

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)
Division of Competitive Markets & Enforcement (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

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.

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.