

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
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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

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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

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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.



NATHAN A. SKOP

Commissioner and Prehearing Officer

(SEAL)

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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.