

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080065-TX

In the Matter of:

INVESTIGATION OF VILAIRE COMMUNICATIONS,
INC.'S ELIGIBLE TELECOMMUNICATIONS
CARRIER STATUS AND COMPETITIVE LOCAL
EXCHANGE COMPANY CERTIFICATE STATUS IN
THE STATE OF FLORIDA.



PROCEEDINGS: HEARING

BEFORE: CHAIRMAN MATTHEW M. CARTER, II
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER KATRINA J. MCMURRIAN
COMMISSIONER NANCY ARGENZIANO
COMMISSIONER NATHAN A. SKOP

DATE: Wednesday, June 4, 2008

TIME: Commenced at 9:30 a.m.
Concluded at 9:43 a.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION 080065-TX JUN-9 08

FPSC-COMMISSION CLERK

1 PARTICIPATING:

2 LEE ENG TAN, ESQUIRE, and ADAM TEITZMAN, ESQUIRE,
3 FPSC General Counsel's Office, 2540 Shumard Oak Boulevard,
4 Tallahassee, Florida 32399-0850, representing Prosecutorial
5 Staff.

6 ROSANNE GERVASI, ESQUIRE, FPSC General Counsel's
7 Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida
8 32399-0850, representing Advisory Staff.

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P R O C E E D I N G S

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CHAIRMAN CARTER: Good morning.

We'll call this hearing to order, and ask staff would you please read the notice.

MS. GERVASI: Pursuant to notice, this time and place have been set for a hearing in Docket Number 080065-TX, in re: Investigation of Vilaire Communications, Inc.'s eligible communications carrier status and competitive local exchange company certificate status in the state of Florida.

CHAIRMAN CARTER: Let's take appearances.

MS. TAN: Lee Eng Tan and Adam Teitzman on behalf of the Commission.

MS. GERVASI: And Rosanne Gervasi on behalf of the Advisory Staff.

CHAIRMAN CARTER: Okay. Prosecution staff, okay. Prosecution staff; advisory staff.

MS. GERVASI: Yes, sir.

CHAIRMAN CARTER: Any preliminary matters?

MS. GERVASI: Yes, sir, there are.

There are two pending motions that the advisory staff suggests can be taken up as preliminary matters. And there is also a letter filed by VCI on May the 27th, 2008, stating that the company will not participate in the hearing. Because of their failure to participate also at the prehearing on May the 28th, no prehearing order has been issued in this case and the

1 prehearing officer's -- at the prehearing officers's direction
2 on June 2nd during the prehearing, advisory staff filed a legal
3 memorandum and a recommendation on the two pending motions
4 which are the prosecutorial staff's motion to impose sanctions,
5 which was filed on May the 13th, 2008, and VCI's motion to
6 dismiss or abate the proceeding, which was also filed on May
7 the 13th, 2008.

8 We also note for the Commission's information that on
9 Monday, June 2nd, 2008, the Federal District Court for the
10 Northern District of Florida denied VCI's motion for
11 preliminary injunctive relief of an emergency nature which VCI
12 filed in that court in an effort to restrain the Commission
13 from exercising subject matter jurisdiction over VCI in this
14 proceeding.

15 The advisory staff recommends that the prosecutorial
16 staff's motion to impose sanctions should be granted. Advisory
17 staff believes that by its willful disregard of the discovery
18 order and failure to participate in the prehearing and the
19 hearing, VCI has forfeited its right to a hearing in this case.
20 We recommend that VCI's protest of the PAA order and request
21 for a hearing should be dismissed with prejudice and that the
22 PAA order should be made final and effective by way of a
23 consummating order.

24 We further recommend that if the Commission agrees
25 with advisory staff's recommendation on the motion to impose

1 sanctions and grants it, that VCI's motion to dismiss or abate
2 the proceedings should be denied as moot, as well as its
3 request for oral argument on that motion.

4 **CHAIRMAN CARTER:** Thank you.

5 Commissioners, we have before us two pending motions.
6 One is the prosecutorial staff's motion to impose sanctions. I
7 suppose we probably just need to hear from you guys on your
8 motion just briefly and then we'll ask Commissioners if you
9 have any questions.

10 Commissioner Edgar.

11 **COMMISSIONER EDGAR:** Chairman, I would ask that when
12 staff gives us their overview if they could give us an overview
13 and a very brief analysis of why they are making the
14 recommendation request for sanctions and what those sanctions
15 would be.

16 **CHAIRMAN CARTER:** Okay. You're recognized.

17 **MS. TAN:** Thank you.

18 Prosecutorial staff believes in this instance that
19 VCI has failed to work with prosecutorial staff and with the
20 Commission's orders. Under Rule 1.380, Florida Rules of Civil
21 Procedure, if a company fails to comply with an order, the
22 Commission has the authority to strike out any pleadings or any
23 proceedings until that order is obeyed or dismissing the action
24 and proceeding with it.

25 In this particular situation, VCI has protested the

1 Commission's PAA order and, in fact, requested a 120.57(1)
2 hearing. And then what they did was they filed a letter
3 stating that they were not bound by that. It is prosecutorial
4 staff's belief that their failure to comply with that, their
5 failure to comply with our motion to compel, which the
6 Commission upheld, and where they failed to respond to anything
7 of substance in this docket frustrates our effort in order to
8 seek resolution in these dockets.

9 What we're trying to do here is find out the answers.
10 When they have failed to work with us, they have tied our hands
11 and they have not allowed us to go any farther. So it is our
12 opinion, that they should -- that there should be a motion for
13 sanctions and that what should happen is that they should
14 grant -- excuse me, is that they should go back to the original
15 PAA and the consummating order be granted.

16 **CHAIRMAN CARTER:** Thank you.

17 Commissioners, we're in our questioning phase. Any
18 further questions?

19 Recommendations?

20 Commissioner Skop.

21 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

22 **CHAIRMAN CARTER:** Commissioner, let me come back to
23 you for a second.

24 Commissioner Edgar.

25 **COMMISSIONER EDGAR:** I was going to make a motion if,

1 indeed, it was timely, but --

2 **CHAIRMAN CARTER:** I'll recognize you at the
3 appropriate time for the motion.

4 **COMMISSIONER EDGAR:** Okay.

5 **CHAIRMAN CARTER:** Commissioner McMurrin.

6 **COMMISSIONER McMURRIAN:** Thank you.

7 And I guess I will address this to advisory staff.
8 Looking at the recommendation we have before us, on the should
9 the docket be closed issue, should there be some time limit on
10 when VCI should complete the required refund of overcharges and
11 verify the transition of the customers to AT&T? I guess what I
12 was concerned about a little bit was how long -- if they
13 weren't cooperative, how long do we wait before we take some
14 kind of other action? And I don't know what that would be, but
15 since there is no time limit on it.

16 **MS. GERVASI:** I don't know the answer to that
17 question offhand. What I can tell you is that the staff will
18 not be filing any kind of a memo to administratively close the
19 docket unless all of those things happen and happen in an
20 efficient fashion. And I'm sure that if that doesn't happen
21 efficiently that the staff will bring a recommendation to
22 address what course of action, you know, the Commission should
23 take in that regard if it comes to that.

24 **COMMISSIONER McMURRIAN:** Thank you.

25 **CHAIRMAN CARTER:** Commissioners, anything further?

1 Commissioner Edgar, you're recognized for a motion.

2 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

3 I would make a motion at this time in support of the
4 staff recommendations on Issues 1, 2, and 3, and also as part
5 of that motion recognize the questioning and answers that we
6 just had with the further direction to staff to very closely
7 monitor the steps that are laid out in the recommendation under
8 Issue 3 and bring it back before us if, indeed, there is a
9 need.

10 **CHAIRMAN CARTER:** Thank you.

11 **COMMISSIONER SKOP:** Second, Mr. Chairman.

12 **CHAIRMAN CARTER:** Thank you. Thank you,
13 Commissioners.

14 We are into our debate. Just from the
15 for-whatever-it's-worth department, Commissioners, is that for
16 a company to engage in this kind of behavior, it's shocking in
17 that they asked for the hearing, then when we granted them the
18 hearing, they decide they don't want to participate, and rather
19 than participating in the process they even go so far as to the
20 federal district court to say that we don't have jurisdiction,
21 and all they really had to do was respond to the case that's
22 presented.

23 So I think that staff is right on this, and I think
24 it's the right thing to do to send a clear message that you
25 can't just flaunt or thumb your nose up at the law of the state

1 of Florida or the process that we have here, nor the rights of
2 the citizenry of Florida. So, with that, Commissioners, I just
3 wanted to put in my two cents before we had a vote. But, we
4 are in debate. Commissioners?

5 Commissioner Argenziano.

6 **COMMISSIONER ARGENZIANO:** Mr. Chair, you're 100
7 percent correct. I think that they may have felt they had
8 certain rights and things that they wanted to do, but they
9 really repeatedly failed to work with staff. The information
10 that would help us come to a conclusion they would not give.
11 And, in the meantime, the people of the state of Florida are at
12 risk.

13 **CHAIRMAN CARTER:** At risk, absolutely.

14 **COMMISSIONER ARGENZIANO:** So I think you're 100
15 percent correct, and I'm glad that staff came down with such
16 good recommendations, because I don't think you had any other
17 choice at this point.

18 **CHAIRMAN CARTER:** Commissioners, anything further?

19 Hearing none, Commissioners, all those in favor let
20 it be known by the sign of aye.

21 (Unanimous affirmative vote.)

22 **CHAIRMAN CARTER:** All those opposed, like sign. Show
23 it done.

24 Ms. Gervasi, anything further? One second.

25 Commissioner Skop, you're recognized, sir.

1 **COMMISSIONER SKOP:** Thank you, Chairman.

2 Just a question to advisory staff, just based on the
3 vote on the two pending motions which were dispositive in this
4 case. Will advisory staff also be notifying our relevant
5 sister agencies and/or federal agencies of our decision?

6 **MS. GERVASI:** Yes, sir. In fact, the PAA order which
7 will be revived requires that, or directs the staff to do just
8 that.

9 **COMMISSIONER SKOP:** Thank you.

10 **CHAIRMAN CARTER:** Thank you, Commissioner Skop. We
11 appreciate that. And that's very critical, is that you
12 can't just -- if you don't get the decision you like here, you
13 can't run here and run there. That's very critical and I
14 appreciate that.

15 Ms. Gervasi, anything further?

16 **MS. GERVASI:** With that decision, there's obviously
17 no need for an evidentiary hearing at this point. We will
18 issue the consummating order, and the order will memorialize
19 your decision made today as well as making the PAA order final
20 and effective. And there are no other pending matters that I'm
21 aware of.

22 **CHAIRMAN CARTER:** Commissioners? With nothing
23 further, we're adjourned.

24 (The hearing concluded at 9:43 a.m.)

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2 STATE OF FLORIDA)

3 : CERTIFICATE OF REPORTER

4 COUNTY OF LEON)

5

6 I, JANE FAUROT, RPR, Chief, Hearing Reporter Services
7 Section, FPSC Division of Commission Clerk, do hereby certify
8 that the foregoing proceeding was heard at the time and place
9 herein stated.

8

9 IT IS FURTHER CERTIFIED that I stenographically
10 reported the said proceedings; that the same has been
11 transcribed under my direct supervision; and that this
12 transcript constitutes a true transcription of my notes of said
13 proceedings.

11

12 I FURTHER CERTIFY that I am not a relative, employee,
13 attorney or counsel of any of the parties, nor am I a relative
14 or employee of any of the parties' attorney or counsel
15 connected with the action, nor am I financially interested in
16 the action.

14

DATED THIS 9th day of June, 2008.

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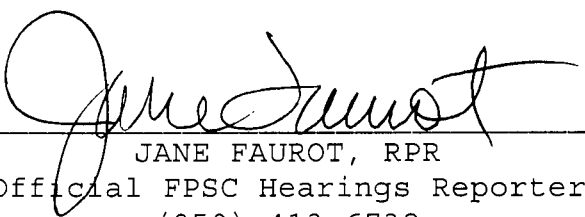
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