

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Petition of VCI)	<u>DOCKET NO. 05-2446-01</u>
Company dba Vilaire for Designation as an)	
Eligible Telecommunications Carrier Providing)	<u>REPORT AND ORDER</u>
Service to Customers under the Utah Low Income)	
Telephone Assistance Plan)	

ISSUED: August 17, 2005

SYNOPSIS

The Public Service Commission of Utah grants VCI Company's request for Federal ETC status for the Qwest exchanges in Utah. The Commission limits said designation to eligibility for the Federal Lifeline/Link Up program, thereby limiting withdrawal from the Utah Universal Service Fund to the state contribution for low-income households under the Lifeline program.

By The Commission:

PROCEDURAL HISTORY

On May 8, 1997, the Federal Communications Commission ("FCC") issued its Universal Service Report and Order, CC Docket 96-45, FCC 97-157 ("Universal Service Order") implementing the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"). The Universal Service Order provides that only eligible telecommunications carriers designated by a state commission shall receive federal universal service support. Under 47 U.S.C. § 214(e)(2), a state commission shall, upon its own motion or upon request, designate a common carrier that meets the requirements set forth by the FCC as an eligible telecommunications carrier ("ETC") for a service area designated by the state commission. The FCC defines a service area as a geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms. Together, all of a carrier's calling areas represent the overall area for which the carrier shall receive support from federal universal service support mechanisms.

On April 18, 2005, VCI Company ("VCI") filed a Petition with the Public Service Commission

("Commission") for designation as an ETC in Utah to receive federal universal service support under the Act and corresponding FCC regulations, and for the purpose of receiving support from the Utah Universal Service Fund ("State Fund") established by the Commission. VCI indicated in its Petition that it does not plan to serve high-cost areas and will limit its service offering to provision of local exchange service to Utah residents qualifying for the Utah Low Income Telephone Assistance Plan. VCI also stated it has been approved for ETC designation in the states of Washington, Wyoming, Oregon, Iowa, Idaho, and Colorado, and currently provides Lifeline/Linkup support to residents of tribal lands in areas approved for ETC designation in each of these states.

No parties have sought intervention in this Docket. On June 20, 2005, the Division of Public Utilities ("Division") filed a request for more time to conduct its investigation. On July 12, 2005, the Division filed comments recommending the Commission grant limited federal and state ETC designation to VCI, authorizing it to participate only in the federal Lifeline/Link-Up, and, thus, to collect federal universal service fund ("USF") monies only for the reimbursement of Lifeline. The Division further recommended granting VCI designation as a state ETC, authorized to participate in the Utah Lifeline Program which would permit limited withdrawal from the State Fund. The Division recommends the Commission, upon granting ETC designation, order VCI to file its Price List and samples of advertising with the Commission within thirty days of approval.

II. STATUTORY PROVISIONS

To be designated as a federal ETC under the Act, a carrier must: (1) be a common carrier; (2) demonstrate it will provide the supported services set forth in 47 C.F.R. § 54.101(a) throughout its designated service areas; and (3) present an acceptable plan for advertising its universal service offerings and the charges therefor using media of general distribution. 47 U.S.C. § 214(e); Universal Service Order, ¶ 24.

The FCC's supported services set forth in 47 C.F.R. § 54.101(a) are:

- a. voice grade access to the public switched telephone network;
- b. local usage;
- c. dual tone multi-frequency signaling or its functional equivalent;

- d. single-party service or its functional equivalent;
- e. access to emergency services;
- f. access to operator services;
- g. access to interexchange service;
- h. access to directory assistance;
- i. toll limitation for qualifying low-income consumers.

In addition, on March 17, 2005, in CC Docket No. 96-45, the FCC adopted additional criteria requiring a petitioning telecommunications corporation to do the following prior to ETC designation:

1. provide a five-year plan demonstrating how high-cost universal service support will be used to improve its coverage, service quality or capacity throughout the service area for which it seeks designation;
2. demonstrate its ability to remain functional in emergency situations;
3. demonstrate that it will satisfy consumer protection and service quality standards;
4. offer local usage plans comparable to those offered by the incumbent local exchange carrier in the areas for which its seeks designation; and
5. acknowledge that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations.

To obtain funding from the State Fund, the Commission has established the following requirements in Utah R746-360-6: (a) a carrier must be designated an ETC under Section 214(e) of the Act; (b) a carrier must be in compliance with applicable Commission orders and rules; (c) a carrier must offer "basic telecommunications service" as defined by Commission Rule R746-360-2; and (d) a carrier must be a facilities-based provider.

Provision of "basic telecommunications service" requires a carrier to provide access to the public switched network; touch-tone, or its functional equivalent; local flat-rated, unlimited usage, exclusive of extended area service; single-party service with a telephone number listed free in directories that are received

free; access to operator services; access to directory assistance; access to 911 or E911 emergency services; access to long-distance carriers; and access to toll limitation services. Utah R746-360-2C.

III. DISCUSSION AND FINDINGS

Federal ETC Designation

VCI dba Vilaire is a certificated competitive telecommunications provider in the State of Utah. In its application, VCI states that it provides wireline service primarily through the leasing of Unbundled Network Elements ("UNE's"), but the Division notes VCI has not yet begun providing service in Utah, has no customers in the State, and has no Price List on file with the Commission. VCI states that it provides services supported by the USF as set forth in 47 C.F.R. §54.101(a). The Division notes VCI's plan to offer service to low-income consumers utilizing Qwest's UNE/QPP method of connection will, by default, provide the services required in 47 C.F.R. §54.101(a). By providing service via Qwest's UNE/QPP facilities, VCI will also have the ability to provide the same service quality that Qwest provides to its own customers. The Division has investigated VCI's past service quality record in other jurisdictions, observes no severe problem with that record, and notes VCI has committed to abide by all Commission service quality rules and regulations.

VCI indicates that it advertises the availability of its universal service offering throughout its ETC service area by means of daily television advertisement. The Division notes that since VCI does not currently offer service in Utah it does not advertise in Utah. However, the Division has reviewed VCI's advertising in other states and notes VCI also plans to distribute printed advertising materials at food banks, state department of social service offices, and low-income housing offices. VCI thus meets the advertising requirement of 47 U.S.C. § 214(e)(1).

The Division notes VCI maintains no five-year plan for high-cost universal service support but does not view this as a disqualifying factor since VCI plans to provide service to low-income households and does not expect to withdraw funds from the federal high-cost fund. The Division notes that by virtue of VCI's leasing of Qwest's UNE/QPP VCI satisfies the FCC's emergency viability and local usage plan criteria. VCI has also informed the Division that it will offer equal access to its subscribers who do not have toll limitation.

Furthermore, the Division concludes granting ETC designation is in the public interest because it will provide consumers another choice in the low-income market.

However, the Division does not believe VCI would be able to provide service to the total subscriber base of a relinquishing service provider. Because VCI plans to provide service to its low-income subscribers via Qwest's UNE/QPP, VCI is dependent upon Qwest to provide access for its subscribers. Thus, were Qwest to relinquish its service territory it would be difficult for VCI to serve Qwest's service area. VCI states that if Qwest were to cease providing service in an area served by VCI, VCI would continue to serve that area because Qwest would continue as VCI's underlying carrier. The Division disagrees, noting that if Qwest relinquished its service territory, it would most likely be sold, requiring VCI to construct its own network or to purchase UNE/QPP, if available, from Qwest's successor.

VCI's representation that it has no plan to serve high-cost areas, coupled with the Division's conclusion that VCI would not be able to serve the total subscriber base if Qwest relinquished its service territory, leads the Division to recommend limiting VCI's ETC designation and its State Fund reimbursement to the state contribution for low-income households under the Lifeline program.

State Level Qualifications for Approval to Draw on the State Fund

VCI seeks to draw from the State Fund for the Qwest exchanges in its application area. The services supported by the State Fund as set forth in the Commission's definition of "basic telecommunications service" are similar to the FCC's service requirements under FCC Rule 54.101(a). While the Utah and FCC supported services are expressed in slightly different words, there are few substantive differences between them. VCI must obey the Commission's Rules with respect to qualifying to receive money from the State Fund. Specifically, VCI must charge no more than the Affordable Base Rate for its universal service offering. The Commission has set rates for basic residential services in the Qwest exchanges dealt with in this order, and presumes that these rates represent the affordable rates for the relevant exchanges or areas.

Using Qwest's network elements, VCI will provide the following State Fund supported services:

access to the public switched network; touch-tone; single-party service; access to 911 emergency services; access to long-distance carriers; and access to toll limitation services. Though not specifically provided for in its Petition, we expect that VCI will also provide a free telephone listing in a directory that is distributed without charge.

Findings

We find that VCI qualifies for limited federal ETC designation as defined by the Act and 47 C.F.R. § 54.1 et seq., in the Qwest service territory in Utah for the purpose of receiving federal universal service support. Further, we find that VCI qualifies for the designation of eligible telecommunications carrier for purposes of drawing from the State Fund in the same Qwest exchanges for which federal designation has been granted. Based on the information contained in VCI's Petition, and concurring with the Division's recommendation, we conclude said ETC designation shall be limited to participation in Lifeline/Link-Up.

We stress that our finding that VCI meets the criteria for federal and state level designation is a recognition only of their potential to provide the service. VCI may draw from the funds only as it provides service to actual customers, and only for so long as it remains in compliance with Commission rules and federal guidelines with respect to prices, quality, services, and offerings.

The Commission has jurisdiction and authority to ensure that VCI continues to meet the ETC criteria set forth in Section 214(e)(1) of the Act. Nothing prevents the Commission from, on its own motion, modifying, suspending or revoking VCI's ETC designation if it does not meet those obligations. An ETC's obligation to "offer the services that are supported by Federal universal service support mechanisms," as required by 47 U.S.C. § 214(e)(1), connotes not just willingness to offer the services, but actual performance of the services. Such performance in turn connotes provision of the services at an adequate service level. The issue of whether an ETC (in this case VCI) is actually performing such services could arise in a proceeding to modify, revoke, or suspend the designation.

IV. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. VCI is granted limited designation as an eligible telecommunications carrier under the federal guidelines in the Qwest Corporation Local Exchanges in the State of Utah, conditioned on meeting the requirements of this Order. On the same conditions, VCI is also designated as qualified to receive State Fund disbursements for Lifeline and Link-Up as services are provided, in the same Qwest exchanges for which federal designation has been granted. Said designation is conditional on VCI's submission of a written service agreement or Price List and proposed Utah advertising materials as required below.

2. VCI shall provide universal service pursuant to a written service agreement or price list. The service agreement or price list shall be filed for review with the Commission, and shall contain provisions which ensure it will provide universal service as defined by 47 U.S.C. § 214(e)(1) and 47 C.F.R. § 54.101(a) and this Order. The required components of this offering are listed in this Order above. We note that our approval is conditional on VCI offering unlimited local usage as part of the universal service offering package that covers, at a minimum, all areas currently covered by the incumbent local exchange provider. On an individual calling area basis, VCI may offer larger free unlimited local calling areas.

3. Approval to receive money from the State Fund is further conditioned upon VCI providing directory listings as required by state rule, and on it charging a price for basic telecommunications service that is less than or equal to the affordable base rate. At such time as VCI seeks reimbursement from the State Fund, it shall seek reimbursement only for Lifeline expenses.

4. VCI shall file with the Commission its written service agreement or Price List, as well as samples of its proposed Utah advertising, not less than 30 days in advance of offering service in Utah.

5. Pursuant to *Utah Code Annotated* §§ 63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing

within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of *Utah Code Annotated* §§ 63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 17th day of August, 2005.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#45394