

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-504T

IN THE MATTER OF THE PETITION OF VCI COMPANY, D/B/A VILAIRE, FOR
DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER PROVIDING
SERVICE TO CUSTOMERS UNDER THE COLORADO TELEPHONE ASSISTANCE PLAN.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
VACATING PROCEDURAL SCHEDULE,
SETTING PREHEARING CONFERENCE,
REQUIRING FILING REGARDING
REPRESENTATION, AND IDENTIFYING
ISSUES FOR DISCUSSION**

Mailed Date: December 13, 2004

I. STATEMENT

1. On October 4, 2004, VCI Company, doing business as Vilaire (VCI or Petitioner), filed a Petition for Designation as an Eligible Telecommunications Carrier (Petition). VCI did not file its direct testimony and exhibits with its Petition. The Petition commenced this docket.

2. The Commission gave public notice of the Application. Notice of Petition Filed (Notice), dated October 12, 2004. In that Notice, the Commission established a 30-day intervention period and a procedural schedule. This Order will vacate that procedural schedule.

3. On November 2, 2004, the Office of Consumer Counsel (OCC) filed a Notice of Intervention of Right, Entry of Appearance, and Request for Hearing. This filing was timely.

4. On November 3 and 10, 2004, VCI provided responses to letters sent to it by Staff of the Commission (Staff).

5. By Decision No. C04-1398, the Commission granted the OCC's request for a hearing, referred this matter for hearing before an Administrative Law Judge (ALJ), and deemed the Petition complete as of November 30, 2004.

6. On December 10, 2004, Staff filed its intervention of right and request for hearing. This filing was timely.

7. The parties in this proceeding are Petitioner, OCC, and Staff. Collectively, OCC and Staff are the Intervenors.

8. It is necessary to schedule a hearing and to establish a procedural schedule in this matter. To do so, a prehearing conference will be held on **December 28, 2004**. The provisions of Rules 4 *Code of Colorado Regulations* (CCR) 723-1-79(b)(3) and 4 CCR 723-1-79(b)(4) will govern this prehearing conference.

9. Petitioner must be prepared to discuss the letters it submitted on November 3 and 10, 2004, and their relationship (if any) to the Petition. For example, are those letters and the information they contain to be considered supplements to the Petition so that the information is incorporated into the Petition? If not, what is the status or meaning of those letters?

10. The parties must be prepared to discuss these matters at the prehearing conference: (a) date by which Petitioner will file its direct testimony¹ and exhibits; (b) date by which Intervenors each will file its answer testimony and exhibits; (c) date by which Petitioner will file its rebuttal testimony and exhibits; (d) date by which Intervenors each will file its cross-answer testimony and exhibits;² (e) date by which each party will file its corrected testimony and

¹ Testimony is filed in question and answer format.

² Cross-answer testimony may address only answer testimony.

exhibits; (f) date by which each party will file its prehearing motions;³ (g) whether a final prehearing conference is necessary and, if it is, the date for that prehearing conference; (h) date by which the parties will file any stipulation reached;⁴ (i) hearing date(s); and (j) date for each party to file its post-hearing statement of position (assuming the parties wish to file statements of position) and whether response should be permitted. In addition, the parties should be prepared to discuss any matters pertaining to discovery if the procedures and time frames contained in Rule 4 CCR 723-1-77 are not sufficient. Further, the parties should review, and be prepared to discuss to the extent relevant, the matters outlined in Rule 4 CCR 723-1-79(b)(5). Finally, any party may raise any additional issue.

11. In considering proposed dates, parties should keep in mind that the Commission deemed the Application complete as of November 30, 2004. Absent Petitioner's waiver of the statutory time frame or a finding of extraordinary circumstances, a Commission decision in this proceeding should issue within 210 days of that date (*i.e.*, on or before June 28, 2005). §§ 40-6-109.5(2) and 40-6-109.5(4), C.R.S.; 4 CCR 723-1-70. Any procedural schedule must take into account, and must allow time for, preparation of a recommended decision, preparation of exceptions to the recommended decision and response to exceptions, and preparation of a Commission decision on exceptions,⁵ all of which should occur by June 28, 2005.

12. The undersigned ALJ expects the parties to come to the prehearing conference with proposed dates for all deadlines. The parties must consult prior to the prehearing

³ This date should be at least 10 days before the final prehearing conference or, if there is no final prehearing conference, 14 days before the hearing.

⁴ This date should be at least seven calendar days before the first day of hearing.

⁵ As a general rule, and not including the time necessary for preparation of a transcript if one is ordered, these activities consume 10 to 12 weeks from the end of the hearing, the filing of statements of position, or the filing of responses to statements of position, whichever occurs last.

conference with respect to the listed matters and are encouraged to present, if possible, a procedural schedule and hearing date(s) which are satisfactory to both parties.

13. From the information available from the Commission file in this matter, the ALJ cannot determine what type of business entity Petitioner is (*e.g.*, limited liability company, corporation, association, partnership, some other type). In addition, the ALJ could find no information in the file indicating that Petitioner is authorized to do business in Colorado. Thus, Petitioner will be ordered to file and to serve on the parties in this proceeding, on or before **December 23, 2004**, a statement concerning its business type and to file documents establishing that it is authorized to do business in Colorado.

14. Rule 4 CCR 723-1-21(a) *requires* a party in a proceeding before the Commission to be represented by counsel *unless* one of the following exceptions applies: (a) the person is “an *individual* who is a party to [the] proceeding and who wishes to appear *pro se* [to represent] *only* his *individual* interest” (Rule 4 CCR 723-1-21(b)(1) (emphasis supplied)); or (b) the person appears “on behalf of a closely held corporation, [but] *only* as provided in § 13-1-127, C.R.S.” (Rule 4 CCR 723-1-21(b)(2)⁶ (emphasis supplied)).

15. The Commission recently had occasion to emphasize the mandatory nature of this Rule requirement and to determine that pleadings filed by, and appearances made by, non-attorneys which are not in compliance with Rule 4 CCR 723-1-21(a) are void and of no legal effect. *See, e.g.*, Decisions No. C04-1119 and No. C04-0884. Thus, by Rule and by Commission decision, a party cannot appear without counsel unless it is an individual or a closely-held entity.

16. Petitioner is a party in this proceeding.

⁶ To the extent necessary, the ALJ grants a variance to Rule 4 CCR 723-1-21(b)(2) so that the Rule is as broad in its reach as § 13-1-127, C.R.S.

17. If Petitioner can establish that it is an individual and will represent only its individual interest in this matter, Petitioner may proceed without counsel. If Petitioner believes that it falls within this category, it must file, on or before **December 23, 2004**, a verified (*i.e.*, sworn) filing that establishes the required elements.

18. If Petitioner can establish that it is a closely-held entity and will appear in this matter through an authorized officer, Petitioner may proceed without counsel. If Petitioner believes that it falls within this category of closely-held entity, § 13-1-127(2), C.R.S., controls. That section provides that an officer⁷ may represent a closely held entity⁸ before an administrative agency *provided* two conditions are met: (a) the amount in controversy does not exceed \$10,000; *and* (b) the officer provides the agency with evidence, satisfactory to the agency, of the authority of the officer to represent the closely held entity.

19. Section 13-1-127(2.3), C.R.S., provides that:

each of the following persons shall be presumed to have the authority to appear on behalf of the closely held entity upon providing evidence of the person's holding the specified office or status:

- (a) An officer of a cooperative, corporation, or nonprofit corporation;
- (b) A general partner of a partnership or of a limited partnership;
- (c) A person in whom the management of a limited liability company is vested or reserved; and
- (d) A member of a limited partnership association.

20. In order for the Commission to determine whether Petitioner is a closely-held entity which may appear without counsel, Petitioner must file, on or before **December 23, 2004**, a verified (*i.e.*, sworn) filing that: (a) establishes that Petitioner meets the statutory criteria as a

⁷ Section 13-1-127(a)(i), C.R.S., defines "officer" as "a person generally or specifically authorized by an entity to take any action contemplated by" § 13-1-127, C.R.S.

⁸ The criteria for a closely-held entity are found in § 13-1-127(1)(a), C.R.S.

closely held entity; (b) states whether the amount in controversy in this proceeding does or does not exceed \$10,000 and explains in detail the basis for the conclusion Petitioner reached; (c) identifies the individual who will represent Petitioner in this matter; (d) establishes that the identified individual is an officer of Petitioner; and (e) if the identified individual does not meet the requirements of § 13-1-127(2.3), C.R.S., has appended to it a resolution from Petitioner's Board of Directors that specifically authorizes the identified individual to represent Petitioner in this matter.

21. Petitioner must make the filing described in ¶ 17 *or* the filing described in ¶ 20 if Petitioner wishes to proceed *pro se* in this matter.

22. In the alternative, on or before **December 23, 2004**, Petitioner may file a pleading stating that it will be represented in this matter by an attorney at law currently in good standing before the Supreme Court of the State of Colorado and identifying that counsel. The identified counsel must enter an appearance in this matter on or before **December 23, 2004**.

23. **Petitioner is advised that its failure to make a filing as required by this Order will result in a determination that it must appear through counsel in this proceeding.**

24. **Petitioner is advised further** that, if the ALJ determines that it must be represented by counsel in this matter and if Petitioner fails to obtain counsel following such a determination, the motions and other filings made by Petitioner in this proceeding will be void. It will be as if those filings, including potentially the Petition, were never made.

II. ORDER

A. It Is Ordered That:

1. The procedural schedule established in the Notice of Applications Filed dated October 12, 2004, is vacated.

2. A prehearing conference in this docket is scheduled as follows:

DATE: December 28, 2004
TIME: 9:00 a.m.
PLACE: Commission Hearing Room
1580 Logan Street, OL2
Denver, Colorado

3. The parties must be prepared to discuss the matters set forth above.

4. On or before December 23, 2004, VCI Company, doing business as Vilaire, shall make the filing described in ¶ I.13 *and either* the filing described in ¶ I.17 *or* the filing described in ¶ I.20.

5. In the event VCI Company, doing business as Vilaire, elects to retain counsel (as permitted by ¶ I.20), counsel for SC TxLink, LLC, shall enter an appearance in this proceeding on or before December 23, 2004.

6. To the extent necessary, a variance to Rule 4 *Code of Colorado Regulations* 723-1-21(b)(2) is granted to make that Rule as broad in its reach as § 13-1-127, C.R.S.

7. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge

G:\ORDER\504T.doc:srs