

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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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
COMMISSION CLERK
DATED: MAY 14, 2008

PROSECUTORIAL STAFF'S PREHEARING STATEMENT

Prosecutorial staff, in compliance with the Order Establishing Procedure (Order No. PSC-08-0194-PCO-TX) issued March 26, 2008, hereby files its Prehearing Statement in the captioned docket as follows:

A. Witnesses

Robert J. Casey (Direct and Rebuttal) Issue Nos. 1 -- 11

Intesar Terkawi (Direct and Rebuttal) Issue Nos. 3, 4(a), 5

Prosecutorial staff's witnesses present both facts and policy considerations that support Prosecutorial staff's positions on these issues. Prosecutorial staff's witnesses present testimony regarding the Investigation of Vilaire Communications, Inc.'s ("VCI") eligible telecommunications carrier ("ETC") status and competitive local exchange certificate ("CLEC") status in the state of Florida and whether VCI should retain ETC status and CLEC status.

Prosecutorial staff reserves the right to call additional witnesses, including witnesses to address or respond to inquires from the Florida Public Service Commission ("Commission" or "PSC"), to address issues not presently designated that may be designated by the Prehearing Officer at the Prehearing Conference to be held on May 28, 2008, and to issues raised in any testimony by witnesses for VCI that has not yet been filed.

B. Exhibits

OMP _____
COM 5
CTR _____
ECR _____
GCL _____
OPC _____
SCA _____
SOR _____
SGA _____
SEC _____
OTH _____

Witness

Exhibits

Robert J. Casey

Exhibit RJC-1:

Commission Order PSC-06-0035-PAA-TX, issued January 10, 2006, granting Vilaire Communications a competitive local exchange company certificate.

Exhibit RJC-2:

Vilaire Communications, Inc. Application for Designation as an ETC in the State of Florida in BellSouth Telecommunications, Inc. d/b/a

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PROSECUTORIAL STAFF'S PREHEARING STATEMENT

DOCKET NO. 080065-TX

PAGE 2

AT&T Florida ("AT&T") Service Area. (Exhibit's A-D of Application omitted)

Exhibit RJC-3: Commission Order PSC-06-0436-PAA-TX, issued May 26, 2008, granting VCI eligible telecommunications carrier status in Florida.

Exhibit RJC-4: Universal Service Fund (USF) monies received by VCI for Lifeline, Link-Up, and toll limitation services (TLS) since becoming an ETC in Florida.

Exhibit RJC-5: VCI responses to staff's May 4, 2007 data request.

Exhibit RJC-6: September 13, 2003 Universal Service Administrative Company (USAC) letter to VCI regarding TLS.

Exhibit RJC-7: Federal Communications Commission (FCC) Notice of Apparent Liability for Forfeiture and Order issued against VCI on August 15, 2007.

Exhibit RJC-8: September 18, 2007 e-mail from Stacey Klinzman of VCI questioning the Commission's authority to conduct an audit.

Exhibit RJC-9: Commission Order PSC-08-0090-PAA-TX, issued February 13, 2008. *In Re: Investigation of Vilair Communications, Inc.'s eligible telecommunications carrier status and competitive local exchange company certificate status in the state of Florida.*

Exhibit RJC-10: VCI Protest of Proposed Agency Action Order PSC-08-0090-PAA-TX on March 5, 2008, and request for a formal hearing.

Exhibit RJC-11: Commission Order PSC-08-0194-PCO-TX, issued March 26, 2008, Order Establishing Procedure.

Exhibit RJC-12: VCI's March 16, 2006 responses to staff's March 10, 2006 data request.

Confidential
Exhibit RJC-13: AT&T's December 14, 2007 responses to staff's November 30, 2007 data requests.

Exhibit RJC-14: Transcript of February 12, 2008 PSC Agenda Conference, Item No. 4.

Confidential
Exhibit RJC-15: VCI's January 16, 2008 responses to staff's post-audit questions.

- Exhibit RJC-16: Universal Service Administrative Company (USAC) Form 497.
- Exhibit RJC-17: USAC Form 497 instructions.
- Exhibit RJC-18: AT&T Basic Local Exchange Service Tariff A.3.31.2.
- Confidential
Exhibit RJC-19: VCI's Lifeline/Link-Up Reseller Certification dated March 20, 2007.
- Exhibit RJC-20: Form 497 forms filed by VCI for the months from June 2006 through February 2008.
- Confidential
Exhibit RJC-21: Spreadsheet showing monthly VCI reported lines to Florida Telecommunications Relay, Inc.; VCI resale Lifeline lines and wholesale local platform (WLP) lines purchased from AT&T; USAC Form 497 claimed Lifeline, Link-Up and TLS lines and amounts; and amounts billed by AT&T to VCI.
- Exhibit RJC-22: VCI responses to staff's September 18, 2007 data request addressing information for the PSC's annual Lifeline report.
- Confidential
Exhibit RJC-23: AT&T's January 23, 2008 responses to staff's January 7, 2008 data requests, and AT&T's April 4, 2008 responses to staff's March 31, 2008 data requests.
- Exhibit RJC-24: USAC Guidelines for TLS.
- Exhibit RJC-25: Florida E-911 Program Status as of March 3, 2008.
- Exhibit RJC-26: Sample Florida Regulatory Assessment Fee Return with instructions for filing.
- Exhibit RJC-27: VCI's April 7, 2008 Objections to Staff's First Set of Interrogatories and Requests for Production of Documents.
- Exhibit RJC-28: Order PSC-08-0258-PCO-TX, issued April 25, 2008, granting Staff's Motion to Compel Discovery from VCI.
- Exhibit RJC-29: VCI's May 2, 2008 Petition for Reconsideration of Order PSC-08-0258-PCO-TX.
- Exhibit RJC-30: Vilaire Communications, Inc.'s 2006 Florida Regulatory Assessment Fee Return.

- Exhibit RJC-31: Vilaire Communications, Inc.'s 2007 Florida Regulatory Assessment Fee Return.
- Confidential
Exhibit RJC-32: List of post-audit discussion questions sent to VCI, at VCI's request, prior to the January 9, 2008 conference call with staff.
- Confidential
Exhibit RJC-33: Calls made by staff to names and telephone numbers provided in VCI's 130 sample monthly customer bills.
- Exhibit RJC-34: Staff's Response to Vilaire Communications, Inc's Motion for Reconsideration of Order Granting Motion to Compel and Request for Oral Argument.

Intesar Terkawi

- Exhibit IT-1: Staff Audit Report of Vilaire Communications, Inc.
- Exhibit IT-2: Non-Confidential Portion of Staff Audit Work Papers.
- Confidential
Exhibit IT-3: Confidential Portion of Staff Audit Work Papers
- Exhibit IT-4: Document Request Log

Prosecutorial Staff reserves the right to file exhibits to any testimony that may be filed under the circumstances indentified in Section "A" above. Prosecutorial Staff also reserves the right to introduce exhibits for cross-examination, impeachment, or any other purpose authorized by the applicable Florida Rules of Evidence and the Rules of the Commission.

C. Prosecutorial Staff's Statement of General Position

VCI's eligible telecommunications carrier status should be rescinded and its Competitive Local Exchange Company Certificate No. 8611 should be cancelled. VCI has inappropriately received approximately \$1,533,807 in Federal Universal Service Funds for Florida from June 2006 through April 2008 by misrepresentations made to the USAC. Results of staff's investigation along with the final Commission Order should be forwarded to the USAC, the FCC, the Florida Office of the Attorney General and the Department of Justice for further follow-up to recover federal Universal Service Funds obtained by VCI through misrepresentations made to the USAC.

VCI has overbilled its customers for E-911 fees, provided erroneous information on monthly customer billing, and has not provided support for revenues contained on its PSC's

regulatory assessment fee returns. Other improprieties including possible improper billing of late payment charges cannot be determined until VCI submits responses to staff's interrogatories and Production of Document (POD) requests, which it has refused to do to date. Vilaire no longer has the technical, financial, and managerial capability to provide CLEC service in the state of Florida. It has violated the terms and conditions upon which its CLEC certificate was granted, and has violated Commission rules and orders. The Commission should rescind VCI's ETC status in the state of Florida, and cancel its competitive local exchange company certificate in Florida.

Prosecutorial staff reserves the right to add additional rules, statutes and orders, upon receipt and review of VCI's discovery responses.

D. Prosecutorial Staff's Position on the Issues

ISSUE 1: Is the PSC authorized to audit an ETC's records for compliance with applicable Lifeline, Link-Up, and ETC statutes, rules, processes, procedures, and orders?

Prosecutorial Staff: Yes. The PSC may audit records for compliance with applicable Lifeline, Link-Up and ETC statutes, rules, processes, procedures, and orders. Pursuant to Section 364.01(2), Florida Statutes (F.S.) the PSC has jurisdiction in all matters set forth in that chapter in regulating telecommunications companies. Section 364.183(1), F.S. provides access to all records of a telecommunications company that are reasonably necessary for the disposition of matters, Section 364.337(5), F.S. provides authority of regulatory oversight of competitive local exchange companies. Section 364.185, F.S., provides the ability to enter upon any premises occupied by any telecommunications company and may set up and use thereon all necessary apparatus and appliances for the purpose of making investigations, inspections, examinations, and tests under power conferred pursuant Chapter 364, F.S. The FCC has also recognized in Orders that state commissions possess the authority to rescind ETC designations for failure to comply with section 214(e) of the Telecommunications Act of 1934, as amended.

ISSUE 2: Did VCI provide Lifeline service to its Florida customers using a combination of its own facilities and resale of another carrier's services between June 2006 and November 2006?

Prosecutorial Staff: No. VCI did not purchase any wholesale local platform lines in Florida from AT&T during time frame of June 2006 through November 2006. VCI operated as a strict reseller during that time and did not meet the facilities requirement and should not have received any reimbursements from USAC.

ISSUE 3: Did VCI correctly report Link-Up and Lifeline lines on USAC's Form 497 for reimbursement while operating as an ETC in Florida in accordance with applicable requirements?

Prosecutorial Staff: No. VCI has consistently overstated the number of access lines eligible for reimbursement from the USAC. VCI has been, and is still, reporting ineligible resale Lifeline access lines and non-existent lines in the thousands for which it received reimbursement from the USAC.

ISSUE 4(a): Does VCI provide toll limitation service to Lifeline customers using its own facilities?

Prosecutorial Staff: No. VCI does not provide toll limitation service to its Lifeline customers using its own facilities. Since the TLS equipment and services listed by VCI could also be used for purposes other than TLS, and TLS reimbursement is only allowed on equipment and services used exclusively for TLS, the TLS costs claimed by VCI are not reimbursable from the USAC through the TLS program. In addition, since AT&T is providing toll limitation service at no cost to VCI for VCI's Lifeline customers, and AT&T is being reimbursed for the cost of that provided service from USAC, having VCI file for TLS reimbursement creates double reimbursement for providing TLS service to each Lifeline customer. Since AT&T provides TLS service to VCI at no charge, VCI does not incur any incremental cost for providing TLS to its Lifeline customers.

ISSUE 4(b): If so, is VCI entitled to obtain reimbursement for incremental costs of TLS?

Prosecutorial Staff: No. VCI did not incur any incremental costs for providing TLS to its Lifeline customers and therefore is not entitled to obtain reimbursement for incremental costs of TLS.

ISSUE 4(c): If yes, what is the appropriate amount of reimbursement?

Prosecutorial Staff: VCI did not incur any incremental costs for providing TLS to its Lifeline customers and therefore should receive no reimbursement for TLS.

ISSUE 5: Were late payment charges correctly applied to VCI Florida customer bills?

Prosecutorial Staff: A determination as to whether late payment charges were correctly applied to VCI Florida customer monthly bills cannot be made until VCI provides responses to Prosecutorial staff's First Set of Interrogatories and PODs which it has refused to do as of the filing of this Prehearing Statement. See Order No. PSC-08-0304-PCO-TX, issued May 8, 2008, denying VCI's Motion for Reconsideration, and subsequent letter filed by VCI on May 9, 2008, declining to provide information in response to staff's discovery requests.

ISSUE 6: What is the appropriate refund amount for E-911 customer overbilling?

Prosecutorial Staff: A determination as to whether VCI correctly made refunds for overbilling E-911 surcharges on customer's monthly bills cannot be made until VCI provides

PROSECUTORIAL STAFF'S PREHEARING STATEMENT

DOCKET NO. 080065-TX

PAGE 7

responses to Prosecutorial staff's First Set of Interrogatories and PODs which it has refused to do to date. See Order No. PSC-08-0304-PCO-TX, issued May 8, 2008, denying VCI's Motion for Reconsideration, and subsequent letter filed by VCI on May 9, 2008, declining to provide information in response to staff's discovery requests.

ISSUE 7: Does the PSC have the authority to enforce an FCC statute, rule or order pertaining to ETC status, Lifeline, and Link-Up service?

Prosecutorial Staff: Yes. The PSC has authority to enforce any FCC statute, rule, or order pertaining to ETC status, Lifeline, and Link-Up service as long as the action is not inconsistent with the authority set forth by Congress and the FCC.

ISSUE 8(a): Has VCI violated any FCC statute, rule or order pertaining to ETC status, or Lifeline and Link-Up service?

Prosecutorial Staff: Yes. VCI has violated 47 C.F.R. Section 54.7, 47 C.F.R. Section 54.201(i), 47 C.F.R. Section 54.403(a), 47 C.F.R. Section 54.403(c), 47 C.F.R. Section 54.407(b), 47 C.F.R. Section 54.407(c), 47 C.F.R. Section 54.411(a), 47 C.F.R. Section 54.411(c), 47 C.F.R. Section 54.413(a), 47 C.F.R. Section 54.413(b), 47 C.F.R. Section 54.417(a), Order FCC 97-157, and Order FCC 04-87. Staff reserves the right to add additional FCC statutes, rules, and orders upon review of VCI's responses to Prosecutorial staff's discovery request.

ISSUE 8(b): If so, what is the appropriate remedy or enforcement measure, if any?

Prosecutorial Staff: The Commission should rescind VCI's ETC status in the state of Florida, and cancel its competitive local exchange company certificate in Florida.

ISSUE 9(a): Has VCI violated any PSC rule or order applicable to VCI pertaining to ETC status or Lifeline and Link-Up service?

Prosecutorial Staff: Yes. VCI has violated Section 364.10, F.S., Section 364.604(2), F.S., Section 364.336, F.S., Order No. PSC-06-0035-PAA-TX, Order No. PSC-06-0436-PAA-TX, and Order No. PSC-08-0304-PCO-TX. Staff reserves the right to add additional statutes, rules, and orders upon review of VCI's responses to Prosecutorial staff's discovery request.

ISSUE 9(b): If so, what is the appropriate remedy, if any?

Prosecutorial Staff: The Commission should rescind VCI's ETC status in the state of Florida, and cancel its competitive local exchange company certificate in Florida.

ISSUE 10(a): Does the Commission have authority to rescind VCI's ETC status in the state of Florida?

Prosecutorial Staff: Yes. The Commission has the authority to rescind VCI's ETC status pursuant to Section 364.10(2), F.S. and the Commission's regulatory oversight pursuant to 364.337(5), F.S. The FCC and the Federal-State Joint Board on Universal Service found that individual state commissions are uniquely qualified to determine what information is necessary to ensure that ETCs are complying with all applicable requirements.

ISSUE 10(b): If so, is it in the public interest, convenience, and necessity for VCI to maintain ETC status in the state of Florida?

Prosecutorial Staff: No. It is not in the public interest, convenience, and necessity for VCI to maintain its ETC status in the state of Florida. It appears that VCI has been receiving double recovery of Universal Service funds by 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. 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 filed for and received reimbursement for incremental costs of providing TLS when VCI did not incur any TLS incremental costs.

ISSUE 11(a): Has VCI willfully violated any lawful rule or order of the Commission, or provision of Chapter 364?

Prosecutorial Staff: Yes. VCI has willfully violated the lawful rules, and orders, and provisions of Chapter 364. VCI has violated Section 364.10, F.S., Section Section 364.183(1), Section 364.336, F.S., Section 364.337(1), F.S., Section 364.604(2), F.S. and Rule 25-4.0161, Florida Administrative Code. In addition, Prosecutorial staff also believes that VCI has violated Order No. PSC-06-0035-PAA-TX, Order No. PSC-06-0436-PAA-TX, and Order No. PSC-08-0304-PCO-TX. Staff reserves the right to add additional statutes, rules, and orders upon review of VCI's responses to Prosecutorial staff's discovery request.

ISSUE 11(b): If so, should VCI's competitive local exchange company certificate be revoked?

Prosecutorial Staff: Yes. VCI received double recovery from the USF fund for Lifeline and Link-Up, made improper filings for TLS support, overbilled its customers for E-911 fees, provided erroneous information on monthly customer billing, provided business telephone numbers with Lifeline credits, and did not provide support for revenues on its Form 497 filings and the PSC's regulatory assessment fee returns. VCI has violated Order No. PSC-08-0304-PCO-TX which ordered VCI to submit its full and complete responses to Staff's First Set of Interrogatories (Nos. 1-38) and First Request for Production of Documents (Nos. 1-10) by the close of business on Friday, May 9, 2008. VCI has violated the terms and conditions upon

which its CLEC certificate was granted, and has violated Commission rules and orders.

E. Stipulations

The parties have entered into no stipulations at this time.

F. Pending Motions

Prosecutorial staff has filed a Motion to Impose Sanctions Due to VCI's Failure to Comply with Order No. PSC-08-0304-PCO-TX that is currently pending.

G. Prosecutorial Staff's Request and Notice of Intent to Use Confidential Information at Hearing

Prosecutorial Staff filed with its Direct and Rebuttal Testimony of Witnesses Robert J. Casey and Intesar Terkawi, confidential information provided to the Commission by VCI and AT&T via confidential data requests and subpoenas, and may provide additional confidential information in response to future discovery. Prosecutorial Staff has requested or signed its intent to request confidentiality for the following:

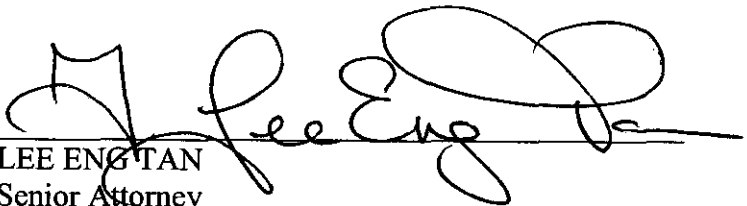
1. Direct Testimony of Robert J. Casey - Pages 15, 17, and 18 and Exhibit Nos. RJC-13, RJC-15, RJC-19 and RJC-21; and Direct Testimony of Intesar Terkawi - Exhibit IT-3.
2. Rebuttal Testimony of Robert J. Casey - Page 4 and Exhibit Nos. RJC-32 and RJC-33.

Prosecutorial Staff reserves the right to use any such information at hearing, subject to appropriate measures to protect confidential information.

H. Other Requirements

Prosecutorial Staff knows of no requirements set forth in the Prehearing Order with which it cannot comply.

Respectfully submitted this 14th day of May 2008.

A handwritten signature in black ink, appearing to read "Lee Eng Tan", written over a horizontal line.

LEE ENG TAN
Senior Attorney
FLORIDA PUBLIC SERVICE COMMISSION
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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 DATED: MAY 14, 2008
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of PROSECUTORIAL STAFF'S PREHEARING STATEMENT has been served by U.S. Mail to Bruce Culpepper, Akerman Senterfitt Law Firm, 106 East College Avenue, Suite 1200, Tallahassee, Florida 32301, and that a true copy thereof has been furnished to the following by U. S. mail or by (*) hand delivery this 14th day of May, 2008:

Vilaire Communications, Inc.
P. O. Box 98907
Lakewood, WA 98496-8907

(*)Rosanne Gervasi
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850



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