

SCANNED

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: March 6, 2008
TO: Office of Commission Clerk (Cole)
FROM: Office of the General Counsel (Poblete, McKay) *of vsm*
Division of Competitive Markets & Enforcement (Watts) *Watts*
RE: Docket No. 070560-TI – Compliance investigation of Virtual Reach Corporation
for apparent violation of Rules 25-24.470, F.A.C., Registration Required, and 25-
22.032(6)(b), F.A.C., Customer Complaints.

AGENDA: 03/18/08 – Regular Agenda – 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\070560.RCM.DOC

RECEIVED-FPSC
08 MAR -6 AM 11:34
COMMISSION
CLERK

Case Background

On October 8, 2007, the Florida Public Service Commission (Commission) issued PAA Order No. PSC-07-0808-PAA-TI (Order), finding that Virtual Reach Corporation (Virtual Reach) was in willful violation of Rule 25-22.032(6)(b), Florida Administrative Code (F.A.C.), Customer Complaints, and Rule 25-24.470, F.A.C., Registration Required. The order imposed a penalty of \$10,000 per violation, for a total of \$40,000, for apparent violations of Rule 25-22.032(6)(b), Customer Complaints, F.A.C., and a penalty of \$25,000 for its apparent violation of Rule 25-24.470, Registration Required, F.A.C.

DOCUMENT NUMBER-DATE

01689 MAR-6 08

FPSC-COMMISSION CLERK

On October 29, 2007, the President of Virtual Reach, Bobby Story, filed a response, protesting the Order and requesting that the Commission release the company from the imposed penalties.

In an effort to address Virtual Reach's protest, the docket was set for hearing. As a preliminary matter, staff was to schedule an issue identification meeting with Virtual Reach. No contact information was included in Virtual Reach's protest, but phone calls were made and emails and letters were sent to contact information previously provided to the Commission by Virtual Reach and to contact information provided by Virtual Reach's underlying carrier.¹ Five out of six phone numbers on file were no longer in service, and a message was left with the only working number, requesting that the company contact staff as soon as possible. On December 24, 2007, a letter was mailed to Mr. Story, but was eventually returned to staff. (See Attachments A-1, A-2). On January 10, 2008, an email was sent to Mr. Story, but a reply was never received. (See Attachment B). On January 22, 2008, a memorandum providing notice of the issue identification meeting was sent by certified mail to two addresses staff had on file. (See Attachment C-1). One was returned to staff unsigned and the other was signed for as received. (See Attachments C-2, C-3).

On February 1, 2008, notice of the issue identification meeting, scheduled for February 19, 2008, was published in Florida Administrative Weekly. All interested persons were invited to attend and those unable to, had the option of participating by phone. In preparation for the meeting, a copy of staff's proposed issues list was sent to Mr. Story by email. (See Attachments D-1, D-2). Virtual Reach did not respond.

On February 19, 2008, the issue identification meeting was held as scheduled. Staff met to identify and discuss a tentative issues list with Virtual Reach. Virtual Reach did not attend the meeting or participate by phone.

Staff notes that, on two separate occasions, the Federal Communications Commission (FCC) has found Virtual Reach to be engaged in the unauthorized switching of telecommunications service providers.² In separate orders, released on November 20, 2007, and January 31, 2008, the FCC granted the complaint filed against Virtual Reach, entitling the complainant to absolution of charges incurred, during the first thirty days after unauthorized change, and prohibiting Virtual Reach from pursuing collection.³ In reaching its decision, the FCC made the following statements:

Pursuant to Sections 1.719 and 64.1150 of our rules, we notified Virtual Reach of the complaint. Virtual Reach has failed to

¹ Staff notes that this contact information is identical to Virtual Reach's contact information on file with the Florida Department of State. The most recent event on file is a statement amending the company's registered agent, which was filed on July 25, 2007. In this amendment, the contact information at issue here remained unchanged and was listed for both the current and new registered agent. The company's status is currently listed as active.

² See In the Matter of Virtual Reach Corporation: Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, 22 F.C.C.R. 20737 (November 30, 2007); In the Matter of Virtual Reach Corporation: Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, WL 281725 (F.C.C.) (released January 31, 2008).

³ Id.

respond to the complaint. The failure of Virtual Reach to respond or provide proof of verification is presumed to be clear and convincing evidence of a violation.⁴

Staff also notes the on-going investigation of Virtual Reach by the Indiana Utility Regulatory Commission (Indiana Commission), which was officially ordered as commenced on October 10, 2007.⁵ The investigation was prompted by allegations similar to those presented to this Commission on September 11, 2007, and which resulted in the proposed agency action now at issue, PAA Order No. PSC-07-0808-PAA-TI. The allegations include the unauthorized provision of telecommunication services in the state due to a failure to obtain a Certificate of Territorial Authority from the Indiana Commission and the unauthorized switching of consumers' telephone service.⁶

Staff notes that the Indiana Commission attempted to contact Virtual Reach on the matter, as stated in its order commencing formal investigation.⁷ Specifically, more than three months prior to the issuance of its order, a written request for information was sent to the company.⁸ Virtual Reach never responded.⁹

The Commission is vested with jurisdiction over these matters pursuant to Sections 364.02, 364.04, 364.285, 364.603, and 364.604, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

⁴ In the Matter of Virtual Reach Corporation: Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, WL 281725 (F.C.C.) (released January 31, 2008) (footnotes omitted).

⁵ See In the Matter of the Indiana Utility Regulatory Commission's Investigation of ACCXX Communications, LLC, Qwest Communications Corporation, Telrite Corporation, Virtual Reach Corporation, and Other Related Companies Operating in Indiana, WL 2989684 (Ind. U.R.C.) (October 10, 2007).

⁶ See id.

⁷ Id.

⁸ See id.

⁹ Id.

Discussion of Issues

Issue 1: Should the Commission dismiss Virtual Reach's protest of PAA Order No. PSC-07-0808-PAA-TI?

Recommendation: Yes. The Commission should dismiss Virtual Reach's protest of PAA Order No. PSC-07-0808-PAA-TI. Additionally, staff recommends that PAA Order No. PSC-07-0808-PAA-TI, be reinstated and consummated as a Final Order. (Poblete)

Staff Analysis: As detailed in the Case Background, upon issuance of PAA Order No. PSC-07-0808-PAA-TI, Virtual Reach filed a response, protesting the penalties imposed. As a result, staff made several attempts to contact Virtual Reach, all of which were unsuccessful. Phone calls were made, emails were sent and letters were mailed to the company through both standard and certified U.S. Mail. On February 1, 2008, notice of the issue identification meeting scheduled for February 19, 2008, was published in Florida Administrative Weekly. At the meeting, staff was prepared to discuss its list of proposed issues, and Virtual Reach, which had the option of attending in person or participating by phone, failed to appear.

Staff believes the Commission has afforded Virtual Reach ample time and opportunity to pursue its case. Virtual Reach's protest was filed on October 29, 2007, and from this date on, staff was engaged in obtaining the company's contact information and attempting to make contact. For more than two months, following the filing of its protest, Virtual Reach has failed to respond to staff's repeated inquiries.

Because Virtual Reach failed to provide any contact information with its protest, to contact staff and to respond to staff's repeated inquiries, staff believes Virtual Reach's actions and/or failure to act constitute abandonment of its protest in this docket.

Based on Virtual Reach's failure to participate in proceedings initiated by its protest and to respond to staff's repeated inquiries, staff recommends that the Commission dismiss Virtual Reach's protest with prejudice. Additionally, staff recommends that PAA Order No. PSC-07-0808-PAA-TI, be reinstated and consummated as a Final Order.¹⁰

¹⁰ Staff's recommendation is consistent with action previously taken by the Commission upon companies that fail to respond to staff or to appear at Commission proceedings. In Order No. PSC-03-1170-FOF-TC, issued October 20, 2003, this Commission dismissed Florida Commercial PayFon, Inc.'s protest of PAA Order No. PSC-03-0134-PAA-TC with prejudice. The Commission found that the company's repeated failure to return staff's calls, along with notice sent by certified mail and signed for as received, constituted abandonment of its protest. Additionally, PAA Order No. PSC-03-0134-PAA-TC, was reinstated and consummated as a Final Order.

Issue 2: Should this docket be closed?

Recommendation: If the Commission approves staff's recommendation on Issue I, Virtual Reach should make payment of the penalties and provide the documentation required by PAA Order No. PSC-07-0808-PAA-TI, within fourteen calendar days after the issuance of the Commission's Order from this recommendation.¹¹ This docket should be closed administratively upon either receipt of the payment of the penalties and the required documentation, or upon the referral of the penalties to the Department of Financial Services. (Poblete)

Staff Analysis: If the Commission approves staff's recommendation on Issue I, this docket should be closed administratively upon either receipt of the payment of the penalties and the required documentation, or upon the referral of the penalties to the Department of Financial Services.

¹¹ PAA Order No. PSC-07-0808-PAA-TI, ordered that Virtual Reach (1) pay \$10,000 per violation for a total of \$40,000 for apparent violations of Rule 25-22.032(6)(b), Customer Complaints, F.A.C.; (2) pay \$25,000 for its apparent violation of Rule 25-24.470, Registration Required, F.A.C.; and (3) furnish the company's current contact information, tariff, and customer complaint responses, within fourteen calendar days after the issuance of the Consummating Order.

Docket No. 070560-TI
Date: March 6, 2008

ATTACHMENT A-1

COMMISSIONERS
LISA POLAK EDGAR, CHAIRMAN
MATTHEW M. CARTER II
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

STATE OF FLORIDA



GENERAL COUNSEL
MICHAEL G. COOKE
(850) 413-6248

Public Service Commission

December 24, 2007

Bobby Story
3275 West Hillsboro Boulevard, Suite 300
Deerfield Beach, FL 33442

Re: Docket No. 070560-TI

Dear Mr. Story:

In an effort to address Virtual Reach Corporation's response to Order No. PSC-07-0808-PAA-TI, issued October 8, 2007, we have set this docket for hearing. In order to proceed, Staff must schedule an issue identification meeting with Virtual Reach. No contact information was provided on Virtual Reach Corporation's protest, and Staff has been unsuccessful in obtaining such information. This letter is a request for you to contact us as soon as possible.

Please call me at (850) 413-6191 or e-mail me at cpoblete@psc.state.fl.us.

Thank you.

Regards,

Charlene C. Poblete
Attorney, Office of the General Counsel
Florida Public Service Commission
Telephone: (850) 413-6191
E-mail: cpoblete@psc.state.fl.us



**Florida
Public
Service
Commission**

Charlene Poblete
Attorney
Office of the General Counsel

2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
Telephone: (850) 413-6191
Fax: (850) 413-6192
cpoblete@psc.state.fl.us

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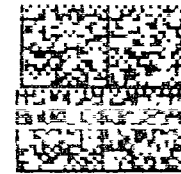
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PSC Website: <http://www.floridapsc.com>

Internet E-mail: contact@psc.state.fl.us

State of Florida
Public Service Commission

2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850



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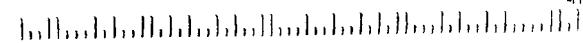
Mr. Bobby Story
3275 West Hillsboro Boulevard
Suite 300
Deerfield E

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NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

BC: 32399085099 *0938-00385-24-40

323990850



Docket No. 070560-TI
Date: March 6, 2008

ATTACHMENT B

Charlene Poblete

From: Charlene Poblete
Sent: Thursday, January 10, 2008 9:31 AM
To: 'bstory@createacall.com'
Subject: Docket No. 070560-TI

Dear Mr. Story:

In an effort to address Virtual Reach's Corporation's response to Order no. PSC-07-0808-PAA-TI (Notice of Proposed Agency Action Order Compliance Investigation for Apparent Violations of Rule 25-24.470, F.A.C. Registration Required, and 25-22.032(6)(b), F.A.C., Customer Complaints), issued October 8, 2007, we have set this docket for hearing.

The Prehearing and Hearing are tentatively scheduled for March 5, 2008 and March 19, 2008, respectively. In order to proceed, Staff must schedule an issue identification meeting with Virtual Reach. The purpose of this meeting is to identify and discuss the issues involved in this docket. Issues in this proceeding will be limited to those raised in the Petition and in the response, if any, in accordance with Section 252(b)(4) of the Telecommunications Act of 1996.

Please contact me as soon as possible. Staff has been unsuccessful in contacting you--both by phone and by mail.

Charlene C. Poblete

Attorney, Office of the General Counsel
Florida Public Service Commission
Telephone: (850) 413-6191
E-mail: cpoblete@psc.state.fl.us

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: January 22, 2008
TO: All Parties and Interested Persons
FROM: Charlene C. Poblete, Attorney, Office of the General Counsel
RE: Docket No. 070560-TI - Compliance investigation of Virtual Reach Corporation for apparent violation of Rules 25-470, F.A.C., Registration Required, and 25-22.032(6)(b), F.A.C., Customer Complaints.

There will be an issue identification meeting in Docket No. 070560-TI at the following time and place:

10:00 a.m., Tuesday, February 19, 2008
Room 382D, Gerald Gunter Building
2540 Shumard Oak Boulevard
Tallahassee, Florida

The purpose of this meeting is to identify and discuss the issues involved in this docket. The issues identified at this meeting will be attached to the Order Establishing Procedure as the tentative issues list. Prefiled testimony and prehearing statements should address the issues set forth in the tentative issues list. Parties are encouraged to provide a copy of their proposed issues to each other and staff at least one day prior to the scheduled meeting. We will also discuss procedural matters associated with this docket. All interested persons are invited to attend.

Interested persons not able to attend the meeting may dial the following number promptly at 10:00 a.m., on Tuesday, February 19, 2008. **To participate by phone please dial 1-888-808-6959, conference code 4136206.**

If settlement of the case or a named storm or other disaster requires cancellation of the proceedings, Commission staff will attempt to give timely direct notice to the parties. Notice of cancellation will also be provided on the Commission's website (<http://www.psc.state.fl.us/>) under the Hot Topics link found on the home page. Cancellation can also be confirmed by calling the Office of the General Counsel at 850-413-6199.

If you have further questions about this meeting, please call me at (850) 413-6191.

CCP

CERTIFIED MAIL™

State of Florida
Public Service Commis

2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850



7006 0810 0000 0158 7137

Virtual Reach Corp.
Bobby Story, CFO
4035 Tampa Road, Suite 6000
Oldsmar, FL 34677



US POS
Mailed From
01/23/08
\$05.2
04718209

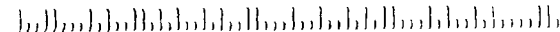
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REQUESTED

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RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

EC: 32399085099 *2474-05662-28-24

323990850



ATTACHMENT C-2

Docket No. 070560-TI
Date: March 6, 2008

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Virtual Reach Corp.
4035 Tampa Rd.
Suite 6000
Oldsmar, FL 34644

2. Article Number

(Transfer from service label)

7006 0810 0000 0158 7137

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- Agent
- Addressee

B. Received by (Printed Name)

C. Date of Delivery

1-28-08

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

- Certified Mail Express Mail
- Registered Return Receipt for Merchandise
- Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

Date: March 6, 2008

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee <i>Paula Morone</i></p> <p>B. Received by (Printed Name) C. Date of Delivery _____ 2-1-08</p>
<p>1. Article Addressed to:</p> <p>Virtual Peach Corp Bobby Story CFO 3275 Hillsboro Blvd. Suite 300 Deerfield Bch, FL 33442</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label)</p>	<p>7006 0810 0000 0158 7144</p>

PS Form 3811, February 2004

Domestic Return Receipt

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UNITED STATES POSTAL SERVICE

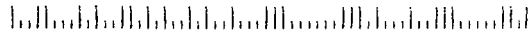


First-Class Mail Postage & Fees Paid USPS Permit No. G-10
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• Sender: Please print your name, address, and ZIP+4 in this box •

Florida Public Service Commission
 Charlene Poblete - GCL
 2540 Shumard Oak Blvd.
 Tallahassee, FL 32399

DK No. 070560-TT



Docket No. 070560-T1
Date: March 6, 2008

ATTACHMENT D-1

Charlene Poblete

From: Charlene Poblete
Sent: Monday, February 18, 2008 2:44 PM
To: 'bstory@createacall.com'
Subject: Staff's Issues List
Attachments: Staff's Proposed Issues List.doc

Attached please find a copy of Staff's Proposed Issues List which is to be discussed at the issue identification meeting scheduled for tomorrow, February 19, 2008 at 10:00am.

Thank you.

Charlene C. Poblete

Attorney, Office of the General Counsel
Florida Public Service Commission
Telephone: (850) 413-6191
E-mail: cpoblete@psc.state.fl.us

1/1

1/1

Docket No. 070560-TI

STAFF'S PROPOSED ISSUES LIST

1. Did Virtual Reach Corporation (Virtual Reach) provide intrastate interexchange company (IXC) service in Florida in 2007?
2. Did Virtual Reach register and file a tariff with the Florida Public Service Commission (Commission) as required by Rule 25-24.470, Florida Administrative Code, (F.A.C.)?
3. Did Virtual Reach respond to consumer complaints within 15 business days as required by Rule 25-22.032(6)(b), F.A.C.?
4. Should the Commission impose a penalty of \$25,000 on Virtual Reach for violation of Rule 25-24.470, F.A.C.?
5. Should the Commission impose a penalty of \$10,000 per violation, for a total of \$40,000, on Virtual Reach for four violations of Rule 25-22.032(6)(b), F.A.C.?
6. Should this docket be closed?