

State of Florida



Public Service Commission

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COMMISSION
CLERK

DATE: January 31, 2008

TO: Office of Commission Clerk (Cole)

FROM: Division of Competitive Markets & Enforcement (Casey, Mann)
Office of General Counsel (Tan)

RE: Docket No. 080065-TX – Investigation of Vilaire Communications, Inc. (VCI) Eligible Telecommunications Carrier status and Competitive Local Exchange Company Certificate status in the State of Florida.

AGENDA: 02/12/08 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

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

Case Background

Vilaire Communications, Inc. (VCI or Vilaire) is a Florida Public Service Commission (FPSC or Commission) certificated competitive local exchange company (CLEC) which provides service in BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast Florida's (AT&T) territory. On May 22, 2006, the Commission designated VCI as an Eligible Telecommunications Carrier (ETC) in AT&T's service area.¹ VCI's purpose in seeking ETC status was solely to provide Link-Up and Lifeline services to low-income Florida consumers. All VCI customers participate in the Lifeline program. No Universal Service high-

¹ Order PSC-06-0436-PAA-TX, issued May 22, 2006, in Docket No. 060144-TX.

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cost funding has been sought by VCI in Florida. VCI is a privately held company headquartered in Lakewood, Washington, and is authorized to conduct business as a foreign corporation in the state of Florida. It operates or has obtained authority to operate in 15 states.

As part of the FPSC's ongoing effort to monitor Universal Service Funds being distributed to ETCs in Florida, staff reviews the Universal Service Administrative Company's (USAC) disbursement database on a monthly basis. Because of the rapid growth in Lifeline customers served by VCI,² and the FPSC's commitment to monitor Universal Service Funds received by ETCs, staff sent a data request to VCI on May 4, 2007, seeking information on VCI's policies regarding Link-Up and Lifeline. VCI provided its responses to the data request on June 15, 2007.

On August 15, 2007, the Federal Communications Commission (FCC) released a "Notice of Apparent Liability for Forfeiture and Order"³ against VCI. The Order found that VCI violated FCC rules by repeatedly failing to keep and provide the USAC accurate records of revenues it was forgoing in providing Link Up and Lifeline service in Minnesota, Oregon, and Washington. In addition, the FCC found that VCI violated federal law by willfully or repeatedly receiving duplicate reimbursement for qualifying low-income consumers served and determined that VCI is liable for a total forfeiture of \$1,047,500. The FCC ordered VCI to submit revised Form 497s to USAC within 30 days excluding all requests for duplicate universal service reimbursement for qualifying low-income customers served from August 2004 to August 2007. VCI relinquished ETC status and ceased all telecommunications service operations in Washington on January 11, 2007, and in Oregon on February 1, 2007.

On September 7, 2007, staff notified VCI via letter that it would be conducting an audit of the low-income Florida USAC programs in accordance with Commission audit procedures. On September 18, 2007, staff received a phone call and subsequent e-mail from VCI questioning the Commission's authority to conduct an audit of Universal Service Funds. VCI requested something in writing defining our authority to initiate an audit. On September 19, 2007, staff conducted a conference call with VCI explaining the Commission's authority to conduct an audit, after which VCI withdrew its request for a written explanation concerning the FPSC's legal authority.

A staff auditor's report was issued November 5, 2007. A post-audit conference call was held with VCI on November 27, 2007, to discuss the audit findings. VCI was advised on the call that it had the opportunity to submit a written reply to the audit if it chose to do so. No written reply was received from VCI. On January 9, 2008, staff conducted another conference call with VCI to provide it the opportunity to explain some of the audit findings and additional information staff obtained from USAC and AT&T. This recommendation addresses the staff auditor's findings, information staff received from the USAC, and information obtained by subpoena from VCI's underlying carrier in Florida, AT&T.

² VCI's Florida reimbursements from USAC went from \$5,197 in August 2006 to \$80,004 in December 2007 with the highest month being March 2007, with \$157,041 being reimbursed.

³ In the Matter of VCI Company Apparent Liability for Forfeiture, File No. EB-07-IH-3985, NAL/Acct. No. 200732080033, FRN No. 0015783004, FCC 07-148, Released August 15, 2007.

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Staff believes time is of the essence in addressing VCI's apparent misconduct. Since VCI began receiving reimbursement for low-income support in August 2006, it has received over \$1.3 million in Universal Service Funds for providing Link-Up and Lifeline services to consumers in Florida. During November and December 2007, VCI received an average of over \$20,000 a week in Universal Service Fund disbursements for Link-Up and Lifeline reimbursement in Florida. Staff also discovered VCI was overcharging customers for E911 service. The Commission has authority under Section 364.10(2), Florida Statutes, to regulate eligible telecommunications carriers pursuant to 47 C.F.R. s. 54.201.

Discussion of Issues

Issue 1: Should the Commission order VCI to refund excess E911 fees collected from customers?

Recommendation: Yes. Staff recommends that the Commission order VCI to provide staff with a revised worksheet showing the total amount of E911 overcharges since VCI received certification in Florida. The worksheet should be provided within 30 days of the Commission Order, and VCI should refund those overcharges within ninety days of the Commission Order in accordance with Rule 25-4.114, Florida Administrative Code. In addition, a preliminary refund report should be made within 30 days after the date the refund is completed and again 90 days thereafter. A final report should be made after all administrative aspects of the refund are completed. Unclaimed refunds and refunds less than one dollar should be remitted to this Commission for deposit in the state of Florida General Revenue Fund. (Casey, Mann, Tan)

Staff Analysis: During staff's audit of VCI's Link-Up and Lifeline procedures, auditors requested a sample of VCI's monthly customer bills. While analyzing the monthly bills, staff discovered that VCI was billing its customers \$0.75 per month for an E911 fee. Section 365.172(8)(3)(f), Florida Statutes, provides that:

The rate of the fee shall be set by the board after considering the factors set forth in paragraphs (h) and (i), but may not exceed 50 cents per month per each service identifier. The fee shall apply uniformly and be imposed throughout the state, except for those counties that, before July 1, 2007, had adopted an ordinance or resolution establishing a fee less than 50 cents per month per access line. In those counties the fee established by ordinance may be changed only to the uniform statewide rate no sooner than 30 days after notification is made by the county's board of county commissioners to the board.

Staff advised VCI of the maximum E911 fee allowed in Florida during the January 9, 2008, conference call. Some monthly bills included customers who were located in counties which have an E911 fee less than the maximum \$0.50 monthly fee. VCI indicated that it would refund any excess E911 fees collected. Staff requested that VCI provide a worksheet showing the total amount of E911 overcharges, along with its proposed plan for refunding the excess fees to current and former customers.

On January 16, 2008, VCI provided staff with a worksheet showing E911 overcharges and its proposed plan for refunds. However, the worksheet showed almost 60,000 less access lines than VCI claimed for Lifeline reimbursement from the USAC. Therefore, staff recommends that the Commission order VCI to provide staff with a revised worksheet showing the total amount of E911 overcharges since VCI received certification in Florida. The worksheet should be provided within 30 days of the Commission Order, and VCI should refund those overcharges within ninety days of the Commission Order in accordance with Rule 25-4.114, Florida Administrative Code. In addition, a preliminary refund report should be made within 30 days after the date the refund is completed and again 90 days thereafter. A final report should be made after all administrative aspects of the refund are completed. Unclaimed refunds and

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refunds less than one dollar should be remitted to this Commission for deposit in the state of Florida General Revenue Fund.

Issue 2: Should VCI's eligible telecommunications carrier status be rescinded?

Recommendation: Yes, VCI's eligible telecommunications carrier status should be rescinded if this Proposed Agency Action becomes final upon issuance of a consummating order. Staff also recommends that if the Commission approves staff's recommendation, results of staff's investigation along with the Commission Order should be forwarded to the USAC, the FCC, and the Department of Justice for further follow-up to recover federal Universal Service Funds obtained by VCI through misrepresentations made to the USAC. (Casey, Mann, Tan)

Staff Analysis: Under the low-income support mechanism, the Link-Up and Lifeline programs provide discounts to qualifying low-income consumers for basic telephone service. In addition, qualifying low-income consumers have the option to elect Toll Limitation Service (TLS) at no extra charge to avoid a deposit requirement. Link-Up provides qualifying low-income consumers with a 50% discount (maximum \$30) on initial costs of installing telephone service. The low-income mechanism allows an ETC providing services to qualifying low-income consumers to seek and receive reimbursement from the Federal Universal Service Fund (USF) for revenues it forgoes as a result. In order for a carrier to receive low-income support, the carrier must first be designated as an ETC.

VCI was granted ETC status by the FPSC on May 22, 2006. By receiving ETC status in Florida, VCI is able to receive low-income support from the USF. The following table shows the amounts received by VCI since becoming an ETC in Florida.

Month/Year	Lifeline	Link-Up	TLS	Total
December 2007	\$57,955	\$14,912	\$7,137	\$80,004
November 2007	\$66,634	\$14,728	\$6,200	\$87,562
October 2007	\$41,492	\$10,410	\$5,103	\$57,005
September 2007	\$59,693	(\$1,876)	\$5,632	\$63,449
August 2007	\$53,871	\$23,877	\$(18,204)	\$59,544
July 2007	\$33,405	\$4,261	\$11,556	\$49,222
June 2007	\$64,246	\$51,378	\$25,353	\$140,977
May 2007	\$71,442	\$33,420	\$27,881	\$132,743
April 2007	\$81,093	\$24,690	\$32,244	\$138,027
March 2007	\$79,913	\$41,400	\$35,728	\$157,041
February 2007	\$61,936	\$30,845	\$32,285	\$131,066
January 2007	\$37,839	\$67,689	\$29,466	\$134,994
December 2006	\$19,825	\$7,527	\$8,162	\$35,514
November 2006	\$8,333	\$16,989	\$7,062	\$32,384
October 2006	\$4,681	\$4,030	\$2,483	\$11,194
September 2006	\$1,651	\$3,090	\$1,321	\$6,062
August 2006	\$1,021	\$3,060	\$1,116	\$5,197
Total	\$745,030	\$350,430	\$224,525	\$1,319,985

Lifeline

47 C.F.R. Section 54.201(d)(1) provides that an ETC must offer the services that are supported by federal universal service support mechanisms either using its own facilities or a combination of its own facilities and resale of another carrier's services. 47 C.F.R. Section 54.201(i) provides that an ETC cannot offer the services that are supported by federal universal service support mechanisms exclusively through the resale of another carrier's services. At the time of its ETC designation petition, VCI stated that it would offer all of the supported services using a combination of its own facilities and resale of another carrier's services.⁴

ETCs in Florida provide a \$13.50 discount to Lifeline customers' monthly bills. For ETCs that serve the Lifeline customer through a leased network element, \$10.00 of that discount is reimbursable from the USF through the USAC. For ETCs which serve the Lifeline customer through resale of Lifeline service, a \$10.00 credit is applied to that ETC's monthly bill by the underlying ETC which in this case is AT&T. The ETC is not entitled to directly collect \$10.00 from the USAC. AT&T in turn files for, and receives reimbursement from, the USAC for the \$10.00 credit provided to VCI. The other \$3.50 discount for consumers is provided by VCI.

Staff's analysis of low-income funds received by VCI discovered that VCI is receiving double compensation by receiving a \$10.00 Lifeline credit from AT&T for each resale Lifeline customer, and also filing for and receiving a \$10.00 reimbursement from the USAC for each resale Lifeline customer. The analysis also shows that from June 2006 through November 2006, VCI received USF monies but did not provide universal service support using a combination of its own facilities and resale of another carrier's services, as required by Section 54.201(i), C.F.R. It operated as strictly a reseller in those months. Staff's analysis reveals that VCI was overpaid \$744,880 from the USF for Lifeline customers from June 2006 through December 2007.

Link-Up

The Link-Up program helps low-income consumers initiate telephone service by paying one-half (up to a maximum of \$30) of the initial installation fee for a traditional, wireline telephone or activation fee for a wireless telephone. It also allows participants to pay the remaining amount on a deferred schedule, interest-free.

VCI has a normal \$150 installation fee for initiation of service. For Lifeline customers, VCI charges a \$120 installation charge after a \$30 Link-Up credit for initiation of service. VCI allows the customers to pay this hook-up charge at \$10/month for 12 months. AT&T's tariffed connection charge is \$46.00. For resold services, AT&T's connection charge is \$35.96 (after a 21.83% resale discount) to VCI. Since this connection is for a Lifeline customer, AT&T passes through a credit of \$23.00 (50% of \$46.00) to VCI and receives reimbursement from the USAC for passing through this Link-Up credit. VCI's final cost for the Lifeline customer hook-up charge is \$12.96 (\$35.96-\$23.00).

⁴ See February 16, 2006, VCI Application for Designation as an Eligible Telecommunications Carrier in the State of Florida in BellSouth Telecommunications Inc. service area. (Page 7, ¶ 14)

Staff's analysis of VCI's Link-Up charges for Lifeline customers shows that in addition to receiving a \$23.00 USF resale Link-Up credit from AT&T, VCI files for and receives a \$30.00 Link-Up reimbursement from the USAC for its resold Lifeline access lines. The maximum credit allowed by Federal rule is 50% of the hook-up charge or \$30, whichever is greater. Based on conversations with the USAC, only one Link-Up USAC payment is allowed per access line. In this case, the appropriate Link-Up credit would be \$23.00 (50% of the AT&T tariffed charge of \$46.00) for the resold Link-Up line. VCI cannot file for a \$30.00 reimbursement or the \$7.00 difference between the \$23.00 credit and the \$30.00 maximum cap. In addition, staff auditors discovered that VCI submitted 546 duplicate phone numbers to the USAC for reimbursement of Link-Up monies during the period June 1, 2006 through June 30, 2007. Staff's analysis shows that VCI was overpaid \$350,370 from the USF for Link-Up customers since becoming an ETC in Florida.

TLS

Toll Limitation Service (TLS) is an optional service which includes toll blocking (allows subscribers to block outgoing toll calls) and toll control (allows subscribers to limit in advance their toll usage per month or billing cycle). An ETC may not collect a service deposit in order to initiate Lifeline service if the qualifying low-income consumer voluntarily elects toll blocking. If the qualifying low-income consumer elects not to place toll blocking on the line, an eligible telecommunications carrier may charge a service deposit. Section 364.10(2)(b), Florida Statutes, provides that:

An eligible telecommunications carrier shall offer a consumer who applies for or receives Lifeline service the option of blocking all toll calls or, if technically capable, placing a limit on the number of toll calls a consumer can make. The eligible telecommunications carrier may not charge the consumer an administrative charge or other additional fee for blocking the service.

ETCs are allowed to receive reimbursement from the USF for the incremental costs of providing TLS. By definition, incremental costs include the costs that carriers otherwise would not incur if they did not provide toll-limitation service to a given customer. ETCs are not allowed to receive support for their lost revenues in providing toll-limitation services (defined as the amount customers normally would pay for the service).⁵ Incremental costs do not include overhead and costs for services or equipment used for non-toll limitation purposes.

In VCI's original petition for ETC status in Florida, it stated that it will provide the toll limitation service that AT&T has the technological capacity to provide.⁶ In response to a November 30, 2007, staff data request, AT&T stated that it does not bill VCI for providing TLS to VCI's Lifeline customers. The USAC disbursement records show that VCI has received \$224,525 in TLS reimbursement from the USF from June 2006 through December 2007.

⁵ In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Released May 8, 1997, FCC 97-157 (¶ 386).

⁶ See February 16, 2006, VCI Application for Designation as an Eligible Telecommunications Carrier in the State of Florida in BellSouth Telecommunications Inc. service area. (Page 10, ¶ 16)

When VCI was questioned about claiming the incremental cost of providing TLS from the USAC, it stated that AT&T's toll-blocking has leaks and it had to develop its own TLS system in addition to using AT&T's toll blocking to plug the leaks. VCI stated that customers would incur toll costs by dialing 411 or the operator. A subsequent inquiry by staff to AT&T shows that VCI customers are unable to dial 411 or the operator using AT&T's toll-blocking service. VCI claimed customers could dial around and incur toll charges. When asked how VCI Lifeline customers can dial 411, it replied by using a 1-800 number to VCI's offices to get a VCI operator. Staff believes this does not create a leak in AT&T's toll-blocking service. It only creates an avenue for VCI to charge for 411 or operator services using VCI operators.

During the January 9, 2008, conference call with VCI, staff asked VCI to provide a detailed breakdown of VCI's incremental cost showing recurring and non-recurring costs incurred to provide TLS service to Lifeline customers. VCI filed its response on January 16, 2008, providing a listing of equipment and costs to provide TLS service to Lifeline customers. Since the equipment listed by VCI could also be used for purposes other than TLS, it is staff's belief that the equipment is not reimbursable from the USAC through the TLS program.

Since AT&T does not charge VCI for its toll-blocking service for Lifeline customers, VCI does not incur any incremental cost for providing TLS to its Lifeline customers. Therefore, staff believes that VCI was overpaid \$224,525 for reimbursement of costs to provide TLS.

USAC Form 497

In order for ETCs to receive reimbursement for providing Lifeline, Link-Up and TLS services to customers it serves using its own facilities,⁷ ETCs file what is known as Form 497 with the USAC. The form is divided into three categories – Lifeline, Link-Up, and TLS. ETCs enter the number of Lifeline, Link-Up and TLS customers in each category along with the dollar amounts requested from the USAC. An officer of the ETC company is required to sign the form certifying that the data contained in the form has been examined and is true, accurate, and complete.

As part of the investigation of VCI's Lifeline and Link-Up practices, staff reviewed each monthly Form 497 submitted to the USAC by VCI for Florida. Staff also obtained (by subpoena) information from VCI's underlying carrier (AT&T) in order to compare the number of resale and leased network element Lifeline access lines provided to VCI by AT&T, and the number of Lifeline, Link-Up, and TLS access lines claimed on VCI's Form 497s submitted to the USAC. Staff's examination showed that VCI improperly completed the Form 497s by claiming multiple thousands of access lines which were actually resale Lifeline customers for which it had already received reimbursement through AT&T's resale Lifeline program.

The disparity between actual AT&T access lines used by VCI and the amount of access lines claimed on the Form 497s has increased dramatically in recent months. Based on access line information obtained by subpoena from AT&T, VCI has been reporting not only resale

⁷ Resale Lifeline and Link-Up reimbursement is received through an ETCs underlying ETC carrier.

Lifeline access lines for which it already receives a credit for from AT&T, but also non-existent access lines in the thousands for which it received reimbursement from the USAC.

Designation and Revocation of ETC Status

State commissions have the primary responsibility for performing ETC designations. 47 C.F.R. Section 54.201(c), provides that:

Upon request and consistent with the public interest, convenience, and necessity, the state commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the state commission, so long as each additional requesting carrier meets the requirements of paragraph (d) of this section. Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the state commission shall find that the designation is in the public interest.

CFR Rule 54.201(d), provides that carriers designated as ETCs shall, throughout the designated service area: (1) offer the services that are supported by federal universal support mechanisms either using their own facilities or a combination of their own facilities and the resale of another carrier's services, and (2) advertise the availability of such services and the related charges therefore using media of general distribution.

In addition to state commissions having the primary responsibility for performing ETC designations, they also possess the authority to rescind ETC designations for failure of an ETC to comply with the requirements of section 214(e) of the Telecommunications Act or any other conditions imposed by the state.⁸ The FCC found that individual state commissions are uniquely qualified to determine what information is necessary to ensure that ETCs are complying with all applicable requirements, including state-specific ETC eligibility requirements.⁹

Section 214(e) requires that an ETC offer the services that are supported by Federal universal service support mechanisms either using its own facilities or a combination of its own facilities and resale of another carrier's services. For six months, VCI operated as a strict reseller and did not meet this requirement. Section 214(e) also requires that VCI's ETC designation should be consistent with the public interest, convenience, and necessity. Based on staff's investigation, staff believes this requirement has not been met by VCI.

Conclusion

Federal law provides that state commission ETC designations must be consistent with the public interest, convenience and necessity.¹⁰ Staff's analysis indicates that VCI has been

⁸ In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Released March 17, 2005, FCC 05-46 (¶ 71-72)

⁹ Id.

¹⁰ § 54.201(c), Code of Federal Regulations.

receiving USAC payments for Florida Link-Up and Lifeline customers and also receiving credits from AT&T for the same Link-Up and Lifeline customers. VCI has consistently overstated the number of access lines eligible for reimbursement from the USAC. Based on access line information obtained by subpoena from AT&T, VCI has been reporting ineligible resale Lifeline access lines and non-existent access lines in the thousands for which it received reimbursement from the USAC.

VCI has received a \$10 monthly credit for Lifeline customers from AT&T and also filed for and received a \$10 Lifeline payment from the USF fund for each resale Lifeline customer. VCI has been receiving a \$23.00 resale Link-Up credit from AT&T and has also filed for and received a \$30 Link-Up reimbursement for the same customers. VCI has filed for and received reimbursement for incremental costs of providing TLS when VCI did not incur any TLS incremental costs.

Staff believes VCI was overpaid \$1,319,775 in Florida through the Link-Up, Lifeline, and TLS programs from August 2006 through December 2007. VCI has been obtaining double compensation by receiving resale Link-Up and Lifeline credits from AT&T, while at the same time receiving Link-Up, Lifeline, and TLS monies from the USF for the same customers. Staff believes because of VCI's misuse of the Federal Universal Service Fund, it is no longer in the public interest to allow VCI to retain ETC designation in Florida. Therefore, staff recommends that VCI's ETC status should be rescinded if this Proposed Agency Action becomes final upon issuance of a consummating order. Staff also recommends that if the Commission approves staff's recommendation, results of staff's investigation along with the Commission Order should be forwarded to the USAC, the Federal Communications Commission, and the Department of Justice for further follow-up to recover federal USF funds obtained by VCI through misrepresentations made to the USAC.

Issue 3: Should the Commission cancel Vilaire Communications, Inc.'s Competitive Local Exchange Company Certificate No. 8611 for its demonstrated lack of technical, financial, and managerial capability to operate a telecommunications company in Florida?

Recommendation: Yes. Staff recommends the Commission cancel Vilaire Communications, Inc.'s Competitive Local Exchange Company Certificate No. 8611 for its demonstrated lack of technical, financial, and managerial capability to operate a telecommunications company in Florida, effective as of the date of the consummating order. VCI should continue to have an obligation to pay the applicable regulatory assessment fees (RAFs) and refund the E911 overcharges addressed in Issue 2. If Vilaire Communications, Inc. certificate is cancelled and the company does not pay its RAFs, the collection of the RAFs should be referred to the Florida Department of Financial Services, for further collection efforts. (Casey, Mann, Tan)

Staff Analysis: Vilaire Communications, Inc. was granted Certificate No. 8611 to provide Competitive Local Exchange Company (CLEC) service in Florida on January 10, 2006.¹¹ In that Order, the Commission noted that it appeared that Vilaire had sufficient technical, financial, and managerial capability to provide such service. Based on staff's investigation enumerated in Issues 1 and 2, staff believes that Vilaire no longer has the technical, financial, and managerial capability to provide CLEC service in the state of Florida. Rule 25-24.572(1) provides that the Commission may cancel a company's certificate for any of the following reasons:

- (a) Violation of the terms and conditions under which the authority was originally granted;
- (b) Violation of Commission rules or orders; or
- (c) Violation of Florida Statutes.

In addition to the items uncovered in Issues 1 and 2 of this recommendation, staff discovered the following during its investigation:

- Seven phone numbers of the 130 sample invoices from Florida obtained by FPSC auditors contained area codes for Canada, Georgia, Texas, Michigan, one fictitious area code, and two area codes that are not even assigned yet. However, each of the addresses on the bills had Florida addresses. Staff believes these bills may not represent real customers.
- Staff called the telephone numbers provided on the 130 invoices and found that 77 numbers were disconnected, 9 had recordings that the numbers were not in service, 4 were business numbers not eligible for Lifeline, 2 were consumers that stated they were not customers of VCI, and 1 was a consumer who stated he was a VCI customer but not on the Lifeline program. Two customers confirmed that VCI was their provider of service and that they were participants in the Lifeline program.
- A check of the 130 sample VCI invoices also showed that every customer was paying a \$10 late fee. Staff asked VCI how all 130 customers in the random sample could have paid their bill late. VCI replied that it was a coincidence. During staff's calls to verify the VCI customers, one

¹¹ PSC-06-0035-PAA-TX, issued January 10, 2006, in Docket No. 050865-TX.

customer stated that VCI's payment was automatically paid from his checking account, and it still showed a late payment on his invoice.

Staff believes it is no longer in the public interest to allow Vilaire to provide telecommunications service in Florida. Vilaire's certificate was granted based on Vilaire having sufficient technical, financial, and managerial capability to provide CLEC service. Given the issues brought to light in Issues one and two, along with the issues shown above, staff believes that Vilaire no longer possesses the technical, financial, and managerial capability as required by Section 364.337(3), Florida Statutes, to provide CLEC service in the state of Florida. Therefore, staff recommends the Commission cancel Vilaire Communications, Inc.'s Competitive Local Exchange Company Certificate No. 8611 for its demonstrated lack of technical, financial, and managerial capability to operate a telecommunications company in Florida, effective as of the date of the consummating order. VCI should continue to have an obligation to pay the applicable regulatory assessment fees (RAFs) and refund the E911 overcharges addressed in Issue 2. If Vilaire Communications, Inc.'s certificate is cancelled and the company does not pay its RAFs, the collection of the RAFs should be referred to the Florida Department of Financial Services, for further collection efforts.

Issue 4: Should the Commission approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of Vilaire Communications, Inc.'s customers to AT&T-Florida, Inc.?

Recommendation: If the Commission approves Issue 3, staff recommends that the Commission waive the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, to allow VCI's customers who do not select another carrier to seamlessly transfer over to AT&T effective as of the date of the consummating order. AT&T should be ordered to serve VCI's existing Lifeline customers during a transitional period where former VCI customers can choose to stay with AT&T at AT&T's existing Lifeline rates and terms or select another carrier of their choice. AT&T should also be required to provide the Commission with all necessary customer information of current VCI customers to allow the Commission to contact them. (Casey, Mann, Tan)

Staff Analysis: The Code of Federal Regulations addresses situations where ETCs voluntarily request relinquishment of its ETC status. In this case, VCI is not requesting relinquishment of its ETC status in Florida. However, staff is concerned that existing VCI Lifeline customers continue to be served if the Commission approves Issues 2 and 3. 47 C.F.R. Section 54.205(b) provides that:

Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the state commission shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The state commission shall establish a time, not to exceed one year after the state commission approves such relinquishment under this section, within which such purchase or construction shall be completed.

Staff believes VCI's underlying carrier, AT&T, should provision service to VCI's customers if the Commission approves Issue No. 3 of this recommendation. Staff also believes AT&T should be ordered to serve VCI's existing Lifeline customers during a transitional period where former VCI customers can choose to stay with AT&T or select another carrier of their choice.

Pursuant to Rule 25-4.118(1), Florida Administrative Code, a customer's carrier cannot be changed without the customer's authorization. Rule 25-4.118(2), Florida Administrative Code, provides that a carrier shall submit a change request only if one of the following has occurred:

- (a) The provider has a letter of agency (LOA) . . . from the customer requesting the change;
- (b) The provider has received a customer-initiated call for service . . . ;

(c) A firm that is independent and unaffiliated with the provider . . . has verified the customer's requested change . . .

Pursuant to Rule 25-24.845, F.A.C., Rule 25-4.118, F.A.C., is incorporated into Chapter 25-24, and applies to CLECs. Section 364.337(2), F.S., states in pertinent part;

A certificated competitive local exchange telecommunications company, may petition the commission for a waiver of some or all of the requirements of this chapter, except ss. 364.16, 364.336, and subsections (1) and (5). The Commission may grant such petition if determined to be in the public interest.

The authority for Rule 25-4.118, F.A.C., is found in Section 364.603, F.S., which is a section that the Commission is authorized to waiver under Section 364.337(c), F.S.

AT&T should provide for a seamless transition while with the least amount of disruption to the customers. The customers should not experience any interruption of service or switching fees. Staff believes it would be appropriate for the Commission to contact VCI's affected customers to notify them of the change to AT&T and to advise them of their available choices. AT&T should be required to provide the Commission with all necessary customer information of current VCI customers to allow the Commission to contact them.

Staff believes that in this instance it is appropriate to waive the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. If prior authorization is required in this event, customers may fail to respond to a request for authorization or neglect to select another carrier. Furthermore, staff believes that granting this waiver will avoid unnecessary slamming complaints during this transition.

Therefore, if the Commission approves Issue 3, staff recommends that the Commission waive the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, to allow VCI customers who do not select another carrier to seamlessly transfer over to AT&T effective as of the date of the consummating order. AT&T should be ordered to serve VCI's existing Lifeline customers during a transitional period where former VCI customers can choose to stay with AT&T at AT&T's Lifeline existing rates and terms or select another carrier of their choice. AT&T should also be required to provide the Commission with all necessary customer information of current VCI customers to allow the Commission to contact them.

Docket No. 080065-TX
Date: January 31, 2008

Issue 5: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, the Commission's decision should become final and effective upon issuance of a Consummating Order. This docket should remain open in order for VCI to complete the required refund of excess E911 overcharges and verify the transition of VCI customers to AT&T after which time; this docket should be closed administratively. (Tan, Casey, Mann)

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, the Commission's decision should become final and effective upon issuance of a Consummating Order. This docket should remain open in order for VCI to complete the required refund of excess E911 overcharges and verify the transition of VCI customers to AT&T after which time; this docket should be closed administratively. (Tan, Casey, Mann)