



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

RECEIVED-FPSC
08 MAR -5 PM 3:52
COMMISSION
CLERK

March 5, 2008

VIA HAND DELIVERY

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 filing in the above-referenced Docket, please find an original and fifteen (15) copies of a Protest of Proposed Agency Action Order no. PSC-08-0090-PAA-TX, and Petition for Formal Hearing, submitted this day on behalf of Vilaire Communications, Inc.

- CMP
- COM
- CTR
- ECR
- GCL
- OPC
- RCA
- SCR
- SGA
- SEC
- OTH

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

{TL152074;1}

DOCUMENT NUMBER-DATE

01669 MAR-5 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 FILED MARCH 5, 2008
--	---

VILAIRE COMMUNICATIONS, INC.'S PROTEST OF PROPOSED AGENCY ACTION
ORDER NO. PSC-08-0090-PAA-TX ISSUED FEBRUARY 13, 2008
AND PETITION FOR FORMAL HEARING

Pursuant to Rule 25-22.029(3), and in accordance with Rule 28-106.201 Florida Administrative Code, Vilaire Communications, Inc. ("VCI" or "Petitioner") hereby submits this Protest of Proposed Agency Action Order No. PSC-08-0090-PAA-TX, issued February 13, 2008 and Request for Hearing under Section 120.57(1), Florida Statutes.

I. BACKGROUND

A. VCI holds Competitive Local Exchange Carrier ("CLEC") Certificate No. 8611 and was designated an ETC on May 22, 2006 in Docket No. 060144-TX. The company provides local exchange service to Lifeline and Link-Up eligible Florida consumers, in accordance with federal law and Federal Communication Commission rules, in the service area of Bell South Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast Florida ("AT&T"). VCI Company obtains reimbursement from the low-income division of the Universal Service Administrative Company ("USAC"). VCI does not seek or obtain reimbursement from the high-cost division of the USAC.

B. The Florida Public Service Commission ("Commission") has submitted data requests seeking information about VCI's Lifeline and Link-Up policies and procedures on two occasions. In May 2007, the Commission requested information about the company's toll limitation service policies and procedures. Second, the Commission conducted a September

2007 audit of the low-income Florida USAC programs. In both instances, VCI cooperated fully with staff and complied with data requests in a timely manner. No further action was taken by the Commission with respect to VCI's responses pertaining to the May 4, 2007 inquiry into the company's toll limitation policies and procedures.

C. On November 19, 2007, the auditor issued her report on the audit of VCI with respect to the Low Income USAC programs ("Audit Report"). VCI participated in a teleconference with audit and Commission staff on November 28, 2007 ("November 28 Conference"), during which the company responded to staff's questions regarding the Audit Report. Among other things, VCI addressed staff's concerns about alleged duplicate Link-Up payments. VCI informed staff that if duplicate payments were, in fact, obtained, the company could submit a corrected Form 497 to the USAC.

D. VCI was informed at the November 28 Conference that the audit was complete and the company had the option, but was not required, to submit additional information in response to the Audit Report. VCI also was informed that whether or not VCI filed a response to the Audit Report, a telecommunications analyst would review the Audit Report and likely request additional information. Based on staff's statements, VCI opted not to file a response to the Audit Report.

E. VCI participated in a second teleconference with staff on January 9, 2008 ("January 9 Conference") at which the company addressed staff's prepared and e-mailed questions, as well as additional questions posed during the conference.

F. VCI addressed, among other things, staff's concerns about VCI's TLS system, VCI's late fee, typographical errors in area codes and staff's inability to contact certain customers by telephone. VCI admitted that it had mistakenly overcharged consumers the 911 surcharge and agreed to file a worksheet detailing the extent of the overcharges together with a

refund plan. On January 16, 2008, VCI filed written responses to additional questions generated by staff during the January 9 Conference.

G. On January 31, 2008, staff issued a recommendation suggesting that the Commission take punitive action against VCI for alleged misconduct (“Recommendation”). In the Recommendation, staff outlined for the first time, concrete and specific allegations that could be addressed by the company. VCI learned for the first time, also, that staff’s allegations were based on documents that had been subpoenaed from ATT, which documents VCI had not had an opportunity to review. VCI filed a public records request with the Commission on February 7, 2008, asking, in sum, for all information on which staff based its allegations.

H. VCI attended the agenda conference held February 12, 2008, and addressed several of staff’s allegations not based on information submitted by VCI under cover of confidentiality. The Commission approved staff’s recommended proposed agency action on February 12, 2008, and issued Order No. PSC-08-0090-PAA-TX on February 13, 2008 (“Order”), memorializing that decision.

II. PROTEST AND REQUEST FOR HEARING

With one noted exception, VCI protests each specific finding, conclusion, and proposed penalty set forth in the Order, as more specifically pled below, and requests a hearing to resolve these disputed issues of fact and law. VCI asserts that grounds do not exist, either in fact or in law, to warrant the proposed agency action set forth in the Order. VCI submits the following information in accordance with Rule 28-106.201, Florida Administrative Code:

A. The name and address of the affected agency and the agency's file or identification number is:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
Docket No. 080065-TX

B The name, address, and telephone number of the Petitioner are:

VCI Company (doing business in Florida as Vilaire Communications, Inc.)
2228 S. 78th Street
Tacoma, WA 98409-9050
Telephone: (800) 923-8375
Facsimile: (253) 475-6328
Electronic mail: Vilaire@comcast.net

C. Correspondence and communications regarding this proceeding should be directed to:

Beth Keating
Akerman Senterfitt
106 East College Avenue, Suite 1200
Tallahassee, Florida 32301
Telephone: (850) 224-9634
Electronic mail: beth.keating@akerman.com

And to:

Stanley Johnson, President
VCI Company
2228 S. 78th Street
Tacoma, WA 98409-9050
Telephone: (253) 973-2476
Facsimile: (253) 475-6328
Electronic mail: stanj@vcicompany.com

And to:

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

D. Explanation of how the Petitioner's substantial interests will be affected by the agency determination:

1. VCI provides local exchange service to Lifeline and Link-Up eligible customers in AT&T's service area in Florida.

2. By Proposed Agency Action Order No. PSC-08-0090-PAA-TX, the Florida Public Service Commission proposes to rescind VCI's Eligible Telecommunications Carrier status in Florida, cancel VCI's CLEC Certificate No. 8611, and transfer all of VCI's Lifeline customers to AT&T.

3. The proposed penalties of seizing VCI's current customer base, rescinding VCI's ETC designation, and canceling VCI's CLEC certificate will prevent Vilaire from doing business as a competitive local exchange carrier in Florida, thereby causing irreparable harm to VCI's business, finances and reputation.

E. A statement of when and how the Petitioner received notice of the agency decision:

VCI's representatives attended the Commission agenda meeting of February 12, 2008, at which meeting the Commission approve Staff's recommended proposed agency action. Vilaire received Order No. PSC-08-0090-PAA-TX via electronic mail from its counsel, Akerman Senterfit, on February 13, 2008, and from Commission staff, Lee Eng Tan, via electronic mail, on February 15, 2008. Vilaire received a hard copy of the order via U.S. mail on or about February 20, 2008.

F. A statement of disputed issues of material fact:

Without waiving or relinquishing the right to allege additional disputed issues of fact at a later date, VCI states that the following are disputed issues of fact, which VCI

specifically protests:

- (i) whether VCI's January 16, 2008, E-911 worksheet is a complete report of customer overpayments of E-911 surcharges;
- (ii) whether VCI offered the nine supported services making up Universal Service to Florida customers using a combination of its own facilities and resale of another carrier's services between June 2006 and November 2006;
- (iii) whether VCI properly reported Lifeline subscribed lines on Forms 497 between June 1, 2006 and June 30, 2007;
- (iv) whether VCI was reimbursed correctly by the USAC for Lifeline customers from June 2006 through June 30, 2007;
- (v) whether VCI properly reported Link-Up subscribed lines on Forms 497 during the period June 1, 2006 through June 30, 2007;
- (vi) whether VCI was reimbursed correctly by the USAC for Link-Up services during the period June 1, 2006 – June 30, 2007;
- (vii) whether VCI offers Florida customers TLS using its own facilities;
- (viii) whether VCI is entitled to obtain reimbursement from the USAC for incremental costs of TLS offered via its own facilities;
- (ix) whether VCI was reimbursed correctly by USAC for incremental costs for TLS;
- (x) whether VCI correctly charged 130 Florida customers who made late payments a late payment charge;
- (xi) whether lines reported on Forms 497 represent actual Florida customers who were invoiced by VCI for Lifeline and Link-Up service;

- (xii) whether VCI maintains technical, managerial and financial ability to provide competitive local exchange service in Florida;
- (xiii) whether VCI's designation as an ETC remains in the public interest, convenience and necessity; and
- (xiv) whether any factual basis has been established upon which the Commission could cancel VCI's Competitive Local Exchange Carrier Certificate.

G. A statement of issues of fact not in dispute:

- (i) VCI does not dispute that the fee it charged for E911 exceeded, in certain instances, the \$.50 limitation set by Section 365.172 (8), F.S., and VCI remains willing to provide an appropriate refund, as it has throughout this proceeding to date.

H. A statement of disputed issues of law:

Without waiving or relinquishing the right to allege additional disputed issues of law at a later date, VCI's allegations of disputed issues of law include the following:

- (ii) whether the Commission has jurisdiction to interpret federal regulations and laws regarding an ETC's offering, provision and administration of Federal Universal Service;
- (iii) whether federal law confers upon the Commission subject matter jurisdiction over an ETC's offering, provision and administration of Federal Universal Service;
- (iv) whether federal law confers upon the Commission subject matter jurisdiction to rescind an ETC designation; and
- (iv) whether VCI violated Florida statutes, rules, or regulations.

I. A concise statement of the ultimate facts alleged, including the specific facts the Petitioner contends warrant reversal or modification of the agency's proposed action:

Without waiving or relinquishing the right to allege additional ultimate facts at a later date, VCI's allegations of ultimate facts include the following:

- (i) matters within the scope of this proceeding will determine the extent of the Commission's jurisdiction over an ETC's offering, provision and administration of Federal Universal Service in Florida;
- (iii) that VCI's January 16, 2008, E-911 worksheet is a complete report of customer overpayments of E-911 surcharges;
- (iv) that VCI offered the nine supported services making up Universal Service to Florida customers using a combination of its own facilities and resale of another carrier's services between June 2006 and November 2006;
- (v) that VCI properly reported Lifeline subscriber lines on Forms 497 between June 1, 2006 and June 30, 2007;
- (vi) that VCI was reimbursed correctly by the USAC for Lifeline customers from June 1, 2006 through June 30, 2007;
- (vii) that VCI properly reported Link-Up subscribed lines on Forms 497 during the period June 1, 2006 through June 30, 2007;
- (viii) that VCI was reimbursed correctly by the USAC for Link-Up services during the period June 1, 2006 – June 30, 2007;
- (ix) that VCI offers Florida customers TLS using its own facilities;
- (x) that VCI is entitled to obtain reimbursement from the USAC for incremental costs of TLS offered via its own facilities;
- (xi) that VCI was reimbursed correctly by USAC for incremental costs for

TLS;

- (xii) that VCI correctly charged Commission specified Florida customers who made untimely payments a late payment charge;
- (xiii) that lines reported on Forms 497 represent actual Florida customers who were invoiced by VCI for Lifeline and Link-Up service;
- (xiv) that VCI maintains technical, managerial and financial ability to provide competitive local exchange service in Florida;
- (xv) that VCI's designation as an ETC remains in the public interest, convenience and necessity;
- (xvi) that there is no basis upon which the Commission could cancel VCI's Competitive Local Exchange Carrier Certificate;
- (xvii) that the Commission has no jurisdiction to rescind VCI's ETC designation;
- (xviii) that the Commission may not transfer VCI's Lifeline customers to AT&T.

J. A statement of the specific rules or statutes the Petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes:

- (i) the Commission has no basis for revoking VCI's CLEC Certificate under Sections 364.335 or 364.337, Florida Statutes;
- (ii) the Commission has no basis for revoking VCI's CLEC Certificate under Rule 25-24.820(1)(a)-(c), Florida Administrative Code;
- (iii) the Commission is without basis to revoke VCI's CLEC Certificate for overcharging customers the E911 fee because the Commission has no jurisdiction to administrate, monitor or enforce the E911 fee, which jurisdiction is allocated to

the Technology Program of the Department of Management under Section 365.172(4), Florida Statutes;

- (iv) the Commission has failed to demonstrate jurisdiction under Florida state or federal law to revoke VCI's ETC designation;
- (v) the Commission has failed to demonstrate that VCI has violated any provision of Section 364.10, Florida Statutes, the sole Florida statute governing Lifeline service provision by Eligible Telecommunications Carriers;
- (vi) the Commission has failed to demonstrate that VCI has violated any provisions of applicable Federal Communications Commission rules or federal law regarding Lifeline and Link-Up service provision by Eligible Telecommunications Carriers;
- (vii) VCI is permitted under 47 C.F.R. Section 54.403(c) to seek reimbursement of its incremental costs of providing toll blocking service;
- (viii) Seizure of VCI's customers constitutes a prohibited "taking" without due process in violation of state and federal law, as well as the abrogation of contractual arrangements.

K. A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action:

(i) Rescind Order No. PSC-08-0090-PAA-TX and close this Docket;

or, in the alternative,

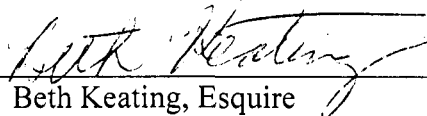
(ii) Set this matter for a Section 120.57(1), Florida Statutes, hearing to resolve the disputed issues of fact and law identified herein¹, and to allow VCI a full opportunity to present evidence and arguments as to why Order No. PSC-08-

¹ In accordance with Cherry Communications, Inc. v. Deason, 652 So. 2d 803 (Fla. 1995), the prosecutorial and advisory staff must be bifurcated for the duration of the proceeding.

PAA-TX should be rescinded.

Respectfully submitted this 5th day of March, 2008.

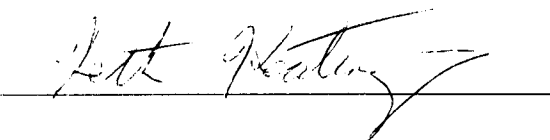
Respectfully submitted this 5th day of
March, 2008,

By: 
Beth Keating, Esquire
Akerman Senterfitt
106 East College Avenue, Suite 1200
P.O. Box 1877 (32302)
Tallahassee, Florida 32301
(850) 521-8002
beth.keating@akerman.com

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 5th day of March, 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: 

Beth Keating
Akerman Senterfitt
106 East College Avenue, Suite 1200
P.O. Box 1877 (32302)
Tallahassee, Florida 32301
(850) 521-8002
Fax: (850) 222-0103
beth.keating@akerman.com