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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.

WITNESS: Rebuttal Testimony Of Robert J. Casey, Appearing On Behalf Of Staff

DATE FILED: May 8, 2008

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REBUTTAL TESTIMONY OF ROBERT J. CASEY

1
2 Q. Please state your name and business address.

3 A. My name is Robert J. Casey, 2540 Shumard Oak Boulevard, Tallahassee, Florida
4 32399-0850. I am employed by the Florida Public Service Commission (PSC or
5 Commission), Division of Competitive Markets and Enforcement, Competitive Industry
6 Practices Section, as a Public Utilities Supervisor.

7 Q. Are you the same Robert J. Casey who filed Direct Testimony on behalf of
8 Commission Staff?

9 A. Yes.

10 Q. Do you have any changes you would like to make to your Direct Testimony?

11 A. Yes. I have discovered some typos in my Direct Testimony which I would like to
12 correct for the record. On page two, line 20, the Order issuance date should be May 22, 2006,
13 not May 26, 2008. On page two, line 25, the date of the Universal Service Administrative
14 Company (USAC) letter should be September 15, 2003, not September 13, 2003. On page 26,
15 lines 6-7, and page 32, line 23, a Tenth Circuit cite reads "WWC Holding v. Sopkin 488 F. 2d
16 1262 (10th Cir 2007)." It should read "WWC Holding v. Sopkin 488 F. 3d 1262 (10th Cir
17 2007)." Lastly, on page 38, line 8, the word improper should be improper.

18 Q. What is the purpose of your Rebutttal Testimony?

19 A. I am responding to Mr. Stanley Johnson's April 24, 2008 Direct Testimony filed on
20 behalf of Vilaire Communications, Inc. (VCI) in Docket No. 080065-TX.

21 Q. Are you sponsoring any additional exhibits with your Rebuttal testimony?

22 A. Yes. I am sponsoring the following additional exhibits:

23 Exhibit RJC-26: Sample Florida Regulatory Assessment Fee Return with instructions
24 for filing.

25 Exhibit RJC-27: VCI's April 7, 2008 Objections to Staff's First Set of Interrogatories

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1 and Requests for Production of Documents.

2 Exhibit RJC-28: Order PSC-08-0258-PCO-TX, issued April 25, 2008, granting Staff's

3 Motion to Compel Discovery from VCI.

4 Exhibit RJC-29: VCI's May 2, 2008 Petition for Reconsideration of Order PSC-08-

5 0258-PCO-TX.

6 Exhibit RJC-30: Vilaire Communications, Inc.'s 2006 Florida Regulatory Assessment

7 Fee Return .

8 Exhibit RJC-31: Vilaire Communications, Inc.'s 2007 Florida Regulatory Assessment

9 Fee Return .

10 Confidential Exhibit RJC-32: List of post-audit discussion questions sent to VCI, at

11 VCI's request, prior to the January 9, 2008 conference call with staff.

12 Confidential Exhibit RJC-33: Calls made by staff to names and telephone numbers

13 provided in VCI's 130 sample monthly customer bills.

14 Exhibit RJC-34: Staff's Response to Vilaire Communications, Inc's Motion for

15 Reconsideration of Order Granting Motion to Compel and Request for Oral Argument.

16 Q. On page one, lines 22-25 of his direct testimony, Mr. Johnson asserts that there is a

17 question regarding Commission jurisdiction of eligible telecommunications company (ETC)

18 matters. Will staff be addressing jurisdiction of ETC matters?

19 A. Yes. The Commission's authority regarding ETCs will be fully addressed in staff's

20 post-hearing brief.

21 Q. On page three, lines 15-19 of his direct testimony, Mr. Johnson states that the company

22 explained to the auditor that it is not possible to correlate the data reported on the company's

23 regulatory assessment fee (RAF) return and the FCC 497 forms. Is this true?

24 A. No. Revenues on the USAC Form 497 (EXH RJC-16) and the PSC RAF form (EXH

25 RJC-26) can be correlated to the General Ledger if the forms are properly completed.

1 Apparently, VCI did not include any of the intrastate monies received from USAC on its RAF
2 forms which it should have done. It also appears that VCI used "revenues collected from
3 customers" instead of its gross operating revenues on the RAF form.

4 Q. On page four, lines 16-18 of his testimony, Mr. Johnson asserts that VCI was not
5 informed by any Commission staff that VCI completed the RAF form incorrectly or under-
6 reported revenues. Is that true?

7 A. Yes. The reason staff cannot presently make a determination as to whether VCI had
8 correctly completed the RAF forms is because of a lack of information. Staff has been
9 attempting to obtain necessary revenue information from VCI to reconcile the 2006 RAF
10 return, but to date have been unable to do so. As stated in Audit Finding No. 2, "The company
11 was not able to provide the documents to support the revenue on the RAF return."

12 Staff's Interrogatories and Production of Document (POD) requests were sent to VCI
13 on March 31, 2008, in order to receive the necessary information to determine if VCI has been
14 reporting its revenues correctly on the RAF forms. In accordance with the Order Establishing
15 Procedure (EXH RJC-11), responses were due within 15 days. However, on April 7, 2008,
16 VCI objected to staff's discovery (EXH RJC-27). Staff filed a Motion To Compel Discovery
17 from VCI on April 22, 2008. By Order PSC-08-0258-PCO-TX, issued April 25, 2008, the
18 Commission ordered VCI to "fully and completely respond to staff's First Set of Discovery"
19 by May 2, 2008. (EXH RJC-28) On May 2, 2008, VCI filed a Petition requesting
20 reconsideration of Order PSC-08-0258-PCO-TX. (EXH RJC-29) On May 5, 2008, staff filed
21 its response to VCI's Motion for Reconsideration of Order PSC-08-0258-PCO-TX. (Exhibit
22 RJC-34) At the May 6, 2008 Agenda Conference, Commissioners denied VCI's Motion for
23 Reconsideration of Order PSC-08-0258-PCO-TX, and ordered VCI to submit its full and
24 complete responses to Staff's First Set of Interrogatories and First Set of Production of
25 documents by the close of business on Friday, May 9, 2008.

1 Staff's investigation as to whether VCI correctly reported revenues on the PSC's RAF
2 form is well founded. For the year 2006, VCI reported Florida gross operating revenues of
3 \$64,448 with a deduction of \$47,320 for amounts paid to other telecommunications companies
4 on its RAF return. (EXH RJC-30) AT&T-Florida (AT&T) responses to staff's data requests
5 show that VCI paid AT&T \$ [REDACTED] from July through December 2006 (Confidential EXH
6 RJC-13), which is a difference of approximately \$ [REDACTED] from what VCI recorded as paid to
7 other telecommunications companies. VCI should account for the difference in the \$ [REDACTED]
8 paid to AT&T for telecommunication services in 2006 and the \$64,448 recorded on VCI's
9 RAF form for the same period.

10 For the year 2007, VCI reported Florida gross intrastate revenues of \$478,709 and
11 amounts paid to other telecommunications companies of \$317,079 on its RAF return. (EXH
12 RJC-31) AT&T Responses to staff's data requests show that VCI paid AT&T \$ [REDACTED] from
13 January through December 2007 (Confidential EXH RJC-13 and Confidential EXH RJC-23),
14 which is a difference of over \$ [REDACTED] from what VCI recorded as paid to other
15 telecommunications companies.

16 In addition, monies VCI obtained from the USAC contain intrastate revenues which
17 should have been included on VCI's RAF returns. On page 4, lines 9-11 of his Direct
18 Testimony, Mr. Johnson states that VCI informed the auditor that the company did not include
19 reimbursement from USAC in the revenues reported on the RAF. The \$10.00 per month
20 reimbursement provided from the universal service fund (USF) for each Lifeline customer
21 consists of a \$6.50 reimbursement for the subscriber line charge which is considered interstate
22 and a \$3.50 reimbursement for the second and third tiers of Lifeline support which are
23 considered intrastate. Therefore, \$3.50 of the \$10.00 reimbursement received per month for
24 each Lifeline customer is considered intrastate revenue which should have been included on
25 the RAF form. I have estimated that VCI should have included intrastate revenues of

1 approximately \$12,429 in 2006 and \$248,332 in 2007 on its RAF returns for the \$3.50
2 Lifeline reimbursements.

3 VCI received \$34,696 in 2006 and \$315,734 in 2007 in Link-Up disbursements from
4 the USF. Link-Up monies are revenues received for initial installation of a Lifeline
5 customer's telephone which is considered an intrastate function. The Link-Up USF
6 disbursements received by VCI of \$34,696 in 2006 and \$315,734 in 2007 should also have
7 been included as intrastate revenues on its RAF forms.

8 Toll limitation service (TLS) is based on toll blocking of long distance calls which
9 consist of intrastate and interstate components. A reasonable allocation of these revenues
10 would be fifty percent for intrastate toll and fifty percent for interstate toll. Using this
11 allocation, I have estimated that VCI should have included TLS revenues of \$10,072 in 2006
12 and \$103,191 in 2007 on its RAF forms.

13 In summary, for disbursements received from the USF, I have estimated that VCI had
14 intrastate revenues of \$57,197 in 2006 and \$667,257 in 2007 which should have been included
15 on its RAF forms.

16 As provided in sections 350.113 and 364.336, Florida Statutes, and Rule 25-4.0161,
17 Florida Administrative Code, each telecommunications company shall pay a regulatory
18 assessment fee of .0020 of its gross operating revenues derived from intrastate business. The
19 only deduction allowable from gross operating revenues are amounts paid to other
20 telecommunications companies for use of their network.

21 On page 3, lines 18-19 of his direct testimony, Mr. Johnson states that "On the RAF,
22 the company reported revenues collected from customers." This policy is incorrect. Revenues
23 on the RAF form are required to be gross operating revenues or amounts billed to customers,
24 not revenues based on only customers who paid their monthly bill. Instructions on the back of
25 the RAF form specifically state that "Gross Operating Revenues are defined as the total

1 revenues before expenses... Do not deduct any expenses, taxes, or uncollectibles from these
2 amounts." (emphasis added) (EXH RJC-26)

3 Q. On page four, lines 24-26 of his direct testimony, Mr. Johnson states that VCI was not
4 informed that staff obtained information from AT&T-Florida and USAC until on or about
5 January 14, 2008. Is the Commission required to inform VCI that staff obtained information
6 from USAC and AT&T as part of its investigation?

7 A. No. The Commission has no obligation to inform VCI that staff obtained information
8 from USAC and AT&T as part of its investigation of VCI's ETC status and competitive local
9 exchange company (CLEC) certificate status in the state of Florida.

10 Q. On page five, lines 1-4 of his direct testimony, Mr. Johnson states that VCI was not
11 aware of any specific issues with respect to VCI's business practices other than 911
12 surcharges and duplicate Link-Up disbursements prior to the filing of staff's recommendation.
13 Was VCI aware of any other issues staff may be investigating with respect to VCI's business
14 practices at any time prior to the filing of staff's recommendation on January 31, 2008?

15 A. Yes. Staff conducted a conference call on January 9, 2008, to provide VCI an
16 opportunity to explain issues brought to light during staff's investigation. Confidential EXH
17 RJC-32 is a list of discussion questions which was provided as a courtesy to VCI, at its
18 request, prior to the January 9, 2008 conference call. The issues cover VCI's toll limitation
19 service (TLS), the number of VCI customer bills with late fees, E-911 overcharges, Florida
20 Relay surcharges, customer bills with incorrect area codes, duplicate reimbursements of
21 Lifeline and Link-Up, advertising costs, and VCI operating as a strict reseller for a period of
22 six months.

23 Q. On pages five and six of his testimony, Mr. Johnson provides VCI's policies regarding
24 late payment fees. Does this resolve staff's issues regarding VCI's late payment fees?

25 A. No. Staff is investigating VCI's business practices to determine whether its customers

1 were correctly or incorrectly charged late fees. All 130 monthly customer bills provided to
2 staff in the audit contained \$10 late fees. VCI's responses to staff's interrogatories and POD
3 requests should provide the necessary information to determine if VCI has been properly
4 assessing late payment fees to its customer's monthly bills. However, staff has not received
5 responses to its discovery as yet.

6 Q. On page six, lines 13-22 of his direct testimony, Mr. Johnson explains that the
7 Commission logged only seven complaints regarding VCI, two of which were for late
8 payments, and attached copies of the complaints in EXH SJ2A-SJ2-F. Is this relevant to
9 staff's investigation of VCI's assessment of late payments?

10 A. Although it is information worth considering, staff is not investigating the number of
11 late payment complaints filed against VCI, we are investigating whether late payment fees
12 were correctly applied to all VCI customers, not just those who filed a complaint.

13 Q. On page six, lines 23-25, and page seven, lines 1-2 of his direct testimony, Mr.
14 Johnson asserts that staff has not provided VCI with a list of customers who were called and
15 which staff allege that VCI assessed incorrect late payment fees. Is there a list of VCI
16 customers who staff allege have been assessed incorrect late payment fees?

17 A. No. There is no list of customers which staff alleges have been assessed incorrect late
18 payment fees because we are waiting for responses to staff's discovery to make a
19 determination as to whether customers were assessed incorrect late payment fees. Without
20 receiving the billing dates and payment dates of each customer as requested in staff's
21 interrogatories, I cannot make any determination if late payment fees were correctly applied.
22 As far as a list of customers who were called, VCI is the one which provided staff with the
23 130 sample monthly customer bills. Staff called people from this list provided by VCI.

24 VCI provided the Commission with 130 customer monthly bills as a random sample. I
25 decided to further review late payment fees on the VCI monthly customer bills since all 130

1 customer monthly bills provided by VCI contained a \$10.00 late payment, which seems out of
2 the ordinary. As stated in my direct testimony “Although 130 late payment charges were
3 found on the 130 random sample bills provided to staff during the audit, a final determination
4 of this issue cannot be accomplished until VCI responds to staff’s first set of interrogatories
5 and PODs.” (Casey Direct, p. 22, lines 18-20)

6 Q. Did VCI inform staff on the January 9, 2008 conference call that the late payments
7 contained on all of the 130 samples of VCI customer monthly bills were just a coincidence?

8 A. Yes. VCI informed staff on the January 9, 2008 conference call that the late payments
9 appearing on all 130 sample VCI customer monthly bills were just a coincidence.

10 Q. Does VCI’s spreadsheet of E-911 overcharges submitted to staff on January 16, 2008,
11 represent all VCI customers who were overcharged for E-911 service?

12 A. Staff is unable at this time to verify whether VCI’s spreadsheet of E-911 overcharges
13 is a true representation of all customers who were overcharged for E-911 service. On page
14 seven, lines 19-22 of his direct testimony, Mr. Johnson states that to the best of his knowledge,
15 information, and belief, the spreadsheet is a correct representation of customers who overpaid
16 the E-911 fee. Until staff receives the appropriate VCI responses to staff’s first set of
17 interrogatories and PODs, it is unable to verify Mr. Johnson’s assertion.

18 Q. Has VCI made any refunds to Florida customers for excess E-911 fees collected?

19 A. In response to staff interrogatory No. 14, VCI states that it has made refunds of E-911
20 overpayments. On page 8, lines 4-6 of his Direct Testimony, Mr. Johnson states that VCI has
21 implemented its plan for refunding or crediting customers for the overpayment of 911
22 surcharges. However, to date, no VCI refund reports have been provided to staff as was
23 outlined in VCI’s “Plan for customer refund of 911 overcharges” contained in VCI’s January
24 16, 2008 confidential filing with the PSC. (Confidential EXH RJC-15) Until staff receives the
25 refund reports and appropriate VCI responses to staff’s first set of interrogatories and PODs, it

1 is unable to verify whether the correct amount of refunds were made to existing and prior
2 customers of VCI.

3 Q. On page 8, lines 9-20 of his direct testimony, Mr. Johnson asks, "What could give staff
4 the impression that business telephone numbers receive Lifeline credits." Did staff determine
5 that some of the customers listed on VCI's sample monthly customer bills were business lines
6 not eligible for Lifeline service?

7 A. Yes. Four of the customers in the sample of 130 VCI monthly customer bills who
8 were called by staff identified themselves as businesses which would make those customers
9 ineligible to receive Lifeline service. (Confidential EXH RJC-33) By definition, Lifeline
10 service is only available to qualifying low-income consumers. 47 C.F.R. s. 54.401(a)(1).

11 Q. On page 8, lines 21-25 of his direct testimony, Mr. Johnson asserts that the first time
12 VCI was aware of "erroneous information contained on monthly customer billing" was in
13 Robert Casey's direct testimony. Was VCI aware of "erroneous information contained on
14 monthly customer billing" prior to my direct testimony?

15 A. Yes. The list of discussion questions (Confidential EXH RJC-32) which was sent to
16 VCI prior to the January 9, 2008 conference call with staff contained information regarding
17 erroneous information contained on VCI's monthly customer bills including incorrect E-911
18 fees and non-existent or erroneous area codes of customers. Staff's January 31, 2008
19 recommendation and the Commission's February 13, 2008 Proposed Agency Action Order
20 (EXH RJC-9) also included examples of VCI's erroneous information contained on its
21 monthly customer billing.

22 Q. On page 9, lines 1-10 of his direct testimony, Mr. Johnson asserts that VCI provided
23 continuous, quality local exchange telephone service to Florida consumers. Do you agree?

24 A. No. On page 9, lines 1-10 of his direct testimony, Mr. Johnson attempts to validate
25 VCI's quality of service by explaining that VCI had only seven consumer complaints on file

1 and by explaining that VCI advertises Lifeline service on television. Although the number of
2 complaints against VCI should be considered, there are many other factors which must be
3 examined when considering a CLEC's quality of service. As stated in my direct testimony on
4 page 38, lines 6-17, "Based on my investigation which discovered double compensation being
5 received for Lifeline and Link-Up, improper filings for TLS support, overbilling of E-911
6 fees, possible improper billing of late payment charges, erroneous information contained on
7 monthly customer billing, business telephone numbers receiving Lifeline credits, lack of
8 support to reconcile revenues to Form 497 and the PSC's regulatory assessment fee return, and
9 possible other improprieties which may be uncovered by staff's interrogatories and PODs, I
10 believe that Vilaire no longer has the technical, financial, and managerial capability to provide
11 CLEC service in the state of Florida. It has violated the terms and conditions upon which its
12 CLEC certificate was granted, and has violated Commission rules and orders. In accordance
13 with Rule 25-24.572(1), Florida Administrative Code, Vilaire Communications, Inc.'s CLEC
14 Certificate No. 8611 should be cancelled for its demonstrated lack of technical, financial, and
15 managerial capability to operate a telecommunications company in Florida." However, a final
16 determination as to VCI's claim of quality local exchange telephone service to Florida
17 consumers cannot be made until additional information is received through VCI responses to
18 staff's interrogatories and PODs, depositions, and information obtained at hearing. The final
19 determination should be made based on the record established in this case.

20 Q. On page 9, lines 11-17 of his direct testimony, Mr. Johnson asserts that Florida
21 consumers have not been harmed by VCI's offering of local exchange service or universal
22 service. Do you agree?

23 A. No. As stated in my direct testimony, VCI was overpaid approximately \$1,480,366 in
24 USF funds for Florida through the Link-Up, Lifeline, and TLS programs from August 2006
25 through March 2008. (Confidential EXH RJC-21) At the time of my direct testimony, I

1 estimated that Florida consumers paid approximately \$103,626 of the universal service fund
2 disbursements made to VCI through its misrepresentations and incorrect data provided to
3 USAC. (Casey Direct, p.37, lines 10-13) Since the filing of my direct testimony, VCI has
4 received another \$53,461 on April 28, 2008, from the USF, of which I estimate Florida
5 consumers paid over \$3,700. VCI has also overbilled Florida consumers for E-911 fees.
6 Additional harm to Florida consumers may be uncovered after staff analyzes VCI's responses
7 to staff's interrogatories, depositions of VCI officers, and other information obtained at
8 hearing.

9 Q. Does this conclude your Rebuttal testimony?

10 A. Yes. I have responded to issues included in Mr. Stanley Johnson's April 24, 2008
11 direct testimony. Other issues which Mr. Johnson chose not to address in his direct testimony,
12 including VCI's misuse of the Federal Universal Service Fund through double recovery of
13 USF monies, overstatement of the number of access lines eligible for reimbursement from the
14 USAC, reporting of ineligible resale Lifeline access lines and non-existent access lines in the
15 thousands, and improper filing for toll limitation service reimbursement, are addressed in my
16 direct testimony.

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TO AVOID PENALTY AND INTEREST CHARGES, THE REGULATORY ASSESSMENT FEE RETURN MUST BE FILED ON OR BEFORE «Field1».

Competitive Local Exchange Company Regulatory Assessment Fee Return
 Florida Public Service Commission

STATUS:
 Actual Return
 Estimated Return
 Amended Return

«Field2»
(See Filing Instructions on Back of Form)

FOR PSC USE ONLY

Check # _____
 \$ _____ 06-03-001
 003001
 \$ _____ E
 \$ _____ P 06-03-001
 004011
 \$ _____ I
 Postmark Date _____
 Initials of Preparer _____

PERIOD COVERED:
 «Field3»

Please Complete Below If Official Mailing Address Has Changed

(Name of Company) (Address) (City/State) (Zip)

LINE NO.	ACCOUNT CLASSIFICATION	FLORIDA GROSS OPERATING REVENUE	INTRASTATE REVENUE
1.	Basic Local Services		\$ _____
2.	Long Distance Services (Intra-LATA only) ⁽¹⁾		_____
3.	Access Services		_____
4.	Private Line Services		_____
5.	Leased Facilities & Circuits Services		_____
6.	Miscellaneous Services		_____
7.	TOTAL REVENUES		\$ _____
8.	LESS: Amounts Paid to Other Telecommunications Companies ⁽²⁾		_____
9.	NET INTRASTATE OPERATING REVENUE for Regulatory Assessment Fee Calculation (Line 7 less Line 8)		\$ _____
10.	Regulatory Assessment Fee Due (Multiply Line 9 by 0.0020)		_____
11.	Penalty for Late Payment (see "3. Failure to File by Due Date" on back)		_____
12.	Interest for Late Payment (see "3. Failure to File by Due Date" on back)		_____
13.	Extension Payment Fee (see "4. Extension" on back)		_____
14.	TOTAL AMOUNT DUE (\$600.00 MINIMUM)		\$ _____

(1) Other long distance revenues must be listed on the Interexchange Regulatory Assessment Fee Return.
 (2) These amounts must be adjusted to reflect the amount payable (see "2. Fees" on back).
 (3) Regardless of the gross operating revenue of a company, a minimum annual regulatory assessment fee of \$600 shall be imposed as provided in Section 364.336, Florida Statutes.

CURRENT COMPANY STATUS

Facilities-Based Provider Reseller
 Other _____

BILLING INFORMATION

Complete below if agent other than yourself.

(Name) (Address, City/State/Zip) (Telephone)

COMPANY INFORMATION

Do you lease telecommunications facilities? YES NO
 If YES, who do you lease these facilities from? Name _____
 Address _____

I, the undersigned owner/officer of the above-named company, have read the foregoing and declare that to the best of my knowledge and belief the above information is a true and correct statement. I am aware that pursuant to Section 837.06, Florida Statutes, whoever knowingly makes a false statement in writing with the intent to instead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree.

(Signature of Company Official) (Title) (Date)

(Preparer of Form - Please Print Name) Telephone Number () Fax Number ()

F.E.I. No. _____

DOCUMENT NUMBER-DATE
 03864 MAY-88
 FPSC-COMMISSION CLERK

FLORIDA PUBLIC SERVICE COMMISSION
 Instructions For Filing Regulatory Assessment Fee Return
 (Competitive Local Exchange Company)

1. **WHEN TO FILE:** For companies which owed a total of \$10,000 or more of assessment fee for the preceding calendar year, this Regulatory Assessment Fee Return is required twice a year and payment must be filed or postmarked:

*On or before July 30 for the six-month period January 1 through June 30, and
 On or before January 30 for the six-month period July 1 through December 31*

For companies which owed a total of less than \$10,000 of assessment fee for the preceding calendar year, this Regulatory Assessment Fee Return and payment must be filed or postmarked:

On or before January 30 for the prior twelve-month period January 1 through December 31.

However, when July 30 or January 30 falls on a Saturday, Sunday, or holiday, the Regulatory Assessment Fee Return may be filed or postmarked on the next business day, without penalty or interest.

2. **FEES:** Each company shall pay 0.0020 of its gross operating revenues derived from intrastate business, as referenced in Rule 25-4.0161(1), F.A.C. Gross Operating Revenues are defined as the total revenues before expenses. Intrastate Operating Revenues are defined as revenues from calls originating and terminating within Florida. Do not deduct any expenses, taxes, or uncollectibles from these amounts.

On Line 8, deduct any amounts paid to another telecommunications company for the use of any telecommunications network to provide service to its customers. **Do not deduct any taxes, federal subscriber line charges, interstate long distance access charges, or amounts paid for nonregulated services such as voice mail, inside wire maintenance, or equipment purchases/rentals. DEDUCTIONS MUST BE INTRASTATE ONLY AND MUST BE VERIFIABLE.**

3. **FAILURE TO FILE BY DUE DATE:** Failure to file a return by the established due date will result in a penalty being added to the amount of fee due, 5% for each 30 days or fraction thereof, not to exceed a total penalty of 25% (Line 11). In addition, interest shall be added in the amount of 1% for each 30 days or fraction thereof, not to exceed a total of 12% per year (Line 12). A Regulatory Assessment Fee Return must be completed, signed, and filed even if there are no revenues to report or if the minimum amount is due.

When a company fails to timely file a Regulatory Assessment Fee Return, the Commission has the authority to order the company to pay a penalty and/or cancel the company's certificate. The company will have an opportunity to respond to any proposed Commission action.

4. **EXTENSION:** A request for an extension of time up to 30 days may be made by filing the enclosed *Regulatory Assessment Fee Extension Request* form (PSC/ADM 124), two weeks prior to the filing date. When an extension is granted, a charge shall be added to the amount due (Line 13):

0.75% of the fee to be remitted for an extension of 15 days or less, or
 1.5% of the fee for an extension of 16 to 30 days.

In lieu of paying the charges outlined above, a company may file a return and remit payment based upon estimated gross operating revenues. If such return is filed prior to the normal due date, the company shall be granted a 30-day extension period in which to file and remit the actual fee due without paying the above charges, provided the estimated fee payment remitted is at least 90% of the actual fee due for the period. An automatic 30-day extension to file an actual return may be obtained by checking the "Estimated Return" space in the top left-hand corner on the reverse side.

5. **FEE ADJUSTMENTS:** You will be notified as to the amount and reason for any fee adjustment. Penalty and interest charges may be applicable to additional amounts owed the Commission by reason of the adjustment. The company may file a written request for a refund of any overpayments. The request should be directed to Fiscal Services at the below-referenced address.

6. **MAILING INSTRUCTIONS:** Please complete this form, make a copy for your files, and return the original in the enclosed preaddressed envelope. Use of this envelope should assure a more accurate and expeditious recording of your payment. **Make your check payable to the Florida Public Service Commission.** If you are unable to use the enclosed envelope, please address your remittance as follows:

Florida Public Service Commission
 2540 Shumard Oak Boulevard
 Tallahassee, FL 32399-0850

ATTENTION: Fiscal Services

7. **ADDITIONAL ASSISTANCE:** If you need additional assistance in preparing your Regulatory Assessment Fee Return or regarding telecommunications facilities, please contact the Division of Competitive Markets and Enforcement at (850) 413-6600. This division may be contacted at the above-referenced address, directing correspondence to the attention of the division.

Akerman Senterfitt
ATTORNEYS AT LAW

Fort Lauderdale
Jacksonville
Los Angeles
Madison
Miami
New York
Orlando
Tallahassee
Tampa
Tysons Corner
Washington, DC
West Palm Beach

Suite 1200
106 East College Avenue
Tallahassee, FL 32301
www.akerman.com
850 224 9634 *tel* 850 222 0103 *fax*

April 7, 2008

VIA ELECTRONIC FILING

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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

Dear Ms. Cole:

Enclosed for electronic filing in the above-referenced Docket, please find Vilaire Communications, Inc.'s Objections to Staff's First Set of Interrogatories (1 - 38) and Requests for Production of Documents (Nos. 1 - 10), submitted this day on behalf of Vilaire Communications, Inc.

If you have any questions whatsoever, please do not hesitate to contact me.

Sincerely,



Beth Keating
AKERMAN SENTERFITT
106 East College Avenue, Suite 1200
Tallahassee, FL 32302-1877
Phone: (850) 224-9634
Fax: (850) 222-0103

Enclosures
cc: Stacey Klinzman

{11155088 1}

DOCUMENT NUMBER - DATE

03864 MAY-08

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation of Vilaire Communications, Inc.'s eligible telecommunications carrier status and competitive local exchange company certificate status in the State of Florida.	DOCKET NO. 080065-TX DATED: APRIL 7, 2008
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VILAIRE COMMUNICATIONS, INC.'S OBJECTIONS TO STAFF'S FIRST SET OF
 INTERROGATORIES (NOS. 1 - 38) AND PRODUCTION OF DOCUMENTS (1-10)

COMES NOW, VCI Company, doing business in Florida as Vilaire Communications, Inc., and objects to Staff's First Set of Interrogatories ("Interrogatories") and Production of Documents ("Requests") (collectively "Discovery") as follows:

GENERAL OBJECTIONS

1. VCI objects to the Commission's Discovery as unduly burdensome in that since January 1, 2007, VCI and third-parties have provided the Commission with voluminous documents and information, which the Commission deemed sufficient to support the allegations in its February 13, 2008 Order of Proposed Agency Action. Thus, the Commission should require no further Discovery to prosecute this proceeding.
2. VCI objects to the Commission's Discovery to the extent that it is not reasonably necessary for the disposition of matters within the powers, functions and duties delegated to the Commission by the Legislature.
3. VCI objects to the Commission's Discovery extent that it seeks information concerning matters governed solely by federal law and regulation, which matters raise federal questions to be adjudicated in Federal District Court.
4. VCI objects to the Commission's Discovery to the extent it seeks information protected against disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity from disclosure.
5. VCI objects to the Commission's Discovery to the extent that it imposes obligations

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beyond those required pursuant to the Florida Rules of Civil Procedure.

6. VCI objects to the Commission's Discovery to the extent that it imposes duties on behalf of, or seeks information, within the possession, custody or control of the Commission, individuals or legal entities other than VCI.

7. VCI objects specifically to any Discovery calling for documents or information about any VCI employees on the basis that it is irrelevant, unduly burdensome, not likely to lead to the discovery of admissible evidence and an invasion of privacy interests and rights of those employees.

8. These General Objections are applicable to each and every one of the following responses and failure to repeat an objection in response to a specific Request or Interrogatory shall not be deemed a waiver of these General Objections.

OBJECTIONS TO STAFF'S FIRST SET OF INTERROGATORIES (NOS. 1 - 38)

1. Please provide a definition of the term "resale".

Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Interrogatory on the ground that it is unduly burdensome in that "resale" is a term of art defined by Federal Communication Commission ("FCC") rules or orders to which the Commission has access in the same manner as VCI. VCI further objects to this Interrogatory on the ground that it calls for a legal conclusion.

2. For the following request, please refer to each monthly bill provided in Production Of Documents Request No. 1.

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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?

Response: VCI objects to this Interrogatory on the grounds that it is overbroad and it would be unduly burdensome for VCI to respond. Response to this Interrogatory will entail reviewing thousands of bills issued by the company over nearly two years and countless hours of staff time, during which staff will be unable to fulfill duties necessary to the company's core business. VCI is a small company with limited personnel. If additional time is permitted, a response to this Interrogatory, together with documents requested in Staff's Production of Documents Request No. 1, may be possible.

3. Please list the collection steps taken by VCI if a customer does not pay his monthly bill when due.

Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. Without waiving these objections, VCI will respond.

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.

Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not

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reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Interrogatory to the extent that it seeks information concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court.

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.

Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Interrogatory to the extent that it seeks information concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court.

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.

Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Interrogatory to the extent that it seeks information concerning VCI's

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operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court.

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?

Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Interrogatory to the extent that it seeks information concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court.

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?

Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Interrogatory to the extent that it seeks information concerning VCI's

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operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court.

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?

Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Interrogatory to the extent that it seeks information concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court. Without waiving these objections, VCI will respond to the extent the Interrogatory requests information as to VCI's price listed per call charge for directory assistance.

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?

Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI

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further objects to this Interrogatory to the extent that it seeks information concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court.

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?

Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Interrogatory to the extent that it seeks information concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court. VCI further objects to this Interrogatory to the extent it seeks information covered by attorney-client and/or attorney work product privileges.

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?

Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI

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further objects to this Interrogatory to the extent that it seeks information concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court.

13. Were any Florida Form 497s revised on June 15, 2007? If so, please describe what necessitated the revisions and what were they?

Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Interrogatory to the extent that it seeks information concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court.

15. Does AT&T provide VCI with toll limitation service for each Lifeline resale customer at no charge to VCI?

Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Interrogatory to the extent that it seeks information concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court.

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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.

Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Interrogatory to the extent that it seeks information concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court.

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?

Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Interrogatory to the extent that it seeks information concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The

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Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court.

18. Please define what the ESS-Phone switching system is and the functions it performs besides TLS?

Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Interrogatory to the extent that it seeks information concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court.

19. Please define what the Inter-tel IP-Phone system is and the functions it performs besides TLS?

Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Interrogatory to the extent that it seeks information concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court.

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20. Please define what the Mercom-Monitoring & recording/computer system is and the functions it performs besides TLS?

Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Interrogatory to the extent that it seeks information concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court.

21. Please define what a Main Computer router is and what functions it performs besides TLS?

Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Interrogatory to the extent that it seeks information concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court.

22. Please explain the function of MPLS and how it is used to provide TLS.

Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI

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further objects to this Interrogatory to the extent that it seeks information concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court.

23. Please define what the MPLS routers are and what functions they perform besides TLS?

Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Interrogatory to the extent that it seeks information concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court.

24. Please define what the T-1s are and what functions they perform besides TLS?

Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Interrogatory to the extent that it seeks information concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court.

25. What other functions do the four personnel (identified in response to post-audit question number one) perform besides TLS functions?

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Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Interrogatory to the extent that it seeks information concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court.

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.

Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Interrogatory to the extent that it seeks information concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court.

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.

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Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Interrogatory to the extent that it seeks information concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court.

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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.

Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Interrogatory to the extent that it seeks information concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court.

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?

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

Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Interrogatory to the extent that it seeks information concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court.

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.

Response: Because of VCI's Response to Interrogatory No. 14 above, VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Interrogatory on the ground that responding would be unduly burdensome for VCI. Responding to this Interrogatory

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would entail reviewing thousands of bills issued by the company over nearly two years and countless hours of staff time, during which staff will be unable to fulfill duties necessary to the company's core business. VCI is a small company with limited staff.

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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.

Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Interrogatory to the extent that it seeks information concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court.

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.

Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Interrogatory to the extent that it seeks information concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court. VCI further objects to this Interrogatory on the ground that responding would be unduly burdensome for VCI. Responding to this Interrogatory would entail reviewing thousands of bills issued by the company over nearly two years and countless hours of

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staff time, during which staff will be unable to fulfill duties necessary to the company's core business. VCI is a small company with limited staff.

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?

Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction.

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.

Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Interrogatory to the extent that it seeks information concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court.

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;

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- 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.

Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Interrogatory to the extent that it seeks information concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court.

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)?

Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Interrogatory to the extent that it seeks information concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court. Without waiving these objections, VCI will respond.

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

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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.

Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Interrogatory to the extent that it seeks information concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court. Without waiving these objections, VCI will respond.

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

38. 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.

Response: VCI objects to this Interrogatory in its entirety on the grounds that it seeks information that is irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Interrogatory to the extent that it seeks information concerning VCI's

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operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court.

OBJECTIONS TO STAFF'S FIRST SET OF PRODUCTION OF DOCUMENTS (NOS. 1 - 10)

1. Please provide copies of all monthly bills for each VCI Florida customer since becoming an ETC in Florida.

Response: VCI objects to this Request on the grounds that it is overbroad and production of such documents would be unduly burdensome. Producing thousands of bills issued by the company over nearly two years would require countless staff hours. As VCI is a small company with limited staff, staff assigned to this task would be unable to perform their normal duties necessary to the company's core business. Without waiving these objections, VCI responds that, if additional time is permitted, production of these documents, together with the information requested in Staff's Interrogatory No. 2, may be possible.

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.

Response: VCI objects to this Request in its entirety on the grounds that it seeks documents that are irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Request to the extent that it seeks production of documents concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The

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VCI's General and Specific Objections to Staff's First Requests for Production of Documents and First Set of Interrogatories

Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court.

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.

Response: VCI objects to this Request in its entirety on the grounds that it seeks documents that are irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Request to the extent that it seeks production of documents concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court.

4. Please provide invoices for all Lifeline advertising contracted and paid for in the state of Florida since becoming an ETC in Florida.

Response: VCI objects to this Request in its entirety on the grounds that it seeks documents that are irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Request to the extent that it seeks production of documents concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court.

5. Please provide copies of all Form 497 forms filed with the Universal Service Administrative Company for Florida since becoming an ETC in Florida.

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VCI's General and Specific Objections to Staff's First Requests for Production of Documents and First Set of Interrogatories

Response: VCI objects to this Request in its entirety on the grounds that it seeks documents that are irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Request to the extent that it seeks production of documents concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court.

6. Please provide copies of any contracts between VCI and Lifeline customers, and any VCI contracts between VCI and non-Lifeline customers

Response: VCI objects to this Request in its entirety on the grounds that it seeks documents that are irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Request to the extent that it seeks production of documents concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court.

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.

Response: VCI objects to this Request in its entirety on the grounds that it seeks documents that are irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further

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VCI's General and Specific Objections to Staff's First Requests for Production of Documents and First Set of Interrogatories

objects to this Request to the extent that it seeks production of documents concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court.

8. Please provide VCI Florida corporate income tax returns for 2006 and 2007.

Response: VCI objects to this Request in its entirety on the grounds that it seeks documents that are irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction.

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.

Response: VCI objects to this Request in its entirety on the grounds that it seeks documents that are irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Request on the ground that it seeks documents concerning VCI's operations as an ETC, which are governed solely by federal law and regulation. The Commission's attempt to assert jurisdiction over such matters raises federal questions to be adjudicated in Federal District Court. VCI further objects to this Request to the extent it seeks the production of documents deemed non-public or confidential.

10. Please provide copies of all FTR1 payments and remittance forms for the Florida relay surcharge from June 2006 through March 2008.

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VCI's General and Specific Objections to Staff's First Requests for Production of Documents and First Set of Interrogatories

Response: VCI objects to this Request in its entirety on the grounds that it seeks documents that are irrelevant, not likely to lead to the discovery of admissible evidence and not reasonably necessary for the disposition of matters within the Commission's jurisdiction. VCI further objects to this Request on the grounds that production would be burdensome and duplicative because such documents are available to the Commission directly from the FTRI and the Commission has, in fact, obtained such documents.

Respectfully submitted this 7th day of April, 2008.

Respectfully submitted this 7th day of April,
2008,

By:



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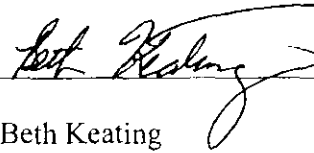
Attorneys for Vilaire Communications, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via US Mail and Electronic Mail* to the persons listed below this 7th day of April, 2008:

<p>Lee Eng Tan, Senior Attorney* Florida Public Service Commission, Office of the General Counsel 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 LTan@psc.state.fl.us</p>	
<p>Adam Teitzman, Supervising Attorney* Florida Public Service Commission, Office of the General Counsel 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 ateitzma@psc.state.fl.us</p>	<p>Beth Salak, Director/Competitive Markets and Enforcement* 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 bsalak@psc.state.fl.us</p>

By:



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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation of Vilaire
Communications, Inc.'s eligible
telecommunications carrier status and
competitive local exchange company
certificate status in the State of Florida.

DOCKET NO. 080065-TX
ORDER NO. PSC-08-0258-PCO-TX
ISSUED: April 25, 2008

ORDER GRANTING MOTION TO COMPEL DISCOVERY

On March 31, 2008, Commission Staff (Staff) served its First Set of Interrogatories (Nos. 1-38) and First Request for Production of Documents (POD Nos. 1-10) on Vilaire Communications, Inc. (VCI). VCI filed general and specific objections thereto on April 7, 2008, and a partial discovery response on April 15, 2008. On April 22, 2008, staff filed a Motion to Compel Discovery, seeking full and complete responses to its first set of discovery requests by 12 p.m. on April 30, 2008. Because the hearing is scheduled to be held on June 4, 2008, I find that time does not allow for VCI to file a response in opposition to the Motion to Compel Discovery within seven days of service.

Relevancy

Among other things, VCI objects to Staff Interrogatory Nos. 1, 4-13, 15-36, and 39 and POD Nos. 2-10 on relevancy grounds. On this basis, VCI has produced minimal information regarding its costs and has failed to provide its Lifeline, Link Up and Retail billing data and any information regarding the technical and managerial functions utilized in provisioning Lifeline and Link Up services to Florida consumers. Staff argues that these discovery requests are for information that directly addresses the matters at issue in this case.

Jurisdiction

VCI objects to Interrogatory Nos. 4-13, 15-29, 31-32, 34-36, and 39 and POD Nos. 2-6, 7, and 9 on jurisdictional grounds, stating that its operations as an Eligible Telecommunications Carrier (ETC) are governed solely by federal law and regulation, and that the Commission's assertion of jurisdiction over these matters raises federal questions to be adjudicated in Federal District Court. Staff argues that the information it seeks is vital to the Commission's resolution of the agreed upon issues. Staff acknowledges that the question of the Commission's jurisdiction is an issue in the case, but does not believe it is appropriately raised as an objection to its discovery requests. VCI has not requested that the Commission address the jurisdictional issues, as threshold legal matters prior to the hearing. The Commission will resolve the jurisdictional matters at issue subsequent to the evidentiary hearing.

DOCUMENT NUMBER - DATE
03864 MAY -8 08
FPSC-COMMISSION CLERK

Burdensome or Overly Broad Discovery Requests

VCI objects to Interrogatory Nos. 2, 30, and 32 and POD Nos. 1 and 10 on the grounds that they are burdensome or overly broad. VCI states that the preparation, review and production of the requested information would require excessive time to produce and review. Staff argues that at the issue identification meeting, it notified VCI of its intention to request this information in order to provide VCI with as much notice as possible, and that upon requesting a hearing on the matter, VCI should have expected that such information would be requested. Staff is willing to accept the information in electronic format to alleviate any alleged burden on VCI. Alternatively, if the Commission finds that staff's requests are burdensome or overly broad, Staff requests that VCI be required to provide four complete months of billing data, with the specific months to be provided by Staff.

Attorney-Client Privilege

VCI objects to Interrogatory No. 11 on the basis of attorney-client and/or attorney work product privileges. Staff argues that VCI has not attempted 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, and requests that VCI's objections regarding privilege be rejected on this basis.

Employee Information

VCI objects to Interrogatory Nos. 25 and 34 on the basis that the requested information about VCI employees is an invasion of the privacy interests and rights of its employees. Staff argues that VCI has addressed these employees in previously received responses to Staff data requests and explained that its employees were directly employed for VCI's Toll Limitation Service (TLS) functions. Staff requests the full descriptions and functions of the four VCI employees to determine whether these employees are utilized for other non-TLS functions. Low Income support for TLS is available only for incremental costs that are associated exclusively with TLS. This information will thus enable the Commission to determine whether VCI is appropriately seeking reimbursement of its costs for provisioning TLS functions.

Analysis and Ruling

Rule 28-106.211, Florida Administrative Code, grants broad authority to "issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case." Based upon this authority, and having considered the pleadings, Staff's Motion to Compel Discovery is granted. This 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. VCI is hereby directed to fully and completely respond to Staff's First Set of Discovery within seven days of the issuance date of this order. Should VCI continue to assert that Interrogatory No. 11 calls for privileged information, it shall describe the nature of the information not produced or disclosed in a manner that, without revealing the privileged or protected information, will enable Staff to assess the

applicability of the privilege, pursuant to Rule 1.280(b)(5), Florida Rules of Civil Procedure. Should VCI believe that any information requested by way of Interrogatory Nos. 25 and 34 contains confidential information, VCI may file a request for confidentiality along with its response in accordance with Commission rules.

Based upon the foregoing, it is

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that Commission Staff's Motion to Compel Discovery from Vilaire Communications, Inc., is hereby granted as set forth in the body of this order. It is further

ORDERED that Vilaire Communications, Inc., shall fully and completely respond to Staff's First Set of Discovery within seven days of the issuance date of this order.

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 25th day of April, 2008.

/s/ Nathan A. Skop

NATHAN A. SKOP

Commissioner and Prehearing Officer

This is an electronic transmission. A copy of the original signature is available from the Commission's website, www.floridapsc.com, or by faxing a request to the Office of Commission Clerk at 1-850-413-7118.

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

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

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

<p>In re: Investigation of Vilaire Communications, Inc.'s eligible telecommunications carrier status and competitive local exchange company certificate status in the State of Florida.</p>	<p>DOCKET NO. 080065-TX DATED: May 2, 2008</p>
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VILAIRE COMMUNICATIONS, INC.'S MOTION FOR RECONSIDERATION OF
ORDER GRANTING MOTION TO COMPEL

COMES NOW, VCI Company d/b/a Vilaire Communications, Inc. (hereinafter "VCI"), and files this Motion for Reconsideration ("Reconsideration") of the Prehearing Officer's order granting Staff's motion to compel ("Motion"), Order No. PSC-08-0258-PCO-TX ("Discovery Order"), issued April 25, 2008. VCI respectfully states that the Discovery Order must be reconsidered and reversed, because it is founded on mistakes of fact and misapplication of the pertinent law.

I. Background

This case arises from a Lifeline audit conducted by the Florida Public Service Commission staff ("Staff") between September and November 2007, culminating in an auditor's report issued November 19, 2007. VCI understands that, based on the audit findings, information obtained from both VCI and AT&T after the audit, and possibly other sources,¹ Staff formally presented its allegations and recommended penalties to the Commission, asking the Commission to initiate compliance proceedings against VCI. The Commission accepted Staff's recommendation and memorialized its decision in Order No. PSC-08-0090-PAA-TX, issued February 13, 2008. Thereafter, VCI timely filed its Protest of Proposed Agency Action and

¹ On February 2, 2008, VCI filed a public records request seeking production of, in sum, all documents regarding complaints by Florida consumers against VCI, all documents relied upon by Staff in making its allegations in the recommendation, and all documents by and between Staff and third-parties.

Petition for Formal Hearing on March 5, 2008, pursuant to which this matter has been set for a Section 120.57, Florida Statutes, hearing. In accordance with the requirements of Cherry Communications, Inc. v. Deason, 652 So. 2d 803 (Fla. 1995), the Staff assigned to this case have now been bifurcated into Prosecutorial Staff and Advisory Staff.

In furtherance of the anticipated hearing schedule, the Prosecutorial Staff conducted an Issues Identification meeting in which VCI participated, as did Advisory Staff. During that meeting, the two parties to this proceeding, Prosecutorial Staff and VCI, reached an accord regarding the wording of the specific issues to be addressed in this proceeding. The Prehearing Officer subsequently issued the Order Establishing Procedure on March 26, 2008, which accepted those issues and set forth the procedural requirements and filing dates for this proceeding.

Thereafter, Staff served VCI with Interrogatories and Requests for Production of Documents ("Discovery Requests") on March 31, 2008, to which VCI filed timely objections and responses ("Discovery Responses"). Staff then filed a Motion on April 22, 2008, seeking to have discovery compelled by April 30. Order No. PSC-08-0258-PCO-TX ("Discovery Order") was issued on April 25, 2008, before VCI was able to provide its Response to the Motion.

Herein, VCI respectfully suggests that the Discovery Order must be reconsidered, because it is based upon factual inaccuracies, as well as mistakes regarding the application of Florida law. Had the Prehearing Officer had the benefit of VCI's response before he issued his Order, VCI believes it very likely that the Prehearing Officer would have reached different conclusions. By this Motion, VCI urges the Commission to recognize that fundamental fairness and due process require that the Discovery Order be revisited, and to find that VCI has sufficiently demonstrated herein that the mistakes of fact and law in the Order mandate that it be

reversed.

II. Standard of Review

The standard of review in Florida for reconsideration is whether or not the Commission, or in this instance, the Prehearing Officer, made a mistake of fact or law, or overlooked a point of fact or law, in rendering the decision in question. See Stewart Bonded Warehouse v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 362 (Fla. 1st DCA 1981).

III. Jurisdiction/Notice of Intent to Seek Relief

As a preliminary matter, VCI acknowledges that jurisdiction has been identified as an issue for resolution in this proceeding. In fact, VCI questioned the Staff regarding the Commission's authority to audit the Lifeline program as early as September 2007, but did not pursue the issue at that time in the interest of maintaining amicable discussions with Staff. In its Motion, Prosecutorial Staff claims that the Discovery Requests directly impact the issues in this proceeding because "...staff's requests seek information that is directly related to VCI's operations as an ETC." VCI continues to maintain that this Commission lacks subject matter jurisdiction to inquire into matters concerning VCI's operations as an ETC; consequently, VCI hereby 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.² The Discovery Requests that will be most directly impacted by VCI's motion to dismiss are those touching on, wholly or in part, VCI's operations as an ETC, specifically Interrogatory Nos. 2, 4, 5, 7, 8- 32, 35, 36 and 38 and Request

² Pursuant to Fl. R. Civ. P. 1.140, a motion to dismiss for lack of subject matter jurisdiction may be brought at any time.

Nos. 2, 3, 4, 5, 6, 7, 8 and 9. This Motion for Reconsideration also provides additional, alternative grounds upon which reconsideration of the Discovery Order may be based.

IV. Argument

A. ISSUANCE WITHOUT BENEFIT OF RESPONSE

As a threshold matter pertaining to the Order as a whole, VCI believes that the timing of the issuance of the Discovery Order was contrary to the plain language of Rule 28-106.204, Florida Administrative Code, and an abrogation of VCI's due process rights, resulting in a clear basis for reconsideration of the decision.

1. There Was No Compelling Reason to Grant Staff's Motion on Shortened Time.

Specifically, as set forth above, Prosecutorial Staff filed its Motion on April 22, 2008, seeking to have discovery responses compelled by April 30. The Discovery Order granting Staff's motion was issued just 3 days later, without benefit of VCI's response.³ Under Rule 28-106.204, F.A.C., a response may be filed within 7 days, if time allows. The seventh day would have fallen on Tuesday, April 29. The only rationale offered in the Discovery Order for the expedited issuance without benefit of response was that this matter is set for hearing June 6, 2008, a full six weeks from the date the Order was issued. Likewise, as set forth in the Order Establishing Procedure for this proceeding, the discovery cut off date in this matter is not until May 22, 2008. As such, there is absolutely no compelling reason that the Discovery Order had to be issued on an expedited basis without allowing VCI to respond to the

³ Local counsel for VCI was contacted on April 23 by Advisory Staff, who inquired as to whether VCI would be able to provide an expedited response. Staff indicated that an Order may be forthcoming in view of the date by which Prosecutorial Staff had asked for discovery to be compelled. Local counsel advised Staff that it would endeavor to provide its response on an expedited basis, but in view of the fact that VCI's testimony was due the following day, suggested that it would be difficult to provide the response any earlier than the following Monday, April 28. VCI was not given notice of a date by which a Response to the Motion would have to be filed in order to be considered. Keys Citizens for Responsible Gov't, Inc. v. Fla. Keys Aqueduct Auth., 795 So.2d 940, 948 (Fla. 2001)(Procedural due process requires fair notice and a real opportunity to be heard); see also Massey v. Charlotte County, 842 So.2d 142, 146 (Fla. 2d DCA 2003).

Prosecutorial Staff's Motion.

2. The Discovery Order Should Not Have Been Issued on Shortened Time Pursuant to the Florida Rules of Civil Procedure..

Furthermore, the Discovery Order fails to consider the applicability of Rule 28-106.206, F.A.C., which provides the basis upon which "...the prehearing officer may issue appropriate orders to effectuate the purposes of discovery and to prevent delay. . . ." Rule 28-106.206, F.A.C. specifically incorporates the requirements of Rules 1.280 through 1.400, Fl. R. Civ. P., providing that parties may obtain discovery by any means appropriate under those referenced rules.

VCI respectfully submits that the Prehearing Officer erred by overlooking Rule 28-106.206, and consequently, Rule 1.380, F.A.C., as well as the cases interpreting Fl. R. Civ. P. 1.380. Specifically, Fl. R. Civ. P. 1.380 requires that a party be provided "reasonable notice" that a party will seek an order compelling discovery. 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." 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). VCI had properly and timely responded to Prosecutorial Staff's Discovery Requests by offering valid objections. Consequently, the Prehearing Officer erred by failing to allow VCI an opportunity to be heard with regard to its objections and the Motion.

In Conclusion, by issuing the Discovery Order prior to the 7 day period allowed by Rule

28-106.204(1), F.A.C., without allowing VCI time to respond and without otherwise identifying a date by which VCI needed to provide an expedited response in order to have it considered, a fundamental legal and factual error was created regarding the very issuance of the Order, because time did, in fact, allow for a response to the Motion. This alone constitutes a basis for reconsideration under the standard set forth in Diamond Cab.

B. DISCOVERY MUST BE APPROPRIATELY LIMITED IN SCOPE AND REASONABLY CALCULATED TO LEAD TO THE DISCOVERY OF ADMISSIBLE EVIDENCE.

As it pertains to the specific findings regarding the discovery in dispute, the Discovery Order references Rule 28-106.211, F.A.C., as the sole basis for the decision to reject VCI's initial Objections that the Prosecutorial Staff's Discovery Requests are irrelevant, and unlikely to lead to the discovery of admissible evidence (Interrogatory Nos. 1, 4 -13, 15 – 36, and 39, and POD Nos. 2 – 10). Likewise, the Order cites no additional authority or case law, other than Rule 28-106.211, for the decision to reject VCI's objections that Interrogatory Nos. 2, 30, and 32, and POD Nos. 1 and 10 are overly broad and unduly burdensome. The Order simply concludes, without support, that, "This 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." Discovery Order at p. 2.

VCI acknowledges that the scope of discovery is, indeed, broad. It is not, however, entirely without bounds. It is on this point that the Discovery Order errs. Specifically, the Discovery Order assumes that unless a privilege has been specifically asserted, then any information, regardless of scope, burden, or relationship to the issues in the case, is discoverable. That is simply not the law in Florida.

1. Unduly Broad and Burdensome Requests

Specifically, Rule 1.280(b)(1), Fl. R. Civ. P., provides that:

[p]arties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party.... It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The scope of discovery under Florida rules may be considered liberal. However, this Commission has acknowledged that the Florida Rules of Civil Procedure do not permit unlimited discovery.⁴ For example, discovery requests must be narrowly crafted to the issues of the case. Redland Co. v. Atl. Civ., Inc., 961 So. 2d 1004, 1007 (Fla. 3rd DCA 2007). The documents and information requested must be relevant to the subject matter of the case, and litigants are not entitled to “carte blanche” discovery of irrelevant material. Allstate Ins. Co. v. Langston, 655 So. 2d 91, 94, 95 (Fla. 1995). Furthermore, in reviewing Prosecutorial Staff’s Discovery Requests for overbreadth and undue burden, the Prehearing Officer should consider the fact that, through the filed Testimony of Robert Casey, it is readily apparent that Prosecutorial Staff seeks expansive discovery for purposes beyond this proceeding. See Direct Testimony of Robert Casey at page 34, lines 15 – 23, and page 38, line 11.

⁴ *In Re: Petition for arbitration of unresolved issues resulting from negotiations with Sprint-Florida, Inc. for interconnection agreement, by AT&T Communications of the Southern States LLC, Commission Order No. PSC-03-1014-PCO-TP, 2003 Fla. PUC Lexis 578 at p. 37.*

- a. POD Request Nos. 1 and 10 and Interrogatory Nos. 2 and 32 are Not Appropriately Limited as to Scope and Time Period.

To this point, Staff's POD Request 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 Request No. 10 seeks all remittance payments to FTRI for the 2-year period since VCI has been a designated ETC. These requests are expansive and unduly burdensome. Moreover, providing the full scope of the information requested does not appear necessary for proving up any issue in this proceeding.

Make no mistake, this process of providing all its monthly bills in Florida in paper format, pursuant to POD No. 1, would be burdensome to VCI due to the number of bills at issue over the time period requested.⁵ Specifically, in order to respond to POD Request 1, VCI 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, copies of all FTRI payments over two (2) years, would be equally burdensome.

Furthermore, as has been communicated to Staff, VCI's billing system will not permit the download of bills into electronic format. To provide electronic copies, VCI would have to print out thousands of bills, scan them, and download the scans onto computer disks, a labor and time intensive process. (See Attachment 1, Affidavit of Stanley Johnson). Thus, the Order errs in its apparent acceptance of Prosecutorial Staff's assertion that providing the bills in electronic format would reduce the burden on VCI.

VCI further anticipates that the extensive analysis in Interrogatories No. 2 and 32 will entail substantial employee time. VCI is a small company with

⁵ Discovery must be restricted in subject matter, scope and time. Life Care Ctrs. of Am. v. Reese, 948 So. 2d 830, 832 (Fla. 5th DCA 2007).

limited personnel. Thus, personnel assigned to the task of analyzing VCI's bills would be unable to perform duties necessary to the company's core business operations during the pendency of this project, to VCI's detriment.

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. See, e.g., Union Fidelity Life Insurance Co. v. Seay, 378 So. 2d 1268, 1269 (Fla. 2d DCA 1979) (request for production of insurance documents, without limitation as to time or to the number of claims, amounting to 45,000 insurance policies, was unduly oppressive and burdensome) See also Redland Co. v. Atl. Civ., Inc., 961 So. 2d 1004, 1006-1007 (Fla. 3rd DCA 2007) (tax information was requested over an unreasonably broad time frame and wholesale turnover of documents without regard to issues was overbroad). Requiring VCI to produce and copy each and every bill issued since it became an ETC and each and documents regarding each and every FTRI payment, are likewise unduly oppressive and burdensome, and the Order errs in not recognizing that fact.⁶

b. The Prehearing Office Should Not Give Weight to Prosecutorial Staff's "Advance Notice"

The Discovery Order also seems to give weight to Prosecutorial Staff's mention that it had informed VCI at the Issues Identification meeting that it would be seeking the billing information, and that therefore, VCI "had as much notice as possible". Discovery Order at p. 2. While is undisputed that Prosecutorial Staff informed VCI that it would seek to discover VCI's bills, VCI's understanding at the time was that Prosecutorial Staff sought VCI's bills to confirm information already provided by VCI demonstrating its amendment of

⁶ Furthermore, the request would be duplicative, at least in part, of information already supplied to Prosecutorial Staff through the audit process.

E911 billing errors. VCI was also of the understanding that an actual discovery request would be forthcoming in short order. VCI did not have the benefit of reading the actual discovery requests for billing information and understanding the full scope of the request, including the bill analysis requested, until a full two weeks later when Prosecutorial Staff actually served the Discovery Requests. Only then did VCI realize the difficulty it would have in providing the number of bills covered by the Discovery Requests and the related analysis sought.⁷

c. Discovery for the Purposes of “Fishing” for Other Possible Causes of Action is Improper

Requiring VCI to produce each and every bill since it became an ETC (and documents pertaining to FTRI payments) and extensively analyze information on the bills, is overly broad and unduly burdensome for the company for the reasons set forth above. Moreover, it seems unlikely that Prosecutorial Staff could effectively review and synthesize in time for the June 6 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. Consequently, one might reasonably assume that these extremely broad requests are interposed for either of two possible purposes: (1) to hinder VCI’s ability to prepare for trial by seeking a “data dump;” and/or (2) to provide Prosecutorial Staff with a deep pool in which to “fish” for other violations apparently anticipated by Prosecutorial Staff -- whether at issue in this proceeding or not.

⁷ When VCI received Prosecutorial Staff’s Discovery Requests, it informed Prosecutorial Staff that providing all bills ever issued in Florida would be extremely burdensome, but that a sampling might be a more reasonable alternative. In response, Prosecutorial Staff indicated that it would consider what sort of sampling would be statistically valid. Prosecutorial Staff later informed VCI that a sampling would not be acceptable, but that it would accept the bills in electronic format as an alternative. VCI informed Prosecutorial Staff that its billing information could not be provided in true bill format, as viewed by customers, electronically, and that to provide bills, as viewed by customers, the bills would still have to be printed out electronically. VCI again suggested a sampling might be a reasonable alternative. VCI received no response until the Motion to Compel, wherein Prosecutorial Staff now seems to suggest that it might consider four (4) months worth of bills to be a reasonable alternative. It is unfortunate that this information was not conveyed to VCI prior to the filing of Staff’s Motion to Compel, as it is likely that VCI would have agreed that four (4) months worth of bills was an acceptable resolution of the issue.

“Fishing,” which appears to be the most likely basis for these requests, is entirely inappropriate. In fact, the courts have specifically 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.” See, State Farm Mut. Auto. Ins. Co. v. Parrish, 800 So. 2d 706, 707 (Fla. 5th DCA 2001) (Discovery order quashed because judge expressly authorized fishing expedition).

- d. POD Request Nos. 4, 5 and 7 and Interrogatory Nos. 1 and 12 are Unduly Burdensome because Duplicative or Equally Accessible to Prosecutorial Staff.

Other requests are also unduly burdensome, albeit for a somewhat different reason. Specifically, Prosecutorial Staff has already obtained the documents sought in POD Request Nos. 4⁸, 5 and 7 either from VCI or from third-parties, as has been disclosed in documents produced in response to VCI’s public records request. Furthermore, the definition of the term “resale” (Interrogatory No. 1) may be obtained as easily by Staff as VCI. VCI should not be required to produce duplicate documents or provide Staff with information it can easily obtain itself. Thus, as to these Discovery Requests, the Motion should have been denied.

With respect to documents in Staff’s possession, VCI provided the Staff auditor with copies of invoices for Lifeline advertising (Request No. 4) and copies of FCC Forms 497 (Request No. 5) during the audit. As for Interrogatory 12 and Request No. 5, Prosecutorial Staff has already obtained and, upon information and belief, continues to receive copies of VCI’s FCC Forms 497 directly from the Universal Service Administrative Company. Further, to the extent that POD Request No. 7 seeks copies of VCI’s interconnection agreement and local wholesale complete agreement with ATT-Florida, VCI provided those documents to

⁸ This tribunal should also note that whether VCI has advertised its Lifeline services is not an issue identified in this proceeding. As such the advertising invoices are irrelevant and the Discovery Order should be reversed on POD Request for this reason.

the Staff auditor, and the wholesale agreement currently is on file, under seal, with the Commission Clerk's Office.

Thus, for the foregoing reasons, the Discovery Order should be reconsidered and reversed as it pertains to Interrogatories Nos. 2 and 32, and POD Requests 1 and 10. The finding therein that these expansive discovery requests are allowable under Florida law is erroneous as a matter of law, and the assumption therein that Prosecutorial Staff's statements at the March 13 Issues Identification meeting served as sufficient "notice" of the full scope of discovery at issue in these requests constitutes a mistake of fact. As for Interrogatory Nos. 1 and 12, and POD Requests Nos. 4, 5, and 7, the Order errs in assuming that this information is not either readily available to Prosecutorial Staff or already in their possession and consequently failing to recognize that providing duplicative responses would be unduly burdensome.

2. Irrelevant Requests

While material need not be specifically relevant to a matter at issue in a proceeding in order to be deemed discoverable, material that is otherwise irrelevant must be reasonably calculated to lead to the discovery of admissible evidence in order to be deemed discoverable. Rule 1.280(b)(1), Florida Rules of Civil Procedure [emphasis added]. This simply means that there must be a readily apparent and "reasonably calculated" causal connection between the information sought and evidence relevant to the issues in the case. Calderbank v. Cazares, 435 So. 2d 377, 379 (Fla. 5th DCA1983). If the causal connection is not readily apparent, the party seeking discovery must point out the reasoning process using facts and inferences. Id. 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. Id. In other

words, it should not require a “leap of faith” to see how the information might lead to other, relevant information.⁹

- a. Requiring all of VCI’s Bills to Review 911 Surcharges is Overbroad in Scope and Not Reasonably Calculated to Lead to the Admissibility of Discoverable Evidence.

Specifically, Interrogatories 2, 30, and 32, as well as POD Requests 1 and 10, are not likely to lead to the discovery of admissible evidence on the 911 issue for the following reasons: 1) VCI has admitted overcharging customers the 911 surcharge; 2) VCI has submitted to Staff a spreadsheet disclosing the number of customers who overpaid the 911 surcharge and the amount of the overcharge; 3) VCI submitted a plan for refunding or crediting the customers who overpaid and 4) VCI responded in Interrogatory No. 14 that the company has compensated customers who overpaid the 911 fee. The 911 issue has been resolved and no further discovery is warranted. There is no rational basis for a discovery inquiry of this magnitude regarding an issue upon which VCI has already conceded culpability.

This is not an issue upon which VCI has offered a vigorous defense; thus, the scope of the request should be more appropriately tailored to confirming that VCI has satisfactorily resolved the issue. If this tribunal determines review of VCI’s bills is necessary to verify that VCI has corrected the surcharge amount, Prosecutorial Staff can surely determine this fact by examining one or two recent bills for each county where VCI’s customers reside.

⁹ Furthermore, requests for irrelevant information and things, and requests that are unreasonably expansive in nature may be so burdensome as to constitute a departure from the essential requirements of the law causing irreparable injury and may be quashed on appeal. Life Care Ctrs. of Am., 948 So. 2d at 832-833.

b. No Causal Connection Has Been Established to Warrant Production of All of VCI's Bills on the Late Payment Charge Issue

These same requests are also not likely to lead to the discovery of admissible evidence on the late payment charge issue, nor has any causal connection been established. For instance, only one VCI customer has complained to the Commission that he was incorrectly assessed a late payment fee, and that customer is on record admitting that his payments were made after the payment due date. See Exhibit SJ2-A to the Direct Testimony of Stanley Johnson. While Prosecutorial Staff has alleged that VCI has incorrectly charged other customers,¹⁰ Prosecutorial Staff has thus far refused to provide VCI with identifying information for those customers and such information should have been produced in response to VCI's public records request.¹¹ As a result, VCI is unable to investigate Staff's allegations, clear the company's name, or alternatively substantiate the allegations.¹² On the basis of deminimis complaints of record and the statements of unnamed sources and undisclosed facts, Prosecutorial Staff "thinks" that VCI is charging a late payment fee incorrectly. Prosecutorial Staff is, in essence, seeking information that "might" lead to relevant evidence without establishing any causal relationship. In other words, Prosecutorial Staff is on a "fishing expedition," which, as set

¹⁰ Staff has never informed VCI of the exact number of customers it surveyed who claimed incorrect late payment fee billing.

¹¹ VCI's public records request submitted to the Commission on February 7, 2008, requested, in pertinent part, all documents regarding complaints by Florida consumers against VCI, all documents relied upon by Staff in making its allegations in the PAA, and all documents by and between Staff and third-parties. As VCI's customers are third-parties, Staff has alleged incorrect assessment of late fees, and a customer's statement concerning a billing error would be considered a complaint, VCI should have received any and all documentation about these alleged customers, including staff notes and e-mails, in response to the public records request.

¹² "In addition to *substantial* evidence to support a license revocation, the cases require that the accusation state with specificity the acts complained of, to allow the licensee a fair chance to prepare a defense." Davis v. Dept. of Prof. Reg., 457 So. 2d 1074 (Fla. 1st DCA 1984), *citing Hickey v. Wells*, 91 So.2d 206 (Fla. 1957).

forth herein, is inappropriate.¹³ Thus, the Order erred as a matter of law in compelling VCI to provide this information.

If the Commission determines that some amount of information or documents sought by Interrogatories 2, 30, and 32, and POD Requests Nos. 1 and 10 are responsive on the late payment issue, the scope of the request should be narrowed significantly. Prosecutorial Staff should likewise be ordered to produce identifying information about those customers it believes have been mischarged by VCI, as should have done pursuant to the public records request.

c. Other irrelevant requests

In several instances, Prosecutorial Staff provided no rational explanation regarding the likelihood discovery sought would lead the discovery of admissible evidence. Consequently, the Order errs in relying on Prosecutorial Staff's arguments in compelling responses. Specifically, Interrogatory No. 6 and Request 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 form as well as information and documents regarding VCI's FTRI payments.¹⁴ Neither VCI's regulatory assessment fees nor VCI's FTRI payments are at issue in this proceeding.¹⁵

Similarly, Interrogatory Nos. 11, 29(a), 35 and 36 and Request No. 9 seek information about VCI's operations in states other than Florida, as well as documents and information filed in

¹³ Supra at p. 8.

¹⁴ In addition, VCI should not be compelled to comply with Request No. 10 because documents produced pursuant to VCI's public records request demonstrate that Staff requested and received directly from the FTRI administrator a report of VCI's payments to this fund and other documents. Because Staff has this information already in its possession and can easily obtain this information directly from the FTRI, VCI should not be compelled to produce these documents.

¹⁵ Furthermore, in this compliance proceeding in which VCI's ETC designation and certificate are at stake, fundamental principles of fairness and due process would prevent Prosecutorial Staff from bringing 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. An agency cannot find a defendant in violation on an issue not charged in the original complaint against the defendant. Willner v. Dept. of Prof. Reg., 563 So. 2d 805 (Fla. 1st DCA 1990).

an FCC proceeding regarding VCI's operations in states other than Florida. VCI's operations in states other than Florida are not at issue in this proceeding and this Commission has no jurisdiction to inquire into VCI's operations in states other than Florida.

In addition, Interrogatory No. 9 and Request No. 7 request documents and information regarding VCI's business relationships with third-parties who have supplied or are supplying VCI with equipment or services. The quality or quantity of VCI's provision of service to its customers is not an issue identified in this proceeding. It was certainly not called into question in the Commission's PAA Order that initiated this proceeding. Furthermore, as is discussed below, the Commission is without jurisdiction to inquire into the details of VCI's business relationship with any third-party.

Interrogatory No. 34, which seeks information about VCI employees and subcontractors also should have been rejected on these same bases.¹⁶ The information sought is not relevant or reasonably calculated to lead to the discovery of admissible evidence because the quality of work or the type of work performed by VCI's employees is not at issue. Furthermore, VCI employees are not parties and no employee other than Stanley Johnson is a witness in this proceeding. Prosecutorial Staff identified no causal relationship between this information and any issue in this proceeding. Instead, Prosecutorial Staff lumped this Interrogatory under its general argument that essentially says, all roads lead to Lifeline and Linkup issues. See, Motion at p. 3. It is simply unfathomable how information about VCI's employees and subcontractors can possibly lead to relevant, admissible information about VCI's provision of Lifeline and Linkup services.

¹⁶ The Commission's inquiry into VCI employee functions is directly related to VCI's operations as an ETC and will be addressed in VCI's motion to dismiss. The fact that VCI provided limited information about its employees post-audit does not require VCI to provide additional information. Subject matter jurisdiction cannot be waived.

Finally, as to Interrogatory Nos. 2 and 32, these requests demand information about VCI customers' disconnect dates. Again, in the context of this proceeding, the requests are simply irrelevant, and unlikely to lead to the discovery of admissible evidence as to any issue identified in the Order Establishing Procedure. There is no identifiable causal relationship between the information sought and matters at issue, and one must stretch the imagination to come up with a rational relationship. These requests are simply further casts of the fly in Prosecutorial Staff's ongoing fishing expedition, and as such, should have been rejected by the Prehearing Officer.

Without benefit of VCI's arguments addressing these Discovery Requests, the Prehearing Officer accepted Prosecutorial Staff's assertions as to the relevance of Interrogatory Nos. 2, 6, 8, 9, 10, 11(a), 29, 32, 34-36, and 39, and POD Requests Nos. 7 and 9. As a direct result, the Order Granting Motion was in error as a matter of fact and law for the reasons set forth herein.

C. DISCOVERY BEYOND THE SCOPE OF THE COMMISSION'S INQUIRY AUTHORITY

Staff Interrogatory Nos. 4, 5, 6, 7, 8, 9, 10, 15-31, 34, 38 and 39, as well as POD Nos. 2, 3, 7 and 9 seek, *inter alia.*, 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 USAC.¹⁷ These Discovery Requests seek information that is beyond the reach of the Commission's inquiry, and thus, the information sought is not relevant nor is it reasonably calculated to lead to the discovery of admissible evidence. As such, the Prehearing Officer erred in compelling VCI to respond to these requests.

¹⁷ VCI's objections to Interrogatory No. 6, request for payments made to ATT-Florida are addressed above to the extent that it relates to VCI's reporting of regulatory assessment fees.

1. The Legislature Has Passed No Law Authorizing the Commission to Regulate ETCs. Inquiry into VCI's ETC Operations are Beyond the Scope of the Commission's Inquiry Authority.

First and foremost, the Commission's jurisdiction is prescribed by the Florida Legislature. As set forth in Florida Public Service Commission v. Bryson, 569 So. 2d 1253, 1254-1255 (Fla. 1990):

The PSC has the authority to interpret the statutes that empower it, including jurisdictional statutes, and to make rules and to issue orders accordingly. *PW Ventures, Inc. v. Nichols*, 533 So. 2d 281 (Fla. 1988). It follows that the PSC must be allowed to act when it has at least a colorable claim that the matter under consideration falls within its exclusive jurisdiction as defined by statute.

However, an "[a]dministrative agency has only such power as expressly or by necessary implication is granted by the legislative enactment." Charlotte County v. General Development Utilities, Inc., 653 So. 2d 1081, 1082 (Fla. 1st DCA 1995); State, Department of Environmental Regulation v. Falls Chase Special Taxing District, 424 So. 2d 787, 793 (Fla. 1st DCA 1982).¹⁸ A reasonable doubt as to a power that is being exercised by the PSC must be resolved against such exercise. Lee County Electric Cooperative, Inc. v. Jacobs, 820 So. 2d 297 (Fla. 2002); City of Cape Coral v. GAC Utilities, 281 So. 2d 493, 496 (Fla. 1973); and Florida Bridge Co. V. Bevis, 363 So. 2d 799 (Fla. 1978).¹⁹

Specifically, nothing in Chapter 364 approximates Federal law regarding ETC operations, authorizes the Commission to adopt rules similar to, or permits the Commission to

¹⁸ Similarly, in speaking to the powers of federal agencies, the U.S. Supreme Court has explained that:

An agency may not confer power upon itself. To permit an agency to expand its power in the face of a congressional limitation on its jurisdiction would be to grant to the agency power to override Congress. This we are unwilling and unable to do.

Louisiana Public Service Commission v. FCC, 476 U.S. 355, 374, 375 (1986).

¹⁹ For instance, the PSC was found not to have authority to address a private contractual matter in Teleco Communications Co. v. Clark, 695 So. 2d 304, 309 (Fla. 1997).

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. Curtis v. Taylor, 648 F.2d 946 (5th Cir. 1986). State agencies only can act pursuant to federal law if the federal law contemplates that the state agency will act and there is a specific state statute allowing the state agency to take action. Louisiana Public Service Commission v. FCC, 476 U.s. 355, 374, 375 (1986). The Telecommunications Act of 1934, as amended, of which the Universal Service provisions are a part, is a jurisdictional scheme referred to as "cooperative federalism," whereby Congress specifically designated roles for the FCC and for state commissions. See MCI Telecommunications Corp. v. BellSouth Telecommunications, Inc., 112 F. Supp. 2d 1286; *affirmed* by 298 F. 3d 1269 (11th Cir. 2002).

In this instance, Congress did not designate a role for the state commissions with regard to regulation of ETCs, including auditing and enforcing FCC universal service rules, regarding application for and disbursements from USAC under the Low-Income Program, nor did the Florida Legislature enact a law authorizing the Commission to do so. More than a reasonable doubt exists as to the Commission's authority to inquire into these matters. Thus, 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, Florida Statutes.

2. This Commission Has No Authority to Inquire Into the VCI's Private Business Relationships with Third-Parties.

Furthermore, 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, first, 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 cannot agree to the terms within 60 days and if the parties petition the Commission. The Commission also is authorized to arbitrate interconnection agreement disputes, if the parties so request, after the interconnection agreement is approved.²⁰

In this case, VCI's interconnection agreement with ATT-Florida has been approved by the Commission and neither party to that agreement has requested arbitration. The fact is that once an interconnection agreement is approved, the ongoing implementation of the agreement and business operations of the parties in accordance with that agreement is akin to a private contractual arrangement, and is not subject to Commission general jurisdiction or oversight.

Furthermore, this Commission also has no authority whatsoever to inquire into business operations conducted pursuant to private contract, such as the local wholesale agreement or private contracts entered into between VCI and other third-parties.²¹

In sum, this Commission has not been granted authority to unilaterally inquire into the details of VCI's private business relationship with ATT-Florida and has no authority to inquire into VCI's business relationships with other-third parties. Thus, the Commission has no authority to compel the production of documents concerning those relationships.

3. As Jurisdiction is at Issue, the Discovery Order is in Error. A Motion to Dismiss for Lack of Subject Matter Jurisdiction May be Brought at Any Time.

While jurisdiction is, in fact, a specific issue identified for resolution on the Tentative Issues List attached to the Order Establishing Procedure, VCI has never committed,

²⁰ Fla. Stat. Section 364.162.

²¹See, e.g., *Teleco Communications Co. v. Clark*, 695 So. 2d 304 (Fla. 1997) and *United Tel. Co. of Fla. V. Public Service Commission*, 496 So. 2d 116, 118 (Fla. 1986).

nor was it asked, to refrain from seeking resolution of the jurisdictional question prior to hearing. In fact, VCI does intend to seek resolution of the jurisdictional question prior to hearing. Thus, the Discovery Order is in error to the extent that it compels discovery over the jurisdictional arguments that have been plainly raised on the basis that jurisdiction is an issue in the proceeding.

The fact of the matter is that the Commission is without jurisdiction to interpret and enforce Federal rules pertaining to Lifeline; consequently, Prosecutorial Staff has no right to discovery on these subjects. In pronounced support of this argument is the plain language of Section 364.183, Florida Statutes, which specifically says that the Commission shall have access to documents and records "reasonably necessary for the disposition of matters within the commission's jurisdiction." [emphasis added].

Furthermore, to the extent that any weight has been given in the Order to assertions by Prosecutorial Staff that a Motion or Petition on the jurisdictional question should have been raised prior to issuance of the Order Establishing Procedure, 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. See Fla. R. Civ. P. 1.140(b).²² Presentation of the question need not be posed at time deemed convenient by Prosecutorial Staff.

²² As concisely set forth in In re: D.N.H.W., 955 So. 2d 1236, 1238 (Fla. 2nd DCA 2007): "Subject matter jurisdiction — the 'power of the trial court to deal with a class of cases to which a particular case belongs' — is conferred upon a court by constitution or by statute." Strommen v. Strommen, 927 So.2d 176, 179 (Fla. 2d DCA 2006) (quoting Cunningham v. Standard Guar. Ins. Co., 630 So.2d 179, 181 (Fla. 1994)). Parties cannot agree to jurisdiction over the subject matter where none exists, and the defense of lack of subject matter jurisdiction can be raised at any time. Cunningham, 630 So.2d at 181; Strommen, 927 So.2d at 179; Ruble v. Ruble, 884 So.2d 150, 152 (Fla. 2d DCA 2004). "A trial court's lack of subject matter jurisdiction makes its judgments void. . . ." Strommen, 927 So.2d at 179. Furthermore, "subject matter jurisdiction cannot be waived or conferred upon a court by consent or agreement of the parties." Williams v. Starnes, 522 So.2d 469, 471 (Fla. 2d DCA 1988).

To the same point, VCI also notes that this proceeding has been scheduled on an unusually expedited time frame. This was certainly not done at VCI's urging. Consequently, any delay that may result from VCI's anticipated filing of a Motion to Dismiss for Lack of Subject Matter Jurisdiction, or any similar federal court filing, is unavoidable in the context of a schedule that already has little room to spare and should not be interpreted as being interposed simply for purposes of delay, as suggested by Prosecutorial Staff at Footnote 7 to its Motion. Any reliance on these assertions by Prosecutorial Staff by the Prehearing Officer is rendering his decision to compel discovery over the jurisdictional objections is in error both as a matter of law and of fact.

For all these reasons, the Discovery Order as it relates to Staff Interrogatory Nos. 4, 5, 6, 7, 8, 9, 10, 15-31, 34, 38 and 39, as well as POD Nos. 2, 3, 7 and 9, is in error to the extent that it apparently accepts Prosecutorial Staff's assertions that jurisdiction is a matter for hearing and should not bar discovery of this information.

D. INFORMATION SUBJECT TO WORK-PRODUCT OR ATTORNEY-CLIENT PRIVILEGE.

Staff's Interrogatory Nos. 11, 12, 13 and 33 as well as Request No. 9 seek documents and information protected by the attorney work-product doctrine and/or the attorney client privilege. As such, this information is not discoverable. Thus, in accordance with the Prehearing Officer's directive in the Discovery Order at page 2, VCI hereby specifically sets forth its arguments regarding these assertions of protected information and described the information at issue.

Florida Rule of Civil Procedure 1.280 states, in pertinent part:

Parties may obtain discovery regarding any matter, not privileged.... ..[A] party may obtain discovery of documents and

tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that party's representative...only upon a showing that the party seeking discovery has need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. ...Without the required showing a party may obtain a copy of a statement concerning the action or its subject matter previously made by that party.

The work product doctrine encompasses fact work product, *i.e.*, information relating to a case and gathered in anticipation of litigation, and opinion work product, *i.e.*, the attorney's mental impressions, conclusions, opinions and theories. Fact work product is discoverable upon a showing of need and undue hardship, but opinion work product is not subject to discovery. S. Bell Tel. & Tel. Co. v. Deason, 632 So. 2d 1377, 1384 (Fla. 1994).

The attorney-client privilege protects from disclosure confidential communications made by an attorney in rendering legal services to a client. Id. at 1380. Communications between a corporate attorney and a corporate employee who personifies the corporation are protected by attorney-client privilege. Id. at 1381. A corporate employee personifies the corporation if he is in a position to control or take a substantial part in a decision about an action an attorney may advise the corporation to take. Id. The Commission is not entitled to unfettered access to a regulated company's confidential communications. Id. at 1382. Where a party seeks to abrogate a privilege claim, that party bears the burden to prove facts that would make an exception to the privilege applicable. Eight Hundred, Inc. v. Fla. Dep't of Revenue, 837 So. 2d 574, 576 (Fla. 1st DCA 2003).

Specifically, Interrogatory No. 11 and Request No. 9 seek specific documents and information concerning VCI's participation in an FCC proceeding. This information is protected by the attorney-client privilege and work-product doctrine and, thus, is not subject to discovery.

In Interrogatory No. 11, Prosecutorial Staff seeks information concerning legal advice proffered by VCI's attorney to the corporation in an ongoing administrative proceeding. Revealing this information would disclose VCI's 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 pursuant to the attorney-client privilege. VCI's opinion work product similarly is not discoverable.

Request No. 9 seeks copies of documents filed in response to the FCC's inquiries in that ongoing proceeding concerning VCI's operations in states other than Florida.²³ Because all responsive documents filed with the FCC were prepared in anticipation of litigation or trial, these documents constitute attorney work-product and are protected from disclosure thereby. Further, to the extent the FCC does not permit the public to inspect and copy VCI's filings, these documents are subject to the confidentiality rules of another tribunal and not subject to discovery. In the Motion, Prosecutorial Staff did not make the required showings of "need" for these documents and "undue hardship."

Similarly, Interrogatory Nos. 12 and 33 seek information concerning actions taken by VCI in relation to its case in this proceeding. This information is protected by the Attorney-Client privilege, as well as the attorney work-product doctrine. In this request, Prosecutorial Staff requests information regarding legal advice with respect to this case and that would disclose VCI's counsel's mental impressions, conclusions, opinions and theories of this case. VCI's opinion work product is protected from disclosure; thus, the Motion on this point should have been denied.

²³ VCI has addressed the relevance of information sought in Request No. 9 and whether such information is reasonably calculated to lead to discovery of admissible evidence elsewhere in this Response.

Prosecutorial Staff also seeks information, in Interrogatory No. 13, that would disclose whether and from whom certain information has been obtained by VCI in preparation for this case. 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 VCI's counsel in preparation for hearing. Thus, the Order errs in compelling a response that entails the disclosure of privileged information.

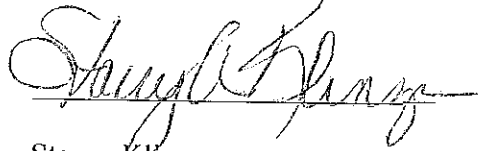
In accordance with the Prehearing Officer's direction on pages 2 and 3 of the Discovery Order, VCI has fully set forth its assertions of privilege, and respectfully asks that the Commission accept these assertions and not seek to further compel responses to this discovery. To do so would constitute a mistake of law and reversible error susceptible to an interlocutory appeal.

V. Conclusion

For all the foregoing reasons, VCI respectfully requests that the Commission grant VCI's Motion for Reconsideration of Order No. PSC-08-0258-PCO-TX to the extent that it seeks to compel VCI to respond to Interrogatories 1 – 13, 15 – 36, 38 and 39 and POD Requests Nos. 1 – 10. To the extent the Discovery Order allows VCI to more fully explicate its objections based upon privilege, VCI has now done so and respectfully asks that these be accepted and that VCI no longer be compelled to respond to Interrogatories 11, 12, 13, and 33 and POD Request No. 9.

[SIGNATURE NEXT PAGE]

Respectfully submitted this 2nd day of May, 2008.



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Attorneys for Vilaire Communications, Inc

ATTACHMENT 1
AFFIDAVIT OF STANLEY JOHNSON

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation of Vilaire Communications, Inc.'s eligible telecommunications carrier status and competitive local exchange company certificate status in the State of Florida.	DOCKET NO. 080065-TX DATED: MAY 2, 2008
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AFFIDAVIT OF STANLEY JOHNSON IN SUPPORT OF
VILAIRE COMMUNICATIONS, INC.'S MOTION FOR RECONSIDERATION

I, Stanley Johnson, President of VCI Company, doing business in Florida as Vilaire Communications, Inc., depose and state the following:

1. VCI Company is comprised of 13 employees located at the company's headquarters, 2228 S. 78th Street, Tacoma, Washington, 98409-9050. VCI provides local exchange service in 9 states including Florida.
2. Upon receipt of Staff's Request for Production No. 1 and Interrogatory No. 2, I estimated the number of documents involved, the availability of staff to be assigned to the project and estimated the time that staff would spend in complying with these requests.
3. I estimate that VCI has issued between 18,000 and 25,000 bills to Florida consumers since June 2006.
4. VCI's computer system will not permit the download of customer bills in electronic format. Bills are generated by the system to be printed out on paper only.
5. To produce bills in electronic format, VCI staff would be required to print out paper bills, scan these bills in portable document format onto a computer and download them onto computer disks. The process of doing so is labor intensive and time consuming.

6. I estimate that it will take VCI staff a minimum of one week to print out and organize the bills. I further estimate it will take three to four weeks for staff to review each bill and input the information required in Interrogatory No. 2 into an excel spreadsheet for review by Staff.

7. My staff's core business functions include serving VCI's customers in 9 states, resolving customer complaints, interacting with underlying carrier staff to facilitate delivery of service to customers, accounting functions such as posting customer payments for service and assembling and mailing bills to VCI's current customers.

8. Assigning staff to print-out or scan the number of bills in POD No. 1, organize and review them, and create an excel spreadsheet of the information required in Interrogatory No. 2, will distract staff from their normal duties and interfere substantially with the company's core business functions, to the detriment of VCI's business.

9. It was my hope that Staff would agree to the production of a random sampling of bills, as audit staff did during the Commission audit conducted between September and November 2007. Staff, however, did not disclose the possibility of reducing the scope of POD No. 1 to four (4) months rather than eighteen (18) months until filing the Motion to Compel.

10. Reducing the number of documents requested and refining the scope of the analysis necessary on those documents will facilitate VCI's ability to comply with Staff's discovery requests in a reasonable amount of time in a manner greatly reducing the burden on its staff as well as the negative affect such the effort of compliance would have on VCI's core business.

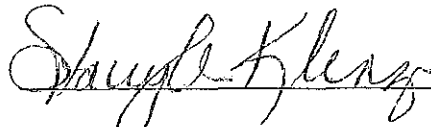
[SIGNATURE NEXT PAGE]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice has been served via Electronic Mail* to the persons listed below this 1st day of May, 2008:

Lee Eng Tan, Senior Attorney* Florida Public Service Commission, Office of the General Counsel 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 LTan@psc.state.fl.us	
Adam Teitzman, Supervising Attorney* Florida Public Service Commission, Office of the General Counsel 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 ateitzma@psc.state.fl.us	Beth Salak, Director/Competitive Markets and Enforcement* 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 bsalak@psc.state.fl.us

By:



Stacey Klinzman
 Regulatory Attorney
 VCI Company
 2228 S. 78th Street
 Tacoma, WA 98409-9050
 Telephone: (253) 830-0056
 Facsimile: (253) 475-6328
 Electronic mail: staceyk@vcicompany.com

TO AVOID PENALTY AND INTEREST CHARGES, THE REGULATORY ASSESSMENT FEE RETURN MUST BE FILED ON OR BEFORE 01/30/2007

Competitive Local Exchange Company Regulatory Assessment Fee Return

Florida Public Service Commission

STATUS:

- Actual Return
- Estimated Return
- Amended Return

PERIOD COVERED:
02/06/2006 TO 12/31/2006

(See Filing Instructions on Back of Form)

TX868-06-0-R
Vilaire Communications, Inc.
P. O. Box 98907
Lakewood, WA 98498-0907

70 JAN 8 2007

Please Complete Below if Official Mailing Address Has Changed

FOR PSC USE ONLY

Check # 8169
\$ 50.00 06-03-001
003001
\$ _____ E
\$ _____ P 06-03-001
004011
\$ _____ I
Postmark Date 7-16-07
Initials of Preparer ET

(Name of Company) (Address) (City/State) (Zip)

LINE NO.	ACCOUNT CLASSIFICATION	FLORIDA GROSS OPERATING REVENUE	INTRASTATE REVENUE
1.	Basic Local Services	\$ <u>6448.30</u>	\$ _____
2.	Long Distance Services (IntraLATA only) ⁽¹⁾	_____	_____
3.	Access Services	_____	_____
4.	Private Line Services	_____	_____
5.	Leased Facilities & Circuits Services	_____	_____
6.	Miscellaneous Services	_____	_____
7.	TOTAL REVENUES		\$ <u>6448.30</u>
8.	LESS: Amounts Paid to Other Telecommunications Companies ⁽²⁾		<u>4732.00</u>
9.	NET INTRASTATE OPERATING REVENUE for Regulatory Assessment Fee Calculation (Line 7 less Line 8)		\$ <u>1716.30</u>
10.	Regulatory Assessment Fee Due (Multiply Line 9 by 0.0020)		<u>34.26</u>
11.	Penalty for Late Payment (see "3. Failure to File by Due Date" on back)		<u>0</u>
12.	Interest for Late Payment (see "3. Failure to File by Due Date" on back)		<u>0</u>
13.	Extension Payment Fee (see "4. Extension" on back)		<u>0</u>
14.	TOTAL AMOUNT DUE (\$50 MINIMUM)		\$ <u>34.26</u> ⁽³⁾

- (1) Other long distance revenue must be listed on the Interexchange Regulatory Assessment Fee Return.
- (2) These amounts must be intrastate only and must be verifiable (see "2. Fees" on back).
- (3) Regardless of the gross operating revenue of a company, a minimum annual regulatory assessment fee of \$50 shall be imposed as provided in Section 364.336, Florida Statutes.

CURRENT COMPANY STATUS

- Facilities-Based Provider
- Reseller
- Other: _____

BILLING INFORMATION

Complete below if billing agent is other than yourself.

(Name) (Address, City/State/Zip) (Telephone)

COMPANY INFORMATION

Do you lease telecommunications' facilities? YES NO

If YES, who do you lease these facilities from? Name: _____

Address _____

I, the undersigned owner/officer of the above-named company, have read the foregoing and declare that to the best of my knowledge and belief the above information is a true and correct statement. I am aware that pursuant to Section 817.06, Florida Statutes, whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree.

(Signature of Company Official) (Title) (Date)

(Preparer of Form - Please Print Name) Telephone Number 206-291-3247 Fax Number ()

FBI No. 562416420

PSC/RMP/007 (Rev. 01/05)

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DOCUMENT NUMBER - DATE
03864 MAY -8 08
FPSC - COMMISSION CLERK

TO AVOID PENALTY AND INTEREST CHARGES, THE REGULATORY ASSESSMENT FEE RETURN MUST BE FILED ON OR BEFORE 01/30/2008

Competitive Local Exchange Company Regulatory Assessment Fee Return

Florida Public Service Commission

STATUS:

- Actual Return
- Estimated Return
- Amended Return

PERIOD COVERED:
01/01/2007 TO 12/31/2007

(See Filing Instructions on Back of Form)

TX868-07-0-R
 Vilaire Communications, Inc.
 P. O. Box 98907
 Lakewood, WA 98496-8907
 819 FEB 05 2008

FOR PSC USE ONLY

Check # 16259
 \$ 323.24 06-03-001
 003001
 \$ _____ E
 \$ _____ P 06-03-001
 004011
 \$ _____ I
 Postmark Date 1-30-08
 Initials of Preparer JA

Please Complete Below If Official Mailing Address Has Changed

(Name of Company) (Address) (City/State) (Zip)

LINE NO.	ACCOUNT CLASSIFICATION	FLORIDA GROSS OPERATING REVENUE	INTRASTATE REVENUE
1.	Basic Local Services	\$ <u>478709.21</u>	\$ _____
2.	Long Distance Services (IntraLATA only) ⁽¹⁾	_____	_____
3.	Access Services	_____	_____
4.	Private Line Services	_____	_____
5.	Leased Facilities & Circuits Services	_____	_____
6.	Miscellaneous Services	_____	_____
7.	TOTAL REVENUES		\$ <u>478709.21</u>
8.	LESS: Amounts Paid to Other Telecommunications Companies ⁽²⁾		<u>317039.21</u>
9.	NET INTRASTATE OPERATING REVENUE for Regulatory Assessment Fee Calculation (Line 7 less Line 8)		\$ <u>161630.08</u>
10.	Regulatory Assessment Fee Due (Multiply Line 9 by 0.0020)		<u>323.26</u>
11.	Penalty for Late Payment (see "3. Failure to File by Due Date" on back)		<u>0</u>
12.	Interest for Late Payment (see "3. Failure to File by Due Date" on back)		<u>0</u>
13.	Extension Payment Fee (see "4. Extension" on back)		<u>0</u>
14.	TOTAL AMOUNT DUE (\$600.00 MINIMUM)		\$ <u>323.26</u>

- (1) Other long distance revenue must be listed on the Interexchange Regulatory Assessment Fee Return.
- (2) These amounts must be intrastate only and must be verifiable (see "2. Fees" on back).
- (3) Regardless of the gross operating revenue of a company, a minimum annual regulatory assessment fee of \$600 shall be imposed as provided in Section 364.336, Florida Statutes.

CURRENT COMPANY STATUS

- Facilities-Based Provider
- Reseller
- Other: _____

BILLING INFORMATION

Complete below if billing agent is other than yourself.

(Name) (Address: City/State/Zip) (Telephone)

COMPANY INFORMATION

Do you lease telecommunications facilities? YES NO
 If YES, who do you lease these facilities from? Name: _____
 Address: _____

I, the undersigned owner/officer of the above-named company, have read the foregoing and declare that to the best of my knowledge and belief the above information is a true and correct statement. I am aware that pursuant to Section 837.06, Florida Statutes, whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree.

Stanley Johnson (Signature of Company Official) President (Title) 1/29/08 (Date)

Stanley Johnson (Preparer of Form - Please Print Name) Telephone Number (253) 973-2476 Fax Number _____

F.E.I. No. 56-2416420

DOCUMENT NUMBER-DATE

03864 MAY-08

FPSC-COMMISSION CLERK

Toll Limitation Service

1. According to the staff audit, VCI incurs a AT&T non-recurring TLS cost of \$ [REDACTED] after the resale discount, and a AT&T recurring TLS cost of \$ [REDACTED] after resale discount per month per customer.
 - a. Are these costs incurred from AT&T for each Lifeline customer, both Resale and UNE?
 - b. The VCI response also states that VCI charges Lifeline customers \$ [REDACTED] for TLS. How was this figure calculated?
2. How is the reimbursement of TLS handled? Does AT&T provide a credit to VCI for TLS?

Customer Invoices

3. All customer invoices provided the auditor are for \$ [REDACTED] which includes a \$ [REDACTED] late fee. Do all of VCI's customers pay late and incur the \$ [REDACTED] fee?
4. All customer invoices provided the auditor show a \$0. [REDACTED] state 911 fee. How was that number calculated?
5. How is the 911 fee administratively handled? Does AT&T pay the counties the 911 fee for VCI?
6. How does VCI handle the Florida Relay surcharge? Does VCI bill customers for it? Does AT&T pay it for you?
7. Seven of the customer invoices have telephone numbers with area codes not assigned to Florida. They are either Canada, Michigan, Texas, general purpose or not assigned area codes. Please explain.
8. The vast majority of telephone numbers on the invoices are either disconnected numbers or businesses. Please explain.

Lifeline

9. Does AT&T provide VCI a credit for resale Lifeline customers?
10. What is the present number of Lifeline UNE customers? Lifeline Resale customers?
11. Is VCI aware of any duplicate reimbursements received for Lifeline and Link-Up other than what our auditors discovered?

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FPSC-COMMISSION CLERK

Link-Up

12. It is our understanding that VCI's connection charge is \$ [REDACTED] minus the \$ [REDACTED] reimbursement from the universal service fund or \$ [REDACTED] payable over 12 months. What does AT&T charge VCI for a hook-up charge?
13. Does AT&T provide VCI any credit for the connection charge of Lifeline customers?

Advertising

14. VCI provided audit staff with invoices of advertising costs for Florida. Are there copies of the TV ads available? Is Lifeline and Link-Up mentioned in the ads or are they general VCI ads?

General

15. Since becoming an ETC in Florida, has VCI provided Lifeline service using a combination of resale and UNE lines for each month it was an ETC?
16. Were there any months that VCI provided Lifeline service as strictly a reseller?

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[REDACTED]

[REDACTED]

Disconnected
Disconnected
No answer
Disconnected
Disconnected
Disconnected
Disconnected
Disconnected
Disconnected
Disconnected
Disconnected
Disconnected
Fax number
Disconnected
No answer
No answer
VCI customer but not on Lifeline
Disconnected
[REDACTED] Bus.
Constantly Busy
Disconnected

[REDACTED]

[REDACTED]

Number not in service
Disconnected
Disconnected
Disconnected
Business line – not VCI
Disconnected
Disconnected
Disconnected
Voicemail
Disconnected
Not in service
Disconnected
Disconnected
Medical Dr. Office number for 9 yrs.
Has VCI and pays \$ [REDACTED]
each month directly from bank
account.

[REDACTED]

[REDACTED]

Disconnected
Disconnected
Disconnected
Disconnected

[REDACTED]

[REDACTED]

Not in service
Disconnected
Disconnected
Disconnected
Disconnected
Not in service
Not in service
Disconnected
Disconnected
Disconnected
Voicemail
Disconnected
Disconnected
Not in service
No answer
Disconnected
Not in service
Busy
Not in service
Disconnected
Disconnected
Disconnected
Disconnected
Disconnected
Never been with VCI

CONFIDENTIAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation of Vilaire Communications, Inc.'s eligible telecommunications carrier status and competitive local exchange company certificate status in the State of Florida.	DOCKET NO. 080065-TX DATED: MAY 5, 2008
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STAFF'S RESPONSE TO VILAIRE COMMUNICATIONS, INC.'S

**MOTION FOR RECONSIDERATION OF ORDER GRANTING MOTION TO COMPEL
AND REQUEST FOR ORAL ARGUMENT**

Pursuant to Rules 25-22.060 and 28-106.204, Florida Administrative Code (F.A.C.), Staff files this response in opposition to the Motion for Reconsideration of Order Granting Motion to Compel ("Motion") filed by Vilaire Communications, Inc. (VCI) on May 2, 2008. As explained below, VCI fails to meet its burden to demonstrate a material and relevant fact or law that the Public Service Commission ("Commission") overlooked or failed to consider upon issuance of Order No. PSC-08-0258-PCO-TX ("Order"), on April 25, 2008. In support thereof, Prosecutorial staff states as follows:

Background

On February 13, 2008, the Commission issued Order No. PSC-08-0090-PAA-TX ("PAA Order"), which proposed the Commission rescind VCI's Eligible Telecommunications Carrier ("ETC") status and cancel VCI's CLEC Certificate. In response, VCI filed a Protest of PAA Order PSC-08-0090-PAA-TX, issued 2/13/08, and Petition for Formal Hearing ("Protest"). An issue identification ("Issue ID") was held between Prosecutorial staff and VCI, on March 13, 2008, where 11 tentative issues were identified and agreed to. An Order Establishing Procedure ("OEP") was issued on March 26, 2008, setting out the procedure for the Section 120.57, Florida Statutes (F.S.), hearing requested by VCI.

Prosecutorial staff served discovery to VCI on March 31, 2008. On April 7, 2008, VCI filed its Objections to Prosecutorial staff's 1st set of Interrogatories (Nos. 1-38) and Production of Document Requests (Nos. 1-10) ("Discovery Objections"). VCI filed its Response to Prosecutorial staff's discovery requests on April 15, 2008, serving responses to only four of Prosecutorial staff's discovery requests. Prosecutorial staff filed its Motion to Compel VCI to respond to Prosecutorial staff's requests on April 22, 2008. As stated above, the Prehearing Officer issued an Order Granting the Motion to Compel on April 25, 2008.

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VCI's Request for Oral Argument

VCI's Motion for Reconsideration was accompanied by a Request for Oral Argument. Given that VCI's Motion for Reconsideration is insufficient on its face as a matter of law, Prosecutorial staff does not believe oral argument is appropriate. In addition, oral argument would not assist the Commission in rendering a decision. Based on the arguments set forth in VCI's Motion, Prosecutorial staff believes VCI's Request for Oral Argument is an attempt to argue the merits of its case. Consequently, Prosecutorial staff does not believe Oral Argument will aid the Commission in rendering its decision. Therefore, VCI's Request for Oral Argument should be denied.

VCI's Motion for Reconsideration

VCI's Motion for Reconsideration is nothing more than a shameless attempt to delay the ultimate resolution of this proceeding. VCI erroneously asserts that the Prehearing Officer based his Order on mistakes of fact and a misapplication of applicable law. In fact, in its Motion VCI simply re-argues its *Discovery Objections*, and ultimately exposes its true intention to needlessly delay resolution in this matter. For this reason alone, VCI's Motion should be summarily denied.

From the inception of the Commission's investigation into VCI's operation as an ETC and CLEC in the state of Florida, VCI has utilized delay tactics on several fronts, ranging from its reluctance to meet with Prosecutorial staff to its frivolous objections to Prosecutorial staff's discovery requests. In its March 5, 2008, protest letter of the PAA Order, VCI requested that this docket be set for a "Section 120.57(1), F.S. hearing to resolve the disputed issues of fact and law identified herein, and to allow VCI a full opportunity to present evidence and arguments as to why Order No. PSC-08-0090-PAA-TX should be rescinded." However, in its Motion, VCI now states that "VCI hereby 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 jurisdiction questions in Federal District Court under the concept that a motion to dismiss for lack of subject matter jurisdiction may be brought at any time."¹

First, as set forth in Prosecutorial staff's Motion to Compel, VCI should have requested that the Commission address jurisdiction as a threshold issue. Consequently, VCI incorrectly relies on this argument to support its objections to Prosecutorial staff's discovery requests. Furthermore, VCI's notice of its intention to file a Motion to Dismiss or Request Abeyance, while it seeks an appeal in Federal District Court is nothing more than that, a Notice of Intent. More importantly, an appeal to Federal District Court would surely fail because there has yet be a final agency action upon which to appeal.

Rather than allow the Commission's PAA order to become final, VCI chose to protest the Order and request a hearing. Thus, because the PAA Order did not become a Final Order, as a

¹ VCI Motion at 3.

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matter of law there have been no legal or factual findings by the Commission regarding VCI's operations as an ETC or CLEC in the state of Florida. This was clearly a calculated decision by VCI. Since the issuance of the PAA Order, VCI has received \$51,966.00 and \$53,461.00 in universal service funds from USAC for March and April for Florida. Now, after failing to respond to Prosecutorial staff's discovery requests, VCI has stated its intention to file a Motion to Dismiss or a Request for Abeyance pending a future appeal to Federal District Court. At best, VCI's Notice of Intent is a misunderstanding of applicable law and the status of this proceeding. At worst, it is a calculated attempt to delay resolution of this matter while it continues to receive funding from USAC for its operations as an ETC in the state of Florida. Until the Commission issues a Final Order setting forth its factual and legal findings, an appeal to Federal District Court would surely fail due to a lack of ripeness. Ripeness is a justiciability 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." Abbott Laboratories v. Gardner, 387 U.S. 136, 148-149, 18 L. Ed. 2d 681, 87 S. Ct. 1507 (1967); accord, Ohio Forestry Ass'n v. Sierra Club, 523 U.S. 726, 732-733, 140 L. Ed. 2d 921, 118 S. Ct. 1665 (1998). In fact, Diamond Cab Co. et al., v. Wilbur C. King et al., 146 So. 2d 889 (Fla. 1962), a case cited by VCI in its Motion, sets forth that "[f]or the purpose of judicial review the administrative process is completed upon the rendition of the final order. . ."²

Prosecutorial staff does note that if VCI would like this matter addressed in Federal District Court, Prosecutorial staff would certainly not oppose VCI's withdrawal of its Protest and Request for Hearing. Thus allowing the Commission to issue an Order consummating its PAA Order as a Final Order, which would then be ripe for review by a court of competent jurisdiction.

Standard of Review

A motion for reconsideration must identify a point of fact or law that the Commission overlooked or failed to consider in rendering the order. In re: Petition on behalf of Citizens of the State of Florida to require Progress Energy Florida, Inc. to refund customers \$143 million, Order No. PSC-08-0136-FOF-EI, issued March 3, 2008. In re: Petition for determination of need for electrical power plant in Taylor County by Florida Municipal Power Agency, JEA, Reedy Creek Improvement District, and City of Tallahassee, Order No. PSC-06-1028-FOF-EU, issued Dec. 11, 2006, citing Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So. 2d 162 (Fla. 1st DCA 1981); and State ex. Rel Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). This is the "sole and only purpose" of a motion for reconsideration, Green, 105 So. 2d at 818.

² Prosecutorial Staff notes that if the Commission were to entertain a Motion to Dismiss and appropriately find that the Commission does not lack subject matter jurisdiction, Prosecutorial staff would strongly oppose a stay of this proceeding pending the outcome of an appeal in recognition of the potential harm to Florida rate payers if VCI continued to receive universal service funds and the alleged misapplication of late payment fees.

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In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Reconsiderations granted based on re-arguing facts and evidence available to the Commission at the time the Motion to Compel was granted is a reversible error on appeal. Stewart Bonded Warehouse, Inc. 294 So. 2d at 317-318.

Staff does not believe that VCI has identified a point of fact or law that the Prehearing Officer overlooked or failed to consider in rendering the Order Granting Staff's Motion to Compel. Although VCI refers the Commission to the proper standard for granting reconsideration, VCI's Motion fails to meet that standard. Rather, VCI simply re-argues its general and specific objections to Prosecutorial staff's discovery requests.

In fact, VCI's Motion reads more like a Response to Staff's Motion to Compel. A Response that VCI chose not to file after Advisory staff apparently notified VCI that it would need to file an expedited Response.³ As a result, VCI's Motion is nothing more than a re-hashing of VCI's objections to Prosecutorial staff's discovery and fails to identify any accurate information not already at the disposal for the Prehearing Officer to consider and reject. Accordingly, staff respectfully requests that VCI's Motion for Reconsideration be summarily denied.

Irrelevant or discovery outside the scope of this proceeding

Although staff believes that VCI's Motion fails to meet the standard for reconsideration, staff feels compelled to respond to certain inaccuracies and allegations leveled against Prosecutorial staff.

Prosecutorial staff takes great issue with VCI's erroneous allegation that staff's discovery is an attempt at fishing. VCI's assertion in its Motion that Prosecutorial staff appears to be "fishing" as the "most likely basis for these requests" is an inaccurate and gross mischaracterization of Prosecutorial staff's discovery requests. As discussed below, 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.

Prosecutorial staff notes that parties have agreed to the following factual issues:

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 VCI Motion at 4.

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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?
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. (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?

VCI alleges in its Motion that Prosecutorial staff seeks expansive discovery for purposes beyond this proceeding and cites to the Direct Testimony of Robert Casey. VCI is referring to Prosecutorial staff's assertion that VCI may also have violated Section 364.336, F.S. by not paying a correct regulatory assessment fee (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:

"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

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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. It [VCI] has violated the terms and conditions upon which its CLEC certificate was granted, and has violated Commission rules and orders." (emphasis added)

Issue No. 11 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 Regulatory Assessment Form is clearly within the scope of this proceeding. This is just one example of VCI's misleading arguments in opposition to Prosecutorial staff's discovery.

VCI argues that Prosecutorial staff has not properly informed VCI of "additional charges" and cites that "[a]n agency cannot find a defendant in violation on an issue not charged in the original complaint against the defendant".⁴ 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 I.D. Furthermore, the OEP specifically stated 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."⁵

VCI's Billing

In its Motion, VCI's 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. VCI's assertion is a blatant falsehood. 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 ID 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.

⁴ Motion at 15, citing to Willner v. Dept. of Prof. Reg., 563 So. 2d 805 (Fla. 1st DCA 1990).

⁵ OEP at 1.

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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 June 6⁶ 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."⁷ The Commission is fully aware that in the regular course of business, members of Prosecutorial staff review a significant number of documents and bills related to the provisioning of telecommunications services in the state of Florida. In fact, Prosecutorial staff was fully aware that its request would yield thousands of bills and has already made preliminary plans to review VCI's bills in preparation for the June 4th hearing. Consequently, VCI's assertion should be given no weight.

Finally, with regard to the discussions that occurred between the parties prior to the filing of Prosecutorial staff's Motion to Compel, 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 Commission's 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.

Furthermore, Prosecutorial staff found that in dealing with local counsel, Prosecutorial staff incurred delays in receiving information in working toward resolution, especially important given the hearing time frame set forth in the OEP. Prosecutorial staff specifically 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. Prosecutorial staff determined that VCI had no intention to work out a compromise in good faith regarding Prosecutorial staff's discovery requests. Subsequently, in recognition of the need to receive VCI's bills and responses to additional discovery requests in a timely manner and VCI's

⁶ Prosecutorial staff notes that the hearing is actually scheduled for June 4, 2008.

⁷ Motion at 10.

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apparent reluctance to work with Prosecutorial staff in good faith, Prosecutorial staff filed its Motion to Compel to prevent further unreasonable delay.

Privileged Information

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

The commission 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 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.

Clearly, the Commission has authority pursuant to Section 364.183, F.S. to require VCI to provide any documents within the Commission's jurisdiction. As discussed above and in Prosecutorial Staff's Motion to Compel, it is not appropriate for VCI to allege the Commission lacks jurisdiction in order to avoid responding to Prosecutorial staff's discovery requests. VCI has failed to request that the Commission address the jurisdictional issues as threshold issues, and therefore, its assertion is *nothing more than a transparent attempt to unreasonably delay this proceeding.*

Additionally, VCI alleges in its Motion that Staff Interrogatory Nos. 11, 12, 13, and 33 and Production of Documents Request No. 9 are protected by the attorney work-product doctrine/attorney-client privilege. Rule 90.502(1)(c), 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

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anticipation of litigation”, and opinion work product, or “the attorney’s mental impressions, conclusions, opinions and theories.”⁸ Prosecutorial staff has made the following requests:

Interrogatories No.

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?

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?

Production of Documents No.

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.

Clearly, none of Prosecutorial staff’s requests would 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 eligible telecommunications carrier 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) of the Florida Rules of Civil Procedure.⁹ In fact, in its

⁸ Motion at 23.

⁹ Rule 1.280(b)(5), Florida Rules of Civil Procedure, sets forth that: When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things

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Discovery Objections, VCI does not even raise the attorney-client and/or attorney work-product privilege for Interrogatory Nos. 12, 13, or 33,¹⁰ that it now adds as privileged in its Motion for Reconsideration.

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 VCI’s claim that Prosecutorial staff “refused” to provide information regarding the VCI customers contacted by Commission staff. 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. Additionally, Prosecutorial staff’s concerns regarding VCI’s assessment of late payment fees was not solely based on the customers contacted, rather Prosecutorial staff’s concerns 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.¹¹

Finally, Prosecutorial Staff, in the interest of full cooperation and disclosure, 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.

Duplicative Requests

In Response to VCI’s claims that Prosecutorial staff is in possession of certain material it has requested in Production of Document Requests Nos. 4, 5, and 7 and Interrogatory Nos. 1 and 12. 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. Furthermore, as has been discussed in detail above, many of VCI’s claims are erroneous or misleading. Consequently, staff felt it necessary to request these materials and responses from VCI in anticipation of objections based on lack of proper authentication and/or hearsay. More importantly, 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.

not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

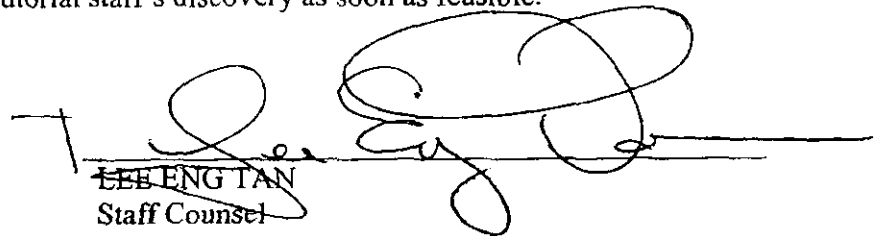
¹⁰ Discovery Objections at pgs. 7 and 13.

¹¹ See Tuesday, February 14, 2008, Agenda Conference, Item 4 Transcript at 44.

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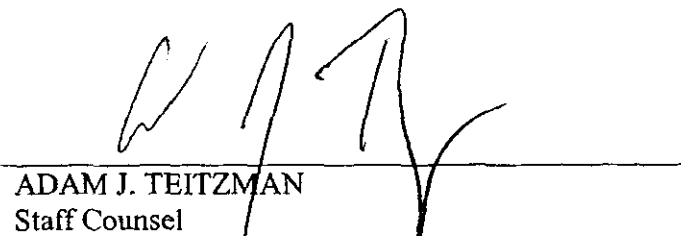
Conclusion

For the reasons set forth above, Prosecutorial staff respectfully requests that the Commission summarily deny VCI's Motion for Reconsideration and Request for Oral Argument and require VCI to respond to Prosecutorial staff's discovery as soon as feasible.



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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation of Vilaire Communications, Inc.'s eligible telecommunications carrier status and competitive local exchange company certificate status in the State of Florida.	DOCKET NO. 080065-TX DATED: MAY 5, 2008
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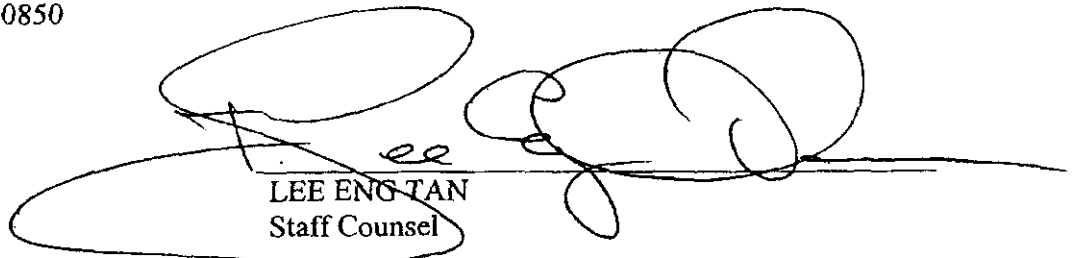
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and five correct copies of RESPONSE IN OPPOSITION has been filed with Office of Commission Clerk and one copy has been furnished to the following by U. S. mail or by (*) hand delivery, this 5th day of May, 2008:

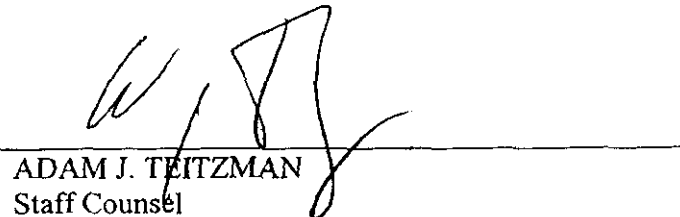
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