jurisdictional arguments that have been raised on the basis that jurisdiction is an issue in the proceeding. VCI emphasizes that Florida law is clear that jurisdiction can be raised at any time and may be properly asserted in a motion to dismiss.¹⁹ It states that any delay that may result from its anticipated filing of a Motion to Dismiss for Lack of Subject Matter Jurisdiction, or any similar federal court filing, should not be interpreted as being interposed simply for purposes of delay, as suggested by prosecutorial staff at Footnote 7 of its Motion to

¹⁷ See Motion to Compel at p. 3.

¹⁸ Curtis v. Taylor, 648 F. 2d 946 (5th Cir. 1986).

¹⁹ See Rule 1.140(b), Florida Rules of Civil Procedure.

Compel. VCI argues that any reliance on these assertions by the Prehearing Officer in rendering the Discovery Order over VCI's jurisdictional objections is in error both as a matter of law and of fact.

F. Privilege

VCI argues that Interrogatory Nos. 11-13 and 33 and POD No. 9 seek documents and information protected by the attorney work-product doctrine and/or the attorney-client privilege, and as such, are not discoverable. In accordance with the Prehearing Officer's directive in the Discovery Order at page 2, VCI specifically sets forth its arguments regarding these assertions of protected information and describes the information at issue in its Motion for Reconsideration at pages 22-25.

In Interrogatory No. 11, prosecutorial staff seeks information concerning legal advice proffered by VCI's attorney to the corporation in an ongoing administrative proceeding. VCI argues that revealing this information would disclose its attorney's mental impressions, conclusions, opinions and theories of this case. Communications between an attorney and client with respect to an ongoing proceeding are protected from discovery.

POD No. 9 seeks copies of documents that have been filed in response to the FCC's inquiries in an ongoing proceeding before the FCC concerning VCI's operations in states other than Florida. VCI argues that because they were prepared in anticipation of litigation, these documents constitute attorney work-product and are protected from disclosure. Moreover, VCI states that they are subject to the FCC's confidentiality rules and, in its Motion to Compel, staff did not make the required showings of "need" for these documents and "undue hardship."

Interrogatory Nos. 12 and 13 seek information concerning actions taken by VCI in relation to its case in this proceeding. Prosecutorial staff requests information regarding legal advice with respect to this case which would disclose VCI counsel's mental impressions, conclusions, opinions, and theories of this case. VCI argues that this information is protected by the attorney-client privilege, as well as the attorney work-product doctrine. VCI asserts that the Motion to Compel should have been denied on this point.

In Interrogatory No. 13, prosecutorial staff also seeks information that would disclose whether and from whom VCI obtained certain information in preparation for this case. VCI argues that this information is protected from disclosure by the work-product doctrine in that it seeks information pertinent to the strategy, timing, and related mental impressions of its counsel in preparation for the hearing. Thus, VCI asserts that the Prehearing Officer erred by compelling a response that entails the disclosure of privileged information.

VCI asks the Commission to accept the foregoing assertions of privilege and not seek to further compel responses to this discovery. VCI argues that to do so would constitute a mistake of law and reversible error susceptible to an interlocutory appeal.

III. Prosecutorial Staff's Response to Motion for Reconsideration

A. Delay Tactics

Prosecutorial staff argues that VCI's Motion for Reconsideration is nothing more than an attempt to delay the ultimate resolution of this proceeding. In the Motion, VCI simply reargues its Objections to Staff's First Set of Interrogatories (Nos. 1-38) and Production of Documents (1-10) (Objections). VCI's Motion should be summarily denied for this reason alone, and VCI should be required to respond to prosecutorial staff's discovery as soon as feasible.

According to the prosecutorial staff, from the inception of the Commission's investigation into VCI's operation as an ETC and CLEC in Florida, VCI has utilized delay tactics on several fronts, ranging from its reluctance to meet with prosecutorial staff to its frivolous objections to the staff's discovery requests. VCI filed a protest to the PAA Order, yet now states that it will seek dismissal, or alternatively, abeyance of the proceeding pending resolution of the Commission's jurisdiction in Federal District Court. As set forth in the Motion to Compel, VCI should have requested that the Commission address jurisdiction as a threshold issue. VCI incorrectly relies on this argument to support its Objections.

Moreover, prosecutorial staff argues that an appeal to Federal District Court would surely fail because there has yet to be a final agency action upon which to appeal. VCI made a calculated decision to protest the PAA Order. Therefore, as a matter of law, the Commission has made no legal or factual findings regarding VCI's operations as an ETC or CLEC in Florida. Since the issuance of the PAA Order, VCI has received \$51,966 and \$53,461 in universal service funds from USAC for March and April, respectively, for Florida. Until the Commission issues a Final Order, an appeal to Federal District Court would surely fail due to a lack of ripeness. Ripeness is a judicial doctrine designed "to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties."²⁰ Prosecutorial staff would not oppose VCI's withdrawal of its protest and request for hearing to allow VCI to have this matter addressed in Federal District Court.

B. Relevancy

Prosecutorial staff takes great issue with VCI's erroneous allegation that staff's discovery is an attempt at fishing. Every discovery request served by prosecutorial staff is relevant to the issues agreed upon by the parties and is reasonably calculated to lead to the discovery of admissible evidence. VCI alleges that prosecutorial staff seeks expansive discovery for purposes beyond this proceeding and cites to the direct testimony of Robert Casey filed in this case. VCI refers to prosecutorial staff's assertion that VCI may have violated section 364.336, F.S., by not paying a RAF because of VCI's incomplete information provided for the calculation of RAF fees. VCI also references where prosecutorial staff witness Robert Casey states that:

²⁰ Abbott Laboratories v. Gardner, 387 U.S. 136, 148-149 (1967).

Based on my investigation which discovered double compensation being received for Lifeline and Link-Up, improper filings for TLS support, overbilling of E-911 fees, possible improper billing of late payment charges, erroneous information contained on monthly customer billing, business telephone numbers receiving Lifeline credits, lack of support to reconcile revenues to Form 497 and the PSC's regulatory assessment fee return, and possible other improprieties which may be uncovered by staff's interrogatories and PODs, I believe that Vilaire no longer has the technical, financial, and managerial capability to provide CLEC service in the state of Florida. [VCI] has violated the terms and conditions upon which its CLEC certificate was granted, and has violated Commission rules and orders. (emphasis added.)

Prosecutorial staff states that Issue 11 (see Attachment A) specifically requires the Commission to make a finding whether VCI has "willfully violated any lawful rule or order of the Commission, or provision of Chapter 364, F.S." Therefore, requesting information that will allow the Commission to consider whether VCI has accurately reported its annual revenue on the Commission's RAF Form is clearly within the scope of this proceeding.

VCI argues that prosecutorial staff has not properly informed VCI of "additional charges." Prosecutorial staff notes that once protested, the PAA Order is no longer in effect. Consequently, staff signals its intent through the agreed-upon issues identified at the Issue Identification meeting. Furthermore, page 1 of the Order Establishing Procedure specifically states that "[t]he scope of this proceeding will be based upon these issues as well as other issues raised by the parties up to and during the Prehearing Conference, unless modified by the Commission."

C. Burdensome or Overly Broad Discovery Requests

In its Motion, VCI asserts that prosecutorial staff did not notify VCI that it would be requesting all monthly bills since VCI was granted ETC status by the Commission. Prosecutorial staff disputes this assertion. Staff Witness Robert Casey is prepared to testify under oath or file an affidavit if the Commission so requires, that prosecutorial staff's intentions to request all monthly bills was clearly expressed to counsel for VCI at the Issue Identification meeting and that there was never an indication that the request would be limited to VCI's billing of the 911 surcharge. Prosecutorial staff was not required to provide such notice, but chose to do so in order to provide as much advance notice as possible.

VCI further argues that prosecutorial staff's request is not appropriately limited in scope. Prosecutorial staff is not aware of a better method to confirm the appropriateness of VCI's billing as an ETC than by reviewing all bills issued by VCI since its designation as an ETC. The monthly bills will provide a comprehensive understanding of VCI's operation as an ETC.

Prosecutorial staff finds it ironic that in the same Motion where VCI complains that the Prehearing Officer should have waited for it to file its Response to prosecutorial staff's Motion to Compel, it also asserts that "it seems unlikely that Prosecutorial staff could effectively review and synthesize in time for the . . . hearing the information from each and every one of VCI's

thousands of bills issued over the 2-year period since VCI received ETC designation.”²¹ Members of prosecutorial staff review a significant number of documents and bills related to the provisioning of telecommunications services in Florida. Prosecutorial staff states that it was fully aware that its request would yield thousands of bills and has already made preliminary plans to review those bills in preparation for the hearing.

Prosecutorial staff disputes assertions made by Stanley Johnson in his Affidavit in Support of VCI’s Motion. Mr. Johnson states that the electronic billing was requested by prosecutorial staff in a “downloadable” format. In fact, prosecutorial staff simply offered to accept the bills in electronic format if available and easier for VCI. In addition, Mr. Johnson asserts that he hoped that “staff would agree to the production of a random sampling of bills” and that prosecutorial staff did not “disclose the possibility of reducing the scope” of discovery. In fact, VCI informed prosecutorial staff that it would not consider any electronic billing in lieu of paper records and did not inform prosecutorial staff of any technical difficulty in providing the bills in electronic format. VCI also notified prosecutorial staff that it would consider the possibility of a sampling of bills only if VCI could choose the bills to be provided. As discussed in the PAA Order, the Commission has previously noted suspicious similarities in the sampling of 130 bills previously provided to Commission staff by VCI. Therefore, in good conscience, staff could not agree to allow VCI to determine the billing sample to be provided.

Further, prosecutorial staff states that it incurred delays in receiving information from VCI’s local counsel in working toward resolution of this matter. Prosecutorial staff requested local counsel to set up a teleconference with its client so that the parties could fully discuss VCI’s Objections. Prosecutorial staff was fully prepared to work towards an equitable resolution regarding the remaining data in dispute. However, prosecutorial staff was informed by local counsel that VCI’s corporate counsel did not feel that there was any reason to work with prosecutorial staff directly and that working with local counsel should be sufficient. Subsequently, in recognition of the need to receive VCI’s bills and responses to additional discovery requests in a timely manner, and VCI’s apparent reluctance to work with prosecutorial staff in good faith, prosecutorial staff filed its Motion to Compel to prevent further unreasonable delay.

D. Privilege

Prosecutorial staff argues that VCI erroneously asserts that the Commission cannot inquire into the mechanics of VCI’s business relationships with its underlying carrier or other third parties. Prosecutorial staff states that VCI’s assertion is a gross misunderstanding of applicable Florida law. Pursuant to Section 364.183, F.S.,

[t]he [C]ommission shall have access to all records of a telecommunications company that are reasonably necessary for the disposition of matters within the commission's jurisdiction. The commission shall also have access to those records of a local exchange telecommunications company's affiliated companies, including its parent company, that are reasonably necessary for the disposition of

²¹ Motion for Reconsideration at 10.

any matter concerning an affiliated transaction or a claim of anticompetitive behavior including claims of cross-subsidization and predatory pricing. The commission may require a telecommunications company to file records, reports or other data directly related to matters within the commission's jurisdiction in the form specified by the commission and may require such company to retain such information for a designated period of time.

The prosecutorial staff argues that the Commission clearly has authority pursuant to section 364.183, F.S., to require VCI to provide any documents within the Commission's jurisdiction. It is not appropriate for VCI to allege the Commission lacks jurisdiction in order to avoid responding to prosecutorial staff's discovery requests.

VCI alleges that Interrogatory Nos. 11, 12, 13, and 33 and POD No. 9 are protected by the attorney work product doctrine/attorney-client privilege. Prosecutorial staff argues that section 90.502(1)(c), F.S. (Florida Rule of Evidence), defines the lawyer-client privilege as a confidential communication between lawyer and client that is not intended to be disclosed to third parties other than (1) those to whom disclosure is in furtherance of the rendition of legal services to the client and (2) those reasonably necessary for the transmission of the communication. VCI asserts that prosecutorial staff requests information that contains attorney-client information, or confidential communications made by an attorney in rendering legal services to a client. VCI further asserts that the information prosecutorial staff requests includes fact work product, which is "information relating to a case and gathered in anticipation of litigation," and opinion work product, or "the attorney's mental impressions, conclusions, opinions and theories."

Prosecutorial staff argues that none of its discovery requests violate the attorney-client privilege or the attorney work product doctrine. Rather, prosecutorial staff requests information provided to "third parties," specifically, USAC in the course of VCI's business as an ETC, and information provided to the FCC. Prosecutorial staff further points out that VCI has failed to provide prosecutorial staff or the Commission with any description of the nature of the documents, communications or things not produced or disclosed, as required by Rule 1.280(b)(5), Florida Rules of Civil Procedure. In fact, in its Objections, VCI does not even raise the attorney-client and/or attorney work-product privilege for Interrogatory Nos. 12, 13, or 33 that it now adds as privileged in its Motion for Reconsideration.

E. List of Customer Names

In its Motion, VCI accuses prosecutorial staff of refusing to provide it with the identifying information for those customers not correctly billed and that such information should have been produced pursuant to VCI's public records request. VCI further asserts that as a result, "it is unable to investigate Staff's allegations, clean the company's name or alternatively substantiate the allegations." Prosecutorial staff vigorously disputes this claim. Prosecutorial staff did, in fact, provide the list of customers contacted by Commission staff to VCI in a red confidential folder accompanying VCI's public records request. Moreover, prosecutorial staff argues that its concerns regarding VCI's assessment of late payment fees was not solely based on the customers contacted. Rather, they were triggered based on the observation that of the 130

sample bills provided by VCI, every bill included a late payment fee. VCI is very well aware of this fact.²² Prosecutorial staff further argues that, in the interest of full cooperation and disclosure, staff faxed an additional copy of the list of customers contacted from VCI's 130 sample bills to local counsel around noon on May 2, 2008.

F. Duplicative Requests

Regarding VCI's claims that prosecutorial staff is in possession of certain material requested in POD Nos. 4, 5, and 7 and Interrogatory Nos. 1 and 12, prosecutorial staff argues that it believed it necessary to request these materials and responses from VCI in anticipation of objections at hearing based on lack of proper authentication and/or hearsay. Prosecutorial staff wanted to ensure that the materials it intends to offer into evidence were comprehensive and accurate. Such matters may have been resolved if VCI would have consented to a conference call with prosecutorial staff to further discuss VCI's Objections. Prosecutorial staff states that VCI has made it abundantly clear in this proceeding that it intends to utilize any procedural or evidentiary tool at its disposal in order to frustrate the Commission's consideration of this matter.

IV. Advisory Staff's Analysis and Recommendation

A. Analysis

1. Jurisdiction/Notice of Intent to Seek Relief

VCI's "notice of intent" to file a motion to dismiss in this proceeding in Federal District Court has nothing to do with whether the Prehearing Officer overlooked or failed to consider a point of fact or law in rendering the Discovery Order. VCI acknowledges that jurisdiction is an issue for resolution in this proceeding. As such, the Prehearing Officer made no mistake of fact or law by compelling discovery on the issue of the Commission's jurisdiction.

2. Issuance of Discovery Order without Benefit of Response

VCI argues that the Prehearing Officer erred by failing to provide VCI an opportunity to file a Response to the Motion to Compel in advance of issuing the Discovery Order. Advisory staff disagrees. There is no legal requirement for the Prehearing Officer to have articulated a "compelling reason" to issue the Discovery Order on an expedited basis. Rule 28-106.204(1), F.A.C., provides that parties may file a response in opposition to a written motion within seven days of service thereof, "when time allows." The Commission has found that this Rule "suggests that there is no right to a response time at all when time does not allow for one."²³ The cases cited by VCI, Keys Citizens for Responsible Gov't and Massey,²⁴ involve whether procedural due process was accorded to adequately apprise interested parties of the pendency of a

²² See February 14, 2008, Agenda Conference, Item 4 Transcript at 44.

²³ Order No. PSC-04-1156-FOF-WS, at page 5, issued November 22, 2004, in Docket Nos. 020896-WS and 010503-WU, In re: Petition by customers of Aloha Utilities, Inc. for deletion of portion of territory in Seven Springs area in Pasco County; and In re: Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc. (denying a motion for reconsideration and finding that it was within the Prehearing Officer's discretion to allow for a shortened response time in that instance).

²⁴ Supra, notes 4 and 5.

government action. As such, they are inapplicable here. Rule 28-106.211, F.A.C., which is applicable, provides that the presiding officer may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case. The Discovery Order at issue does just that.

VCI's reliance upon Rule 1.380(a), Florida Rules of Civil Procedure, in arguing that the Prehearing Officer erred in this instance is also misplaced. That rule provides that a party may apply for an order compelling discovery upon reasonable notice to other parties, which is precisely what the prosecutorial staff did here by serving a copy of the Motion to Compel on VCI. The Waters case that VCI relies upon in construing Rule 1.380 is also inapplicable.²⁵ In that case, the lower court ruled ex parte on a motion to compel. The petitioner did not attend the motion hearing because he claimed he did not receive notice thereof. The reviewing court found that ex parte orders compelling discovery may be entered pursuant to a specific local 17th Judicial Circuit rule only when certain conditions are met. The court found that otherwise, a motion may not be heard without proper notice.²⁶ The local 17th Judicial Circuit rules are inapplicable here. Moreover, in this case, the Motion for Reconsideration will be considered at a duly noticed Commission agenda conference at which parties will be heard dependent upon the Commission's vote on Issue 1 of this recommendation, pursuant to the Commission's oral argument rule.

3. Burdensome or Overly Broad Discovery Requests

VCI argues that the Prehearing Officer erred by assuming that any information, regardless of scope, burden, or relationship to the issues in the case, is discoverable unless the information is privileged. The Prehearing Officer does not make that assumption; VCI does. The Discovery Order acknowledges that the Commission has consistently recognized that discovery is proper and may be compelled if it is not privileged and is, or likely will lead to, relevant and admissible evidence. The Prehearing Officer did not find that the scope of discovery is so broad as to be entirely without bounds. VCI reads more into the language of the Discovery Order than what is there.

VCI further argues that pursuant to Redland Co., discovery requests must be narrowly crafted to the issues of the case.²⁷ The underlying dispute in Redland Co. involved an alleged breach of certain provisions of a settlement agreement. The reviewing court found that the challenged order was overbroad because it required the production of documents for certain years prior to the execution of the settlement agreement, and required "the wholesale turnover of documents without regard to the issues framed by the alleged breaches of [the paragraphs of the settlement agreement that were at issue in the case]."²⁸ The Discovery Order at issue here does not compel VCI to respond to discovery requests that are outside the scope of the issues. Issue 11 involves whether VCI has willfully violated any lawful rule or order of the Commission, or provision of Chapter 364. The discovery requests are tailored to address that issue, as well as the other issues identified by VCI and the prosecutorial staff. (See Attachment A)

²⁵ Supra, note 6.

²⁶ Id.

²⁷ Supra, at note 8.

²⁸ Id.

With respect to VCI's remaining arguments that Interrogatory Nos. 2 and 32 and POD Nos. 1 and 10 are burdensome or overly broad because they are time-consuming and voluminous, VCI made those same arguments in its Objections. The Prehearing Officer considered VCI's Objections in rendering the Discovery Order. In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered.²⁹ VCI's argument that it seems unlikely that prosecutorial staff could effectively review this information in time for the June 4, 2008, hearing underscores the necessity for the expedited issuance of the Discovery Order.

VCI's argument that Interrogatory Nos. 1 and 12 and POD Nos. 4, 5, and 7 are unduly burdensome because VCI has already provided the information is without merit. Stating when and how VCI or third persons previously provided the information to staff would have been a proper response to discovery. Nor did VCI state that the information was previously provided to staff in its Objections. The Discovery Order does not compel the production of documents or information that VCI has already provided or that staff already has in its possession. Therefore, the Prehearing Officer made no mistake of fact or law in the Discovery Order with respect to these discovery requests.

4. Relevancy

VCI argues that there is no rational basis for the discovery requested by Interrogatory Nos. 2, 30, and 32 and POD Nos. 1 and 10 because VCI has admitted to overcharging customers the 911 surcharge and because VCI has not offered a vigorous defense to the 911 issue. Nevertheless, the appropriate refund amount for 911 customer overbilling is an issue in the case. See Attachment A, Issue 6. Therefore, the Prehearing Officer did not err in requiring VCI to provide this information over VCI's Objections.

With respect to VCI's argument that prosecutorial staff should be ordered to produce identifying information about those customers it believes have been mischarged by VCI, as should have been done pursuant to VCI's public records request, a motion for reconsideration of a Discovery Order that is silent on the Commission's response to VCI's public records request is not the proper way to resolve the matter. The Prehearing Officer did not address the matter of the public records request, and the Discovery Order contains no mistake of fact or law with respect to it.

Regarding VCI's argument that Interrogatory No. 6 and POD Nos. 8 and 10 concern VCI's RAF and FTRI payments, which payments are not at issue in this proceeding, Issue 11 involves whether VCI has willfully violated any lawful rule or order of the Commission, or provision of Chapter 364. The discovery requests address that issue, as well as the other issues identified by VCI and the prosecutorial staff. See Attachment A. The Discovery Order contains no mistake of fact or law with respect to these discovery requests.

In its remaining arguments concerning relevancy and the Commission's jurisdiction to inquire into the details of VCI's business relationship with third parties, VCI expands upon the same arguments it made in its Objections. The Prehearing Officer considered VCI's Objections

²⁹ Supra, at note 2.

in rendering the Discovery Order. In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered.³⁰

5. Jurisdiction

VCI argues that because the Commission lacks jurisdiction to take administrative action based upon Federal law, VCI's compliance with Federal rules reaches beyond the scope of discovery. VCI expands upon the same arguments it made in its Objections on this point, and the Prehearing Officer considered these arguments in rendering the Discovery Order. In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered.³¹

Further, VCI argues that it intends to seek resolution of the jurisdictional questions in Federal Court prior to the hearing. Filing a court action is certainly within VCI's rights. Nevertheless, it has nothing to do with whether the Prehearing Officer erred in rendering the Discovery Order. The extent of the Commission's jurisdiction in the matter is identified in the issues of the case. See Attachment A.

6. Privilege

VCI argues that Interrogatory Nos. 11-13 and 33 and POD No. 9 seek privileged documents and information. VCI made this same argument in its Objections, but only with respect to Interrogatory No. 11. In its Response, the prosecutorial staff disputes VCI's assertions of privilege. This is a matter to be resolved by the Prehearing Officer. The Discovery Order at issue did not require VCI to divulge any information that VCI asserts is privileged, nor did the Prehearing Officer make any mistake of fact or law by requiring VCI to "describe the nature of the documents, communications or things not produced or disclosed," as required by Rule 1.280(b)(5), Florida Rules of Civil Procedure.

B. Recommendation

For the foregoing reasons, advisory staff recommends that VCI's Motion for Reconsideration of Order No. PSC-08-0258-PCO-TX should be denied. VCI has failed to identify a point of fact or law that the Prehearing Officer overlooked or failed to consider in rendering the Discovery Order. VCI should be ordered to submit its full and complete responses to Staff's First Set of Interrogatories (Nos. 1-38) and First Request for Production of Documents (Nos. 1-10) by the close of business on Friday, May 9, 2008.

³⁰ Supra, note 2.

³¹ Supra, note 2.

Docket No. 080065-TX
May 5, 2008

Issue 3: Should this docket be closed?

Recommendation: No, the docket should remain open pending the Commission's decision on the merits of the issues after a full evidentiary proceeding is conducted. (Gervasi)

Staff Analysis: This docket should remain open pending the Commission's decision on the merits of the issues after a full evidentiary proceeding is conducted.

Tentative List of Issues

1. Is the PSC authorized to audit an ETC's records for compliance with applicable Lifeline, Link-Up, and ETC statutes, rules, processes, procedures, and orders?
2. Did VCI provide Lifeline service to its Florida customers using a combination of its own facilities and resale of another carrier's services between June 2006 and November 2006?
3. Did VCI correctly report Link-Up and Lifeline lines on USAC's Form 497 for reimbursement while operating as an ETC in Florida in accordance with applicable requirements?
- 4.(a) Does VCI provide toll limitation service to Lifeline customers using its own facilities?
 - (b) If so, is VCI entitled to obtain reimbursement for incremental costs of TLS?
 - (c) If yes, what is the appropriate amount of reimbursement?
5. Were late payment charges correctly applied to VCI Florida customer bills?
6. What is the appropriate refund amount for E-911 customer overbilling?
7. Does the PSC have the authority to enforce an FCC statute, rule or order pertaining to ETC status, Lifeline, and Link-Up service?
- 8.(a) Has VCI violated any FCC statute, rule or order pertaining to ETC status, or Lifeline and Link-Up service?
 - (b) If so, what is the appropriate remedy or enforcement measure, if any?
- 9.(a) Has VCI violated any PSC rule or order applicable to VCI pertaining to ETC status or Lifeline and Link-Up service?
 - (b) If so, what is the appropriate remedy, if any?
- 10.(a) Does the Commission have authority to rescind VCI's ETC status in the state of Florida?
 - (b) If so, is it in the public interest, convenience, and necessity for VCI to maintain ETC status in the state of Florida?
- 11.(a) Has VCI willfully violated any lawful rule or order of the Commission, or provision of Chapter 364?
 - (b) If so, should VCI's competitive local exchange company certificate be revoked?

STAFF'S FIRST SET OF INTERROGATORIES TO VILAIRE
COMMUNICATIONS, INC. (NOS. 1-38)

INTERROGATORIES

- 1) Please provide a definition of the term "resale".
- 2) For the following request, please refer to each monthly bill provided in Production Of Documents Request No. 1.
 - a. Please list the date payment was received from the customer for that bill. If payment was not received, list the disconnection date, if any, for that customer.
 - b. Please list how many monthly bills provided include a late payment charge?
 - c. Please list how many monthly bills provided include an incorrect 911 fee?
- 3) Please list the collection steps taken by VCI if a customer does not pay his monthly bill when due.
- 4) Did VCI use AT&T Wholesale Local Platform (WLP) lines (formerly UNEs) to provision any customers from June 1, 2006, through November 30, 2006? If so, please list how many WLP lines were purchased each month.
- 5) Please provide a spreadsheet showing by month the number of Wholesale Local Platform lines and the number of resale Lifeline lines VCI purchased from AT&T-Florida since becoming an ETC in Florida.
- 6) Please provide a schedule showing all monthly payments made to AT&T Florida. For each month show the amount paid to AT&T, the date the payment was made, and the reconciliation with the PSC's regulatory assessment form.
- 7) Has VCI been receiving a \$10.00 credit from AT&T for each Lifeline resale line purchased from AT&T?
 - a. Has VCI filed for and received reimbursement of \$10.00 from USAC for any resale Lifeline lines purchased from AT&T?
- 8) Has VCI received a \$23.00 credit from AT&T for Link-Up on Lifeline resale lines purchased from AT&T?
 - a. Has VCI filed for and received reimbursement of \$30.00 from USAC for any Link-Up for resale Lifeline lines purchased from AT&T?

- 9) When a VCI customer calls the 1-800 VCI number to obtain directory assistance, what database is used to provide the requested number? Please provide the name of the database provider and cost to VCI to use the database. VCI's price list on file with the PSC shows a \$2.00 per call charge for directory assistance. Is this information current?
- 10) Does VCI claim pro rata amounts on USAC Florida Form 497 for Lifeline customers whose service is initiated during the month or whose service is disconnected during the month? If not, why not?
- 11) Order FCC 07-148, released August 15, 2007, addressed duplicate USF reimbursements received by VCI and inaccurate Form 497 forms filed with USAC by VCI for the states of Oregon, Washington, and Minnesota. Has VCI returned excess reimbursements to USAC or filed revised Form 497 forms for any of these states?
- 12) Has VCI refiled any Florida Form 497 forms with USAC, or reimbursed USAC for any disbursements for Florida to date? If so, were the duplicate number of Link-Up lines claimed by VCI and discovered in staff's audit corrected?
- 13) Were any Florida Form 497s revised on June 15, 2007? If so, please describe what necessitated the revisions and what were they?
- 14) Has VCI made any refunds to Florida customers for excess E-911 fees collected?
- 15) Does AT&T provide VCI with toll limitation service for each Lifeline resale customer at no charge to VCI?

For Request Nos 16-27, please refer to VCI's January 16, 2008, response to staff post-audit question number one.

- 16) In its January 16, 2008, response, VCI asserts that its incremental cost of TLS is calculated using a non-recurring equipment cost of \$803,900 and a recurring cost of \$17,142.50 per month. Since receiving ETC disbursements from USAC in January 2004, VCI has received \$7,839,139 in TLS reimbursements from USAC for all states. A \$17,142.50 recurring cost per month for 38 months (Jan 2004-February 2008) totals \$651,415. Adding the non-recurring equipment cost of \$803,900 totals \$1,455,315. Please explain what the remaining \$6,383,824 received from USAC by VCI for TLS was used for.
- 17) What is the physical location of all equipment listed in VCI's response to staff's post-audit question number one and which VCI asserts is used exclusively for toll limitation service?
- 18) Please define what the ESS-Phone switching system is and the functions it performs besides TLS?

- 19) Please define what the Inter-tel IP-Phone system is and the functions it performs besides TLS?
- 20) Please define what the Mercom-Monitoring & recording/computer system is and the functions it performs besides TLS?
- 21) Please define what a Main Computer router is and what functions it performs besides TLS?
- 22) Please explain the function of MPLS and how it is used to provide TLS.
- 23) Please define what the MPLS routers are and what functions they perform besides TLS?
- 24) Please define what the T-1s are and what functions they perform besides TLS?
- 25) What other functions do the four personnel (identified in response to post-audit question number one) perform besides TLS functions?
- 26) Please provide a spreadsheet showing the different allocation of TLS costs among each of the states where VCI is provided Lifeline service for the month of December 2007.
- 27) In its January 16, 2008 response, VCI provided the monthly investment to be recouped and the total customers needed per month to meet the goal. Please provide a spreadsheet showing how these costs were broken down by each state which VCI had ETC status in and identify how many of the customers were served through Lifeline resale lines and how many were served through WLP lines.
- 28) With regards to the AT&T toll restriction, which is provided to VCI for Lifeline customers, please respond to the following requests.
 - a. Can a VCI Lifeline customer dial 411? If so, to whom is the customer connected?
 - b. Can a VCI Lifeline customer dial 0+? If so, to whom is the customer connected?
 - c. Can a VCI Lifeline customer dial 0 and receive an operator? If so, is it an AT&T operator, VCI operator, or other?
 - d. Please provide a spreadsheet showing the amount of AT&T 411 charges and the amount of AT&T toll connection charges incurred on Lifeline accounts in Florida each month by VCI since becoming an ETC in Florida.

For following request, please refer to VCI's January 16, 2008, response to staff post-audit question number three.

29) In the January 16, 2008, response, VCI states that for December 2007, it invoiced 5,409 total VCI customers and 4,912 Lifeline customers. Did VCI have a total of 10,321 customers or a total of 5,409 customers and of those 4,912 were Lifeline customers?

- a. How many Lifeline customers did VCI have in December 2007 in all states where VCI is providing service?

For the following request, please refer to VCI's January 16, 2008, response to staff post-audit question number four.

30) In response to post-audit question number four, VCI states that it had overcharged the E911 fee on 17,817 access lines from August 2006 through January 2008. Payments to Florida Telecommunications Relay, Inc. from August 2006 through November 2007 show a total of 49,917 lines (not including September 2007 where no filing was made). Also, from June 2006 through November 2007, VCI claimed 77,188 lines on the Florida Form 497s filed with USAC. Please explain the discrepancies in the line numbers.

31) Has VCI claimed or received reimbursement from USAC for any Lifeline customers who did not have an active access line? If so, please explain why.

32) Please provide a spreadsheet showing for the time period June of 2006 through March 2008 (by month) the number of VCI Florida customers on the first of each month, the number of customers added each month and the number of customers disconnected each month since becoming an ETC in Florida. Also note whether or not these customers were Lifeline customers.

33) Has VCI requested copies of VCI information which was provided to the PSC under subpoena from AT&T? If so, please describe when? If it was requested from AT&T, when did VCI receive the information?

34) Please provide a spreadsheet showing all employees on VCI's payroll, their job functions, and the location of their workplace. If sub-contractors are used to provide services, provide the name of the sub-contractor, the amount paid to the sub-contractor in 2007, and job functions they perform on behalf of VCI.

35) Please provide a spreadsheet showing:

- a. all states in which VCI has applied for ETC status;
- b. the date in which ETC status was approved if it was granted;
- c. which states VCI withdrew its request for ETC status and the reason why;
- d. which states VCI withdrew its ETC status and the reason why;
- e. which states where VCI has ETC petitions pending.

36) What is the present status of the FCC's Notice of Apparent Liability for Forfeiture and Order (FCC 07-148, released August 15, 2007)?

Docket No. 080065-TX
May 5, 2008

For the following request please refer to page 11, lines 2-3 of the February 12, 2008 agenda conference Item 4 transcript.

37) At the February 12, 2008 agenda conference, Mr. Johnson stated that “we do believe we have some wrongdoing.” Describe what “wrongdoing” Mr. Johnson was speaking of.

For the following request please refer to page 41, lines 7-9 of the February 12, 2008 agenda conference Item 4 transcript.

38) At the February 12, 2008 agenda conference, Mr. Johnson stated that “...we bill no different than any of the other wireless carriers there. The billing system we developed comes from a Verizon, or AT&T.” Please explain to what Mr. Johnson is referring.

For the following request please refer to page 41, lines 15-21 of the February 12, 2008 agenda conference Item 4 transcript.

39) At the February 12, 2008 agenda, Mr. Johnson stated that:

“We are in a one-year contract, one-year agreement with every customer based on the FCC’s rules, and we are not allowed to collect early on any of those customers until the year is up. So every single month whether the line is active or not, which there’s no rules in the FCC rules that says the line has to be active. Every month they get a connection fee.

Has VCI claimed Lifeline reimbursement from USAC for any VCI customers who have signed a contract, but have no active service? If so, list the customers and any money claimed for reimbursement.

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STAFF'S FIRST SET OF PRODUCTION OF DOCUMENTS TO VILAIRE
COMMUNICATIONS, INC. (NOS. 1 - 10)

- 1) Please provide copies of all monthly bills for each VCI Florida customer since becoming an ETC in Florida.
- 2) Please provide invoices and proof of payment for all equipment asserted to be used exclusively for TLS (see post-audit response to question number one). If it is not shown on the invoice, list the brand and model number of each piece of equipment listed in response to staff post-audit question number one regarding TLS.
- 3) Please provide copies of all AT&T-Florida billing to VCI for from June 2006 through March 2008, since becoming an ETC in Florida.
- 4) Please provide invoices for all Lifeline advertising contracted and paid for in the state of Florida since becoming an ETC in Florida.
- 5) Please provide copies of all Form 497 forms filed with the Universal Service Administrative Company for Florida since becoming an ETC in Florida.
- 6) Please provide copies of any contracts between VCI and Lifeline customers, and any VCI contracts between VCI and non-Lifeline customers
- 7) Please provide any contracts or agreements from June 2006 through March 2008 with any vendors, agents or other parties that have supplied or are presently supplying equipment or services to VCI in or for the state of Florida.
- 8) Please provide VCI Florida corporate income tax returns for 2006 and 2007.
- 9) Provide copies of VCI's June 13, 2007, June 21, 2007, and July 12, 2007 responses furnished to the FCC in response to the FCC Letters of Inquiry referenced in Order No. FCC 07-148 (¶ 10), released August 15, 2007, along with any other correspondence with the FCC regarding the allegations against VCI included in FCC 07-148.
- 10) Please provide copies of all FTRI payments and remittance forms for the Florida relay surcharge from June 2006 through March 2008.

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