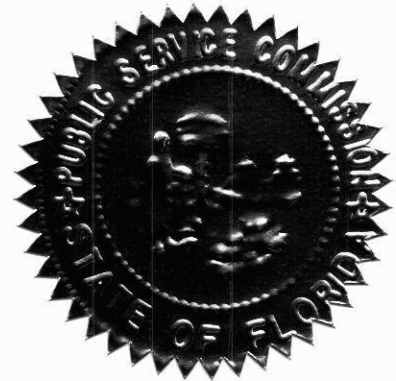


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080065-TX

In the Matter of:

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



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 3A

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

DATE: Tuesday, May 6, 2008

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

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

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1 PARTICIPATING:

2 BETH KEATING, ESQUIRE, representing Vilaire
3 Communications, Inc.

4 STACEY KLINZMAN, representing VCI Company.

5 LEE ENG TAN, ESQUIRE, and BOB CASEY, representing
6 Prosecutorial Staff.

7 ROSANNE GERVASI, ESQUIRE, representing the Florida
8 Public Service Commission.

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P R O C E E D I N G S

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CHAIRMAN CARTER: Okay. We are now moving to Item 3A.

(Off the record.)

CHAIRMAN CARTER: All right. Let's try that again. We had some technical difficulties. Will you introduce yourself, please.

MS. KLINZMAN: Certainly. Stacey Klinzman from VCI Company.

CHAIRMAN CARTER: Okay.

Staff, you're recognized to introduce the issue.

MS. GERVASI: Thank you, Chairman. Rosanne Gervasi for advisory staff.

Item 3A is the advisory staff's recommendation to deny Vilaire's motion for reconsideration of Order Number PSC-08-0258-PCO-TX, issued April 25th, in Docket Number 080065-TX. This is an order compelling VCI to respond to the prosecutorial staff's first set of discovery over VCI's objections.

In Issue 1, we recommend granting VCI's request for oral argument on the motion for reconsideration, and to allow VCI and the prosecutorial staff ten minutes each to address the Commission.

Yesterday afternoon, VCI filed a motion to dismiss the proceeding for lack of subject matter jurisdiction or, in

1 the alternative, to abate the proceeding pending a decision in
2 the federal district court on the issue of subject matter
3 jurisdiction. That motion to dismiss is not a part of the
4 recommendation filed for the Commission's consideration today.
5 I bring it to your attention because in the motion to dismiss
6 VCI argues that the Commission cannot rule on the motion for
7 consideration that is before you today until the Commission has
8 determined its jurisdiction to consider the matters raised in
9 VCI's motion to dismiss.

10 Advisory staff disagrees with that. Unless and until
11 the Commission or a court determines that the Commission lacks
12 subject matter jurisdiction to move forward with VCI's protest
13 of the Commission's PAA order, this matter should head towards
14 hearing in accordance with the schedule set forth in the order
15 establishing procedure. Advisory staff recommends that the
16 Commission rule on the motion for reconsideration so that the
17 parties may be prepared to move forward to hearing on June the
18 4th.

19 The VCI has, in addition to Ms. Klinzman on the
20 telephone, Mr. Bruce Culpepper and Ms. Beth Keating here with
21 Akerman Senterfitt. And the prosecutorial staff is also
22 present in the event that you want to hear oral argument from
23 both sides.

24 **CHAIRMAN CARTER:** One second.

25 Let's have the prosecutorial staff make an

1 appearance, please.

2 MS. TAN: Good morning, Commissioners. Lee Eng Tan
3 on behalf of prosecutorial staff.

4 MR. CASEY: And Bob Casey on behalf of the
5 prosecuting staff.

6 CHAIRMAN CARTER: Thank you. Thank you.

7 Commissioners, we have a recommendation for us from
8 staff on oral argument on Issue 1. What's your preference?

9 Commissioner Edgar.

10 COMMISSIONER EDGAR: Mr. Chairman, I would make a
11 motion in favor of the staff recommendation on Issue 1 that we
12 allow the parties, prosecutorial staff and the company, to
13 present oral argument.

14 COMMISSIONER SKOP: Second.

15 CHAIRMAN CARTER: Okay. Any objections? Without
16 objection, show it done.

17 So that will be ten minutes per side. Ms. Keating,
18 Mr. Culpepper.

19 Ms. Keating, you're recognized. You have got ten
20 minutes.

21 MS. KEATING: Mr. Chairman, thank you very much.
22 Beth Keating, again, Akerman Senterfitt. I just wanted to take
23 a brief second to introduce you once again to Mr. Bruce
24 Culpepper, who is also with the Akerman Senterfitt law firm,
25 and will be participating in this case on a going-forward

1 basis.

2 However, today on behalf of VCI, Ms. Klinzman will be
3 presenting the argument on our behalf.

4 **CHAIRMAN CARTER:** Ms. Klinzman, you're recognized.

5 **MS. KLINZMAN:** Thank you, Mr. Chairman. I want to
6 thank the Commission for permitting me to participate by
7 telephone and to also participate and give oral argument on
8 these issues.

9 The crux of the matter from the company's point of
10 view is staff seeks to enlarge this proceeding to review every
11 company document relating to every aspect of the company's
12 operations in Florida, and even operations in other states. We
13 don't believe that's appropriate or permitted by Florida law.
14 And Mr. Casey's testimony indicates staff wants these documents
15 for fishing purposes, for purposes beyond even the issues in
16 this proceeding.

17 Now, I have to respectfully disagree with staff that
18 subject matter jurisdiction does not need to be determined
19 before you can rule on this motion. If you have no
20 jurisdiction over an issue in this case, discovery simply
21 cannot be had on that issue. If you were to issue an order
22 today in this case requiring us to provide documents to you
23 that you do not have jurisdiction to receive, we would be
24 irreparably harmed by this. And so I respectfully request the
25 Commission reconsider staff's recommendation that you rule on

1 this motion before you determine jurisdiction.

2 I think VCI filed a notice of intent as part of its
3 reconsideration to file something in federal court on
4 jurisdiction really does matter specifically because if you
5 have no jurisdiction then you cannot receive these documents.
6 You are only permitted by statute to obtain information that
7 you have jurisdiction over.

8 I would also like to address staff's accusation in
9 play. Particularly the Commission has been aware that
10 jurisdiction is an issue in this case since the very beginning,
11 and staff has been aware of it since September of 2007. The
12 Commission put this case on an expedited schedule, which is
13 something that we didn't request, and you did so knowing that
14 jurisdiction was an issue.

15 We also believe very strongly that it was
16 inappropriate for there to be an expedited ruling on staff's
17 motion to compel. It's clear to us from staff's response to
18 our motion for reconsideration that they are clearly capable
19 and have said that they are able to do an analysis of
20 documents. And in the course of business they reviewed
21 thousands of documents. Clearly, staff would not have been
22 prejudiced by another couple of days permitting us to respond
23 to the motion to compel. And we do believe this was an error
24 that the Commission made to not have done so.

25 Furthermore, when the Commissioner made his ruling,

1 he considered no facts or law that -- because we were unable to
2 bring facts or law before the Commissioner before he made his
3 ruling, there are no facts or law that VCI could have brought
4 before his attention, so we are not rearguing issues and facts
5 and law that were brought to his attention before.

6 Specifically, we are not required to list every
7 possible objection or every fact relating to that objection in
8 response to discovery requests. So the Commissioner made his
9 decision based only on staff's motion and barebones information
10 provided in those discovery responses and objections, and we
11 believe that that was in error.

12 Regarding staff's desire to work through discovery
13 objections, we have to say that there are a couple of
14 assertions in staff's response that (inaudible) that don't
15 jibe with our assertions.

16 **CHAIRMAN CARTER:** Ms. Klinzman.

17 **MS. KLINZMAN:** Yes.

18 **CHAIRMAN CARTER:** Could you slowly repeat what you
19 just said. We had a breakout on the technical -- could you
20 just --

21 **MS. KLINZMAN:** Certainly. Regarding staff's desire
22 to work through VCI's objections, we thought that we should
23 point out a couple of assertions in prosecutorial staff's
24 response that need a response on --

25 **CHAIRMAN CARTER:** Ms. Klinzman, could you just pick

1 up your phone? I think the problem we're having is you are on
2 your speaker phone.

3 MS. KLINZMAN: Okay. I guess we're having technical
4 difficulties.

5 CHAIRMAN CARTER: Yes. Yes, we are. Thank you.

6 MS. KLINZMAN: Okay. We want to point out regarding
7 staff's desire to work through VCI's objections that on Page
8 6 staff asserted that VCI was contending that staff did not
9 notify us that it would be requesting bills, and that's not
10 correct. At Page 9 of our motion, we concede that staff had
11 notified us. What we weren't able to grasp was the scope of
12 the analysis that would be required in seeking those bills.
13 There was no blatant falsehood with respect to that, and we
14 take a little bit of offense that staff has misread our motion
15 and made that accusation.

16 Regarding staff's statements at Page 7 regarding the
17 discussions of discovery production, we feel compelled to also
18 tell you that although staff invited us into a conference call,
19 it was our understanding, which perhaps might have been in
20 error, that the call was intended to focus on obtaining the
21 bill information only. And with that understanding in mind, we
22 reviewed the possibility that the bill information could be
23 provided in electronic format and determined it wouldn't be
24 feasible.

25 Local counsel then called prosecutorial staff and

1 left counsel a message that electronic bills were not feasible,
2 but that we would be open to other options, including a
3 sampling. Our local counsel didn't get a further response from
4 staff, except that it was going to file the motion to compel.

5 Now, I also want to bring up the fact that regarding
6 duplicate information, we just never understood that to be part
7 of the call that staff proposed, because we felt that that call
8 would be specifically about the bills. Again, we thought that
9 would be -- you know, perhaps we misunderstood, and we
10 apologize if we did. We made it clear that we were going to --
11 that we weren't going to be likely to waive valid objections,
12 and those objections still exist.

13 In addition, staff is arguing that we erroneously
14 asserted the Commission could not inquire into the mechanics of
15 our business relationships with our underlying carrier or other
16 parties. As I stated before, the Commission has access to
17 documents only within its jurisdiction. And other statutes and
18 law cited by VCI that the Hearing Officer did not have the
19 benefit of until our motion for reconsideration addresses the
20 fact that the Commission does not have jurisdiction over third
21 parties and VCI's relationships with those third parties.

22 Let's see. Now, regarding the issue of whether VCI
23 willfully violated a lawful rule or order of the Commission, or
24 a provision of Chapter 364, there is some indication that the
25 Commission may be under the impression that the order doesn't

1 compel VCI to respond to discovery requests that are outside of
2 the scope of the issues. Well, specifically with respect to
3 the 911 issue, VCI has admitted to overcharging its customers a
4 911 surcharge. Therefore, there is no discovery necessary on
5 whether VCI violated that rule. If staff wants to determine
6 whether or not we have corrected the surcharge amount, we are
7 certainly willing to give them a sampling of bills.

8 In addition, with respect to the RAF, VCI has
9 admitted during the audit and through testimony that it did not
10 include the reimbursement from the USAC as revenues on the RAF
11 form. If the Commission considers the fact that we did not
12 include the revenues from USAC on the RAF form and only
13 included customer receipts, then that's a violation of a rule,
14 and no further discovery needs to be done to determine if we
15 have done that.

16 In addition, with respect to the FTRI payments, staff
17 is well aware, because it obtained documents directly from the
18 FTRI, that VCI is making its FTRI payments. Thus, no discovery
19 is necessary on this issue because there is no violation, and
20 staff is well aware of that.

21 Let's see. I'm reviewing my notes.

22 **CHAIRMAN CARTER:** You have one minute left.

23 **MS. KLINZMAN:** Okay. Oh, with respect to privilege,
24 the Commission simply isn't permitted to inquire into VCI's
25 legal strategies with respect to any ongoing proceeding or this

1 proceeding, nor is the Commission entitled to inquire into
2 proceedings with respect to VCI's operations in states other
3 than Florida, because this Commission has no jurisdiction with
4 respect to VCI's operations, if any, in states other than
5 Florida.

6 Also, you need to be aware that with respect to
7 Production of Documents Number 9, we have claimed that those
8 documents are not otherwise discoverable; and, therefore, we
9 did not have to provide a privilege log. And this Commission
10 needs to rule on whether those documents are otherwise
11 discoverable before we need to provide the privilege log to the
12 Commission.

13 **CHAIRMAN CARTER:** Thank you.

14 **MS. KLINZMAN:** Thank you.

15 **CHAIRMAN CARTER:** Ms. Tan, you're recognized.

16 **MS. TAN:** Good morning, again, Commissioners.

17 I'm speaking on behalf of the prosecutorial staff in
18 the investigation of Vilaire Communication, Inc.'s eligible
19 telecommunications carrier status and competitive local
20 exchange company certificate status in the state of Florida.

21 As the Commission is aware, VCI's motion to dismiss
22 was filed at the Commission at 4:55 yesterday. However,
23 prosecutorial staff believes that there are three reasons why
24 the Commission could rule on this motion for reconsideration.
25 The relevant case cited by VCI does not state that the

1 Commission cannot rule on the motion, but rather it holds that
2 a ruling on the motion would create certiorari jurisdiction.

3 There is nothing that precludes the Commission from
4 ruling on this motion. VCI has not exhausted their
5 administrative remedies. The Florida courts have held that a
6 jurisdictional claim which has apparent merit or one which
7 depends upon factual determination, in most instances, requires
8 an exhaustion of administrative remedies before resorting to
9 the judicial forum.

10 Prosecutorial staff supports the prehearing officer's
11 order granting the motion to compel. In response to VCI's
12 motion for reconsideration, prosecutorial staff believes VCI
13 simply reargues the motion to compel and fails to meet its
14 burden to demonstrate a material or relevant fact or law was
15 overlooked. As the Commission has determined before, it is not
16 appropriate to reargue matters that have already been
17 considered.

18 As of today, VCI has yet to address in any forum the
19 factual issues with the exception of the 911 billing issue. It
20 has been over a month and a half since the Issue ID was held
21 and over a month since prosecutorial staff served discovery on
22 VCI. Bottom line, in this motion for reconsideration, VCI
23 creates another transparent attempt at delay. Each day that
24 passes Florida consumers are being harmed, because Florida is
25 the number one net contributor to the Federal Universal Service

1 Fund. In the last two months, VCI has continued to receive
2 universal service fund disbursements of over \$100,000 for
3 Lifeline and Link-Up services in Florida alone.

4 Staff urges the Commission to deny VCI's motion for
5 reconsideration because the prehearing officer correctly
6 determined that VCI should be compelled to produce the
7 discovery they continue to evade and fail to produce.
8 Prosecutorial staff believes that the motion to compel was
9 correctly granted by the prehearing officer and, therefore, VCI
10 should produce the data pursuant to staff's data request.

11 However, prosecutorial staff is compelled to respond
12 to VCI's continued attempts to mislead the Commission and
13 mischaracterize staff's discovery requests. All discovery
14 requested by prosecutorial staff is relevant to the issues
15 agreed upon by the parties and is reasonably calculated to lead
16 to the discovery of information. Staff seeks only to provide
17 comprehensive and accurate evidence for the Commission. For
18 example, at this time the prosecutorial staff has only sample
19 bills selected and provided by VCI. In addition, staff does
20 not have any corporate bills or any consumer contracts that
21 would be of use to verify costs and existence of equipment.

22 In the Commission's order granting ETC status to VCI
23 in 2006, VCI indicated that it would abide by all Florida
24 Statutes, rules, and Commission orders regarding ETCs. Not
25 only is staff looking at VCI's ETC status, but prosecutorial

1 staff believes that VCI no longer has the technical or
2 managerial capability to provide CLEC service in the state of
3 Florida, and all discovery that prosecutorial staff has served
4 is clearly within the scope of this proceeding.

5 VCI has raised the idea that this Commission cannot
6 look into its business relationships with its underlying
7 carrier or any other third-party. Staff disagrees and believes
8 that the Commission has the authority to inquire into VCI's
9 business contracts under Section 364.183, Florida Statutes,
10 which states that companies shall provide any documents within
11 the Commission's jurisdiction.

12 At this time, VCI holds a CLEC certificate with the
13 Commission and is treated as any other CLEC here in Florida.
14 Prosecutorial staff is not asking for any documents it believes
15 to be privileged. In fact, VCI's arguments that their
16 information falls under the attorney/client or work product
17 privilege is without exception erroneous. Not only does VCI
18 fail to describe the nature of the documents pursuant to Rule
19 1.280(b)(5) of the Florida Rules of Civil Procedure, but there
20 is no possibility that the universal service forms filed with
21 the Universal Service Administrative Company in the course of
22 normal business would be privileged information.

23 Unless the information is created between client and
24 attorney or in anticipation of litigation, the requests may be
25 confidential pursuant to the Florida Administrative Code Rule

1 25-22.006, but most certainly are discoverable. In fact, VCI
2 also attempts to add even more of staff's discovery requests to
3 the protection of privilege in its motion for reconsideration.

4 Commissioners, it is a privilege to do business in
5 the state of Florida, not a right. Prosecutorial staff is
6 available to answer any questions you may have regarding this
7 matter.

8 **CHAIRMAN CARTER:** Thank you very kindly.

9 Commissioners, we are now into our questioning phase.

10 Commissioner Skop, you're recognized.

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

12 I have several questions for the company counsel,
13 Ms., I believe, Klinzman, is that correct?

14 **MS. KLINZMAN:** Uh-huh, Klinzman.

15 **COMMISSIONER SKOP:** Okay. First, did a
16 representative from VCI participate in the Issue Identification
17 Meeting, and that is the issues that are in Attachment A to the
18 staff recommendation?

19 **MS. KLINZMAN:** Yes.

20 **COMMISSIONER SKOP:** And at that meeting did VCI have
21 input as to how the issues were framed and worded?

22 **MS. KLINZMAN:** They did.

23 **COMMISSIONER SKOP:** And one of those issues that all
24 the parties agreed upon was Issue 11, is that correct?

25 **MS. KLINZMAN:** I don't have Issue 11 in front of me.

1 That was --

2 COMMISSIONER SKOP: It basically states, Issue 11A,
3 has VCI willfully violated any lawful rule, or order of the
4 Commission, or provision of Chapter 364, Florida Statutes.

5 MS. KLINZMAN: Okay. Yes, that's true.

6 COMMISSIONER SKOP: Okay. So, in that regard, how
7 are the interrogatories and production of document requests not
8 reasonably calculated to lead to admissible evidence when it
9 comes to line charges on these consumers' bills?

10 MS. KLINZMAN: Well, sir, as I mentioned before, with
11 the discovery under that -- under that issue before is to
12 determine whether or not VCI has violated any rules. VCI has
13 admitted that it did not charge the 911 surcharge correctly.
14 Therefore, further discovery on whether VCI violated that rule
15 is simply inappropriate.

16 Secondly, the FTRI payments, staff is well aware that
17 VCI is making its FTRI payments, because VCI made a public
18 records request, and among the documents produced by the
19 Commission pursuant to that request was evidence that the
20 prosecutorial staff asked the FTRI directly for a chart stating
21 that we had made -- asked whether we had made payments and
22 received specific information that we had. And we have no
23 information that staff has found anything other than that we
24 are making our payments. If staff is aware that we have not
25 violated a rule, no further discovery needs to be made.

1 **COMMISSIONER SKOP:** Thank you.

2 Let me move on to some additional questions to a more
3 specific point. You would agree that the Florida Public
4 Service Commission has subject matter jurisdiction regarding
5 CLEC certificate granting -- or designation and revocation?

6 **MS. KLINZMAN:** I can't answer that question
7 wholesale, because I know that the Commission submits that it
8 does have that jurisdiction, but it depends on what the
9 Commission is using as a reason for attempting to take away
10 that certificate.

11 **COMMISSIONER SKOP:** And you would agree, also, that
12 the PSC has subject matter jurisdiction over ETC designation
13 and revocation?

14 **MS. KLINZMAN:** No, we do not agree.

15 **COMMISSIONER SKOP:** Okay. If a company were
16 systematically engaging in a pattern of fraud, that would be
17 highly relevant as to whether a company should be certificated
18 in Florida, is that correct?

19 **MS. KLINZMAN:** Sir, your question is rather
20 inflammatory, and I cannot speak to that issue.

21 **COMMISSIONER SKOP:** In that regard, what are you
22 trying to hide?

23 **MS. KLINZMAN:** We are not trying to hide anything.

24 I refuse to answer a question where the word fraud is
25 inserted in the sentence. I think it's an inappropriate

1 question.

2 **COMMISSIONER SKOP:** Well, the question was presented
3 as a hypothetical. It did not name a specific company.

4 **MS. KLINZMAN:** Sir, I really believe this is an
5 improper inquiry on the Commission's behalf.

6 **COMMISSIONER SKOP:** Based on my two previous
7 questions, you would agree that the discovery sought by staff
8 is reasonably calculated to lead to admissible and relevant
9 evidence as to whether VCI is engaging in unlawful conduct, is
10 that correct?

11 **MS. KLINZMAN:** I'm not prepared to agree with that
12 either, sir.

13 **COMMISSIONER SKOP:** Okay. To my fellow colleagues, I
14 guess my point is that whether a company that is continuously
15 and systematically engaging in a pattern of fraud would be
16 highly relevant to our jurisdiction, the subject matter
17 jurisdiction as to whether to revoke the CLEC certificate
18 and/or the ETC designation. And I'm of the belief that a
19 logical conclusion is that staff's discovery request is
20 appropriate, and I stand by that.

21 And I would like to add to that, too. A lot has been
22 made with respect to the Commission's jurisdiction on certain
23 matters, but, certainly, I also think it would be highly
24 relevant to the Attorney General's Office if a company was
25 openly engaging in fraud in Florida, and I will leave it at

1 that.

2 **CHAIRMAN CARTER:** Thank you, Commissioner.

3 Commissioner McMurrian, you're recognized.

4 **COMMISSIONER McMURRIAN:** Thank you. I also have a
5 question for Ms. Klinzman.

6 **MS. KLINZMAN:** Uh-huh.

7 **COMMISSIONER McMURRIAN:** I'm not an attorney, but I
8 think you can raise jurisdictional questions at any time. And
9 I know that you have raised them, and you talked about in your
10 comments how staff was aware for some period of time. And I
11 think in the recommendation it talks about how there is an
12 issue, or maybe even a few issues that sort of go to the
13 Commission's authority in a few areas. But I guess my question
14 is when we were all here in February, why didn't we hear about
15 the jurisdictional concerns at that time? Because if it's true
16 that we lack subject matter jurisdiction, it seems like that
17 would have been an appropriate time to bring that up, because
18 if we lack jurisdiction, which I don't tend to agree with right
19 now, but I'm willing to keep an open mind. But if we lack
20 jurisdiction, it seems like that would have been the point to
21 bring it up, and that we would make a decision at that point.

22 **MS. KLINZMAN:** Madam Commissioner, the issue of
23 subject matter jurisdiction may be raised at any time, and it
24 is appropriate to be raised at this time. Whether it was
25 appropriate to be raised then, I can't answer.

1 **COMMISSIONER McMURRIAN:** Okay. I guess -- could I
2 just make a comment?

3 **CHAIRMAN CARTER:** Uh-huh.

4 **COMMISSIONER McMURRIAN:** With respect to the comments
5 you made about no discovery was necessary when staff knows the
6 answer, essentially, and I just wanted to share with you my
7 thoughts on that. I'm not trying to speak for the whole
8 Commission. But, frankly, if we're in a hearing mode, and we
9 are trying to build a record, the Commissioners can't just say,
10 well, staff knows, so we have the answer. I think we have
11 to -- we have to base it on the record that's before us. So as
12 long as we have issues with respect to E911, or FTRI, or the
13 fact of compliance with any rule or statute, I think that we do
14 have to -- I think we expect our staff to try to build a record
15 and show us what the truth is either way. And I just wanted to
16 share my thoughts on that. So, thank you.

17 **MS. KLINZMAN:** Thank you.

18 **CHAIRMAN CARTER:** Commissioners, any further
19 questions?

20 Commissioners, we're in debate. We're into debate.
21 We're in debate.

22 Commissioner Skop, you're recognized, sir.

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

24 And, again, I just want to add to this, because, you
25 know, I agree with the fact that the issue of subject matter

1 jurisdiction could be raised at any time. But I think that the
2 premise for lack of subject jurisdiction is completely
3 misguided in the instant case to the extent that we do have
4 subject matter jurisdiction over CLEC certification as well as
5 ETC designation. And I think that the questions before us are
6 highly relevant as to our subject matter jurisdiction to either
7 grant or revoke such designations or certificates. So, again,
8 I think that, you know, the discovery sought is reasonable
9 calculated to lead to information that would support our
10 decision in those regards.

11 **CHAIRMAN CARTER:** Thank you, Commissioners.

12 **MS. KLINZMAN:** Mr. Chairman, may I be heard?

13 **CHAIRMAN CARTER:** Ever so briefly. You're
14 recognized.

15 **MS. KLINZMAN:** Thank you.

16 I just want to point out to the Commission that with
17 respect to subject matter jurisdiction, the facts of the case
18 are not important and may not be considered. It is merely --
19 it's a legal argument, and the Commission, in fact, may not
20 consider the facts or the allegations of the case. So to the
21 extent that you approve this discovery order based on the fact
22 that you think the facts are important, I believe that would be
23 in error.

24 **CHAIRMAN CARTER:** Commissioner Argenziano, you're
25 recognized. We're in debate. This is Commissioners only.

1 We're in debate.

2 **COMMISSIONER ARGENZIANO:** Okay. Well, my debate is
3 this: I am not considering any facts of the case. What I'm
4 considering is the company's continual avoidance of supplying
5 us information to come to a determination that we need to come
6 to. And there's a particular attitude, and I understand due
7 process, and I respect that a great deal, but I couldn't agree
8 more with staff today. I've read staff. I thought staff did
9 an excellent job, and that's all I need to say.

10 **CHAIRMAN CARTER:** Commissioner Skop, you're
11 recognized.

12 **COMMISSIONER SKOP:** Thank you. And also, too, I
13 would like to recognize our hard-working staff along the lines
14 of Commissioner Argenziano. I know they have worked hard on
15 many items at the agenda conference today, and this is one of
16 them. So I just wanted to throw that out there, also.

17 Thank you.

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

19 **MR. CULPEPPER:** Commissioner.

20 **CHAIRMAN CARTER:** I beg your pardon?

21 **MR. CULPEPPER:** My name is Bruce Culpepper, may I
22 make a quick -- (inaudible, microphone not on.)

23 **CHAIRMAN CARTER:** Every so briefly, Mr. Culpepper.
24 You're recognized.

25 **MR. CULPEPPER:** The word fraud came up for the first

1 time, and I'm brand new to this case, and I know that there
2 wasn't a specific allegation with regard to the company, VIC.
3 But I was concerned about that, because I do not think that's
4 part of the charging.

5 **CHAIRMAN CARTER:** That is not what the Commission --
6 if you're talking about what Commissioner Skop said, that was
7 not the flavor of his question.

8 **MR. CULPEPPER:** Yes, sir. I just wanted that to be
9 clear.

10 **CHAIRMAN CARTER:** We were very clear -- we heard him.
11 He did not say that. He asked if a company were engaged in
12 fraud.

13 **MR. CULPEPPER:** Yes, sir. And I just wanted to make
14 sure that was clear, and that I was clear on that, too, because
15 I'm new to this. Thank you.

16 **CHAIRMAN CARTER:** Commissioners, we were all clear,
17 weren't we?

18 **COMMISSIONER ARGENZIANO:** Yes, I was.

19 **CHAIRMAN CARTER:** Thank you. Thank you, Mr.
20 Culpepper.

21 **MR. CULPEPPER:** Thank you for your clarification. I
22 apologize for interrupting.

23 **CHAIRMAN CARTER:** Not a problem. Not a problem. I
24 just want to be sure that we -- we're listening. We're
25 listening. We want to make sure that all the parties are

1 listening, as well.

2 Commissioners.

3 Commissioner Skop, you're recognized.

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

5 If there's no further need for discussion, I would
6 make the motion to approve staff recommendation.

7 **COMMISSIONER ARGENZIANO:** Second.

8 **CHAIRMAN CARTER:** Commissioners, we have a motion
9 before us to approve staff on the recommendation. Any further
10 questions? Any further discussion? Any further debate?
11 Hearing none, all in favor of the motion let it be known by the
12 sign of aye.

13 (Unanimous affirmative vote.)

14 **CHAIRMAN CARTER:** All those opposed, like sign. Show
15 it done.

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STATE OF FLORIDA)

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CERTIFICATE OF REPORTER

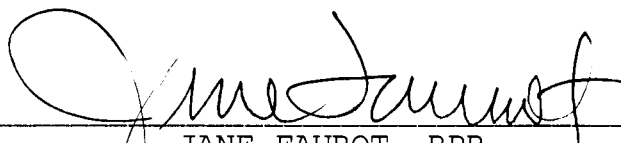
COUNTY OF LEON)

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

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

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

DATED THIS 8TH DAY OF MAY, 2007.



JANE FAUROT, RPR
Official FPSC Hearings Reporter
FPSC Division of Commission Clerk
(850) 413-6732