

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Petition of VCI Company for Designation as an Eligible Telecommunications Carrier	) ) ) )	Case No. CO-2006-0464
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**STATEMENT OF POSITION OF VCI COMPANY**

Applicant VCI Company (“Company” or “VCI”), by counsel, submits this Statement of Position (“Statement”) in accord with the Commission’s order of September 11, 2006.<sup>1</sup> With this Statement, VCI explains its positions on the issues that have arisen in these proceedings.

**ISSUE: HAS VCI COMPANY DEMONSTRATED THAT IT MEETS THE APPLICABLE STATE AND FEDERAL REQUIREMENTS FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER?**

**A. Does VCI meet the applicable federal requirements set forth in Section 214(e)(1) of the Telecommunications Act of 1996 (“the Act”), 47 C.F.R. 54.501(d)(1), (2) and Missouri requirements codified at 4 CSR 240-3.570(2)(A)(6), (7) and (3)(C)(1)(A)-(I)?**

Yes. VCI satisfies the requirements of Section 214(e)(1) of the Act and Missouri rules 4 CSR 240-3.570(2)(A)(6),(7) and (3)(C)(1)(A)-(I). VCI has testified that it is a common carrier and will offer the nine services supported by Federal universal service mechanisms using its own facilities, UNEs, or a combination of its own facilities and resale of another carriers services.<sup>2</sup> The Commission has approved VCI’s interconnection agreement with AT&T Missouri effective July 21, 2006<sup>3</sup> and VCI has made arrangements with AT&T Missouri to obtain UNEs. VCI has further testified that it will advertise the availability of services throughout its designated service

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<sup>1</sup> Order Amending Procedural Schedule, September 11, 2006.

<sup>2</sup> 47 U.S.C. Section 214(E)(1); 4 CSR 240-3.570(3)(A)-(I); VCI Petition for ETC Designation (“Petition”), ¶ 15; Johnson Direct Testimony, August 24, 2006 (“Johnson Direct”), pp. 8-9.

<sup>3</sup> Order Approving Interconnection Agreement (Case No. CK-2006-0446, July 11, 2006).

area, in a manner reasonably designed to reach those who might qualify for the service.<sup>4</sup> VCI has testified that it is in compliance with the outreach guidelines set forth by the Commission in the FCC's June 29, 2004 Lifeline Order.<sup>5</sup>

Through its Petition and Testimony, VCI has made a reasonable demonstration of its capability and commitment to provide universal service.<sup>6</sup> Neither Commission Staff, nor AT&T Missouri have disputed VCI's testimony with respect to the Company's compliance with these requirements. Thus, the Commission should find that VCI fulfills the requirements of Section 214(e)(1) of the Act, 47 C.F.R. 54.501(d)(1),(2) and Missouri rules 4 CSR 240-3.570(2)(A)(6), (7) and (3)(C)(1)(A)-(I).

**B. Does VCI meet all applicable requirements set forth in the FCC's March 17, 2005 Order as codified at 47 C.F.R. 54.202(a) (1)-(5), and in analogous Missouri rules codified at 4 CSR 240-3.570?**

Yes. VCI meets all applicable requirements codified at 47 CFR 54-202(a) (1)-(5) and analogous obligations set forth in Missouri rules codified at 4 CSR 240-3.570. VCI has testified that certain of the FCC's and Commission's requirements apply to wireless carriers, carriers who request high-cost funding and carriers with facilities "in the ground" and, thus, are not applicable to VCI, a UNE based carrier.<sup>7</sup> Commission Staff testified that only certain provisions of 4 CSR 3-570 are applicable to VCI because it does not request high cost funding.<sup>8</sup> VCI has committed to compliance with Staff's designated requirements.<sup>9</sup> AT&T has disputed VCI's compliance

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<sup>4</sup> 47 U.S.C. Section 214(e); 47 C.F.R. 54.201(b), 4 CSR 240-3.570 (2)(A)(6),(7); Petition ¶¶ 18 and 19; Johnson Direct, pp. 9-10.

<sup>4</sup> *Id.*; Johnson Surrebuttal Testimony, March 2, 2007 ("Johnson Surrebuttal"), pp. 7-8.

<sup>5</sup> Johnson Direct, pp. 9-10.

<sup>6</sup> *In the Matter of the Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, 15 FCC Red. 15168, 15178, ¶24 (CC Docket No. 96-45, rel. August 10, 2000).

<sup>7</sup> Johnson Direct, pp 14-15; Johnson Surrebuttal, pp. 3-4. See also Petition ¶ 20.

<sup>8</sup> Cecil Rebuttal, pp. 5-6.

<sup>9</sup> Johnson Surrebuttal, pp. 2-3.

only with certain ETC and Commission requirements. VCI discusses its position on the disputed requirements below.

**1. Commitment to Provide Service to Requesting Customers Pursuant to 47 C.F.R. 54.202(a)(1)(i)(A) and (B) and 4 CSR 240-3.570(3)(C)(3)(A) and (B).<sup>10</sup>**

VCI has committed to provide service on a timely basis to requesting customers within the applicant's service area where AT&T's network passes the potential customer's premises, but has testified that it cannot provide service outside of the network at reasonable cost.<sup>11</sup> AT&T argues that VCI has failed to comply with the Commission's rules because it does not commit to extend its network to serve new customers upon a reasonable request as required in Section 3(C)(3).<sup>12</sup>

VCI concurs in Staff's testimony that the Company need only comply with the portions of Section 3 regarding bill design, customer service contact information, and provision of the nine (9) supported service features.<sup>13</sup> VCI has testified that the requirements of (3)(C)(3) practically can be applied only to carriers with facilities "in the ground." VCI has no facilities "in the ground," thus, VCI has no network of its own to extend.<sup>14</sup>

**2. Local Usage Plan Comparable to that of the Incumbent LEC Pursuant to 4 CSR 240-3.570(2)(A)(10) and 47 C.F.R. Sec. 54.202(a)(4).<sup>15</sup>**

AT&T and VCI agree that the Company's local usage plan is comparable to AT&T's in terms of calling scope, but AT&T argues that VCI is not in compliance with the Commission's rules because the Company's rates are not comparable to AT&T's.<sup>16</sup> AT&T also

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<sup>10</sup> 47 C.F.R. 54.202(a)(1)(i)(A) and (B), 4 CSR 240-3.570(3)(C)(3)(A) and (B).

<sup>11</sup> Petition, ¶ 21; Johnson Direct, p. 14.

<sup>12</sup> 4 CSR 3-570.240(3)(C)(3); Stidham Rebuttal, pp. 3-4.

<sup>13</sup> Cecil Testimony, pp. 5-6.

<sup>14</sup> Johnson Direct, p. 14; Johnson Surrebuttal, pp. 3-4.

<sup>15</sup> 4 CSR 240-3.570(2)(A)(10); 47 C.F.R. Sec. 54.202(a)(4).

<sup>16</sup> Stidham Rebuttal, pp. 6-8.

argues, for the first time on rebuttal, that Staff's analysis of VCI's petition and its rate comparison is faulty because based on the assumption that VCI is a prepaid provider.<sup>17</sup>

First, the Commission indicated in its Order on Rulemaking that Staff will determine on a case-by-case basis whether a carrier meets the local usage provision of the rule.<sup>18</sup> VCI testified the FCC rules do not require the Company to offer a local usage plan identical to AT&T's in substance or cost.<sup>19</sup> VCI further testified that a comparison of CLEC and ILEC rates is inappropriate because 1) competitive carriers cannot offer service at the same rates as the LEC and 2) the cost structure of these carriers are different.<sup>20</sup> VCI submits that, in considering VCI's local usage plan on a case-by-case basis, Staff's evaluation of VCI's rates is correct.

Second, VCI contends that Staff's analysis of VCI's Petition and rate comparison was not based on the assumption that VCI is a prepaid provider, but on the assumption that VCI is a competitive provider. Prepaid providers are competitive providers. VCI took staff's analysis a step further by evaluating its rates in comparison with those of a competitive ETC, the Pager and Phone Company ("TPPC"). VCI testified that when Lifeline support of \$7.00 is subtracted from TPPC's retail rate of \$29.99, TPPC's Lifeline rate would appear to be \$22.95, which is higher than VCI's Lifeline rate.<sup>21</sup>

Furthermore, it appears that Missouri has designated two wireline postpaid carriers that provide service through a combination of their own facilities and ILEC leased facilities: Fidelity Communications Services I, Inc.<sup>22</sup> and Mark Twain Communications

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<sup>17</sup> Stidham Surrebuttal, pp. 3-4.

<sup>18</sup> Order of Rulemaking, Comments of USC, p. 8 (March 8, 2006).

<sup>19</sup> Johnson Direct, p. 16; *Id.* at n11; Johnson Surrebuttal, pp. 4 -5.

<sup>20</sup> Johnson Surrebuttal, p. 5.

<sup>21</sup> Johnson Surrebuttal, p. 5.

<sup>22</sup> Opinion: Order Granting Designation as an Eligible Carrier Pursuant to Section 254 of the Telecommunications Act of 1996, Case No. TA-2002-122, (2001 Mo. PSC LEXIS 1491, November 6, 2001).

Company.<sup>23</sup> The rate structures of these companies, as indicated in their tariffs, demonstrate that the monthly rate for services where the company uses ILEC leased facilities is \$44.00 for Fidelity<sup>24</sup> and \$47.60 for Mark Twain.<sup>25</sup> Subtracting Lifeline support of \$7.00 from these rates, it appears that low-income consumers who are served by these companies using ILEC leased facilities would pay \$37.00 and \$40.60 per month for service. In comparison, VCI's rate of \$19.00 is substantially lower.

Third, VCI's typical customer is one who would likely resort to prepaid local exchange carriers if alternatives are not present in the market.<sup>26</sup> VCI submits that Staff was correct in comparing VCI's rates to prepaid providers' rates, as the Company competes with these carriers. Staff's analysis of the benefits of VCI's offering vis-à-vis prepaid carriers, then, is appropriate.

In sum, the facts of this case require Staff to evaluate VCI's rates, and analyze the benefits of VCI's offering in comparison with prepaid local service providers. Even if Staff were to compare VCI's rates to competitive wireline ETCs who provide service using ILEC leased facilities, VCI's rates would be found to be reasonable. Staff conducted its comparison, found VCI's rates to be acceptable,<sup>27</sup> and VCI concurs in Staff's determination. The Commission should find that, in this case, VCI meets the local usage requirement of Missouri's rules.

### **3. Commitment to Provide Lifeline and Link-Up Discounts Pursuant to 4 CSR 240-3.570(2)(A)(7).<sup>28</sup>**

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<sup>23</sup> Opinion: Order Designating Mark Twain Communications company an Eligible Carrier, Case No. TA-2000-591 (2000 Mo. PSC LEXIS 842, June 15, 2000); Order Redefining the Service Area Served by a Rural Telephone company for Purposes of Universal Service Support, Case No. TO-2006-0100 (2006 Mo. PSC LEXIS 78, January 19, 2006).

<sup>24</sup> Fidelity Communications Services I, Inc., PSC MO. No. 1 Tariff, Section 25, 7<sup>th</sup> Revised Sheet 1, effective March 24, 2007.

<sup>25</sup> Mark Twain Communications Company, PSC MO. NO. 1 Tariff, Section 22, First Revised Sheet 1, effective May 16, 1999.

<sup>26</sup> Petition, ¶ 40.

<sup>27</sup> Cecil Testimony, pp. 3-4.

<sup>28</sup> 4 CSR 240-3.570(2)(A)(7).

AT&T argued that VCI “did not appear to be planning to pass the full amount of the Lifeline support through to the low-income customer.”<sup>29</sup> However, VCI testified that it used the incorrect Subscriber Line Charge in previous calculations of its Lifeline rate, clarified its Lifeline rate calculation, and demonstrated that it would, indeed, pass through all applicable discounts to Missouri Lifeline customers.<sup>30</sup> The Commission should find that VCI has made a commitment to provide Lifeline and Link-Up discounts consistent with the FCC’s rules.

In conclusion, the Commission should find that VCI meets all applicable requirements set forth in the FCC’s March 17, 2005 Order as codified at 47 C.F.R. 54.202(a) (1)-(5), and in analogous Missouri rules codified at 4 CSR 240-3.570.

**C. Does VCI Meet Additional Missouri Requirements Codified at 4 CSR 240-3.570, as Applicable, for ETC Designation?**

Yes. AT&T argues that VCI should be required to submit a plan regarding unusual construction or installation charges set forth in Section 2(C) of the Commission’s rules.<sup>31</sup> However, Staff has determined this requirement inapplicable to VCI, concluding that most of the provisions of Section 2 of the Missouri rules are applicable only to carriers seeking high cost support, and VCI does not seek such support.<sup>32</sup> VCI has testified that this requirement does not apply because VCI is a UNE based carrier utilizing AT&T’s network and AT&T is solely responsible for construction and installation of facilities on its network.<sup>33</sup> Staff requested VCI to commit to the remaining Missouri requirements it determined are applicable to VCI, and VCI has done so.<sup>34</sup>

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<sup>29</sup> Stidham Rebuttal, pp. 9-10.

<sup>30</sup> Johnson Surrebuttal, pp. 5-6.

<sup>31</sup> 4 CSR 240-3.570(2)(C); Stidham Rebuttal, pp. 4-5;

<sup>32</sup> Staff testified that VCI should be subject to the following portions of Section 2 of 4 CSR 240-3.570, in addition to the public interest and comparable local usage requirements: commitment to advertise ((2)(A)(6)); commitment to provide Lifeline and Link-Up discounts ((2)(A)(7)); and consumer privacy protection standards ((2)(A)(8)), Cecil Rebuttal, pp. 5-6.

<sup>33</sup> Johnson Direct, p. 14; Johnson Surrebuttal, p. 4

<sup>34</sup> Cecil Rebuttal, pp. 5-6; Johnson Surrebuttal, pp. 2-3.

The Commission should find that VCI meets additional Missouri requirements codified at 4 CSR 240-3.570, as applicable, for ETC designation.

**D. Is VCI's designation as an ETC in the Public Interest as Required in 47 U.S.C. Section 54.202(c) and 4 CSR-3.570(2)(A)(5)?**

Yes. VCI's designation as an ETC is in the public interest as required in the FCC's and Commission's rules. The Company has testified that its designation as an ETC is in the public interest for the following reasons:

(1) If designated, VCI will be an alternative wireline carrier for consumers, especially those who are unable to obtain service from other carriers.<sup>35</sup> Staff agrees that VCI's designation as an ETC is in the public interest for this reason.<sup>36</sup> The Company is unique in serving this niche of consumers that it believes are unserved or underserved.<sup>37</sup>

(2) If designated, VCI will provide meaningful choice and value to low-income consumers and will provide services not already provided by other competitive carriers. VCI has served as many as 60,000 consumers in 10 states, thus demonstrating that unserved and underserved consumers exist and that consumers in general believe VCI offers "meaningful choice" and "value."<sup>38</sup> Other competitive wireline carriers noted by AT&T Missouri do not appear to be providing Lifeline and Link-Up services in Missouri.<sup>39</sup>

(3) If designated, VCI will be an additional competitive Lifeline and Link-Up provider helping to close the gap in low-income household telephone penetration. VCI has testified that Missouri needs more competitive Lifeline and Link-Up providers to increase subscription to low-income telephone programs.<sup>40</sup> The telephone penetration rate among

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<sup>35</sup> Johnson Direct, pp. 21, 22.

<sup>36</sup> Cecil Rebuttal, pp. 6-7.

<sup>37</sup> Johnson Surrebuttal, p. 7.

<sup>38</sup> Johnson Direct, p. 21; Johnson Surrebuttal, p. 7.

<sup>39</sup> Stidham Rebuttal, pp. 11-12; Johnson Surrebuttal, pp. 8-9.

<sup>40</sup> Johnson Surrebuttal, pp. 9-10.

Missouri's low-income households as of March 2005 was 83.7%, several points below the national average of 86.4%.<sup>41</sup>

(4) If designated, VCI will advertise the availability of Lifeline and Link-Up services primarily through television ads, a method that more than complies with the FCC's advertising guidelines, informs the widest possible audience of the existence of low-income telephone programs, increases awareness of such programs and leads to increased subscription.<sup>42</sup>

(5) If designated, Missouri consumers will benefit from VCI's policies of early billing, education about long distance alternatives, and service without deposits or credit checks. These policies facilitate service subscription, bill payment and low total telephone bills.<sup>43</sup> Unlike VCI, AT&T conducts credit checks and requires deposits.<sup>44</sup>

(6) If designated, VCI will offer only flat rated, unlimited local exchange service and a few custom calling features.<sup>45</sup> Because VCI's services are limited and the Company does not upsell low-income consumers features and services that are unaffordable, the customer pays one, consistent monthly rate for basic local service that is easily budgeted.

(7) If designated, VCI will have minimal impact on the Missouri State and Federal Universal Service Funds because much of the low-income support will be transferred to VCI from the LEC.<sup>46</sup>

For all of the reasons set forth above, the Commission should find that VCI's designation as an ETC is in the public interest.

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<sup>41</sup> Universal Service Monitoring Report, CC Docket No. 98-202 (2006) (Data received through May 2006) ("Monitoring Report"). This document may be accessed on the FCC's web site at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-269251A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-269251A1.pdf).

<sup>42</sup> Johnson Direct, pp. 21-22; Johnson Surrebuttal, pp. 7-8.

<sup>43</sup> Johnson Direct, p. 22; Johnson Surrebuttal, p. 8.

<sup>44</sup> Stidham Rebuttal, p. 15; Johnson Surrebuttal p. 8.

<sup>45</sup> Petition, p. 12; Johnson Direct, p. 23.

<sup>46</sup> Petition, ¶¶ 46, 47; Johnson Direct, pp. 4-5.



**E. May the Commission designate VCI an ETC for low-income support only?**

Yes. Federal law does not prohibit the Commission from designating VCI as an ETC for low-income support only. AT&T's bifurcation and forbearance arguments, made for the first time on surrebuttal, are not relevant to these proceedings and case law has determined that state commissions may impose appropriate limitations on ETC designations.

First, in this case, the Commission has not bifurcated these proceedings – Staff and VCI addressed all applicable state and federal requirements for ETC designation and VCI has demonstrated to Staff's satisfaction that it will comply with the applicable requirements. Several high cost requirements, such as those in the Commission's ETC rule that relate to unusual construction charges, simply do not apply to UNE based carriers.

Second, AT&T's misconstrues the TracFone forbearance proceeding in its argument that VCI must apply for forbearance from high-cost requirements. To obtain ETC designation, TracFone, a non-facilities based wireless carrier, was required to petition the FCC for forbearance from the facilities requirement of Section 214(e)(1) of the Act.<sup>47</sup> VCI, as a UNE based carrier, is facilities-based as defined by the FCC.<sup>48</sup> VCI meets all applicable ETC requirements and, therefore, is not required to request forbearance.

Third, the TracFone Order supports the proposition that limited ETC designations are not prohibited by FCC rule or order. TracFone voluntarily requested that its designation be limited to Lifeline only,<sup>49</sup> and suggested that the FCC need not change its rules to make the limited

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<sup>47</sup> *In the Matter of Federal-State Joint Board on Universal Service, Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. Sec. 214(e)(1)(A) and 47 C.F.R. Section 54.210(i), ¶ 1*(CC Docket No. 96-45; rel. September 8, 2005).

<sup>48</sup> 47 C.F.R. 54.201(f).

<sup>49</sup> Stidham Surrebuttal, p. 2; *In the Matter of Federal-State Joint Board on Universal Service, Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. Section 214(3)(1)(A) and 47 C.F.R. Section 54.201(i)*, Reply Comments of TracFone Wireless, Inc., p. 3 (CC Docket 96-45, August 9, 2004) (Reply Comments); Order of Forbearance, , ¶ 2

designation.<sup>50</sup> In the Forbearance Order, the FCC granted TracFone's voluntary request for Lifeline only designation, without instituting a rulemaking or addressing AT&T's request for a low income only ETC proceeding. Thus, a similar designation by this Commission is not contrary to FCC rules or orders.<sup>51</sup>

Moreover, case law interpreting Section 214(e)(2) of the Act confirms that the Commission has discretion in determining designation requirements for ETCs. Texas Office of Pub. Util. Counsel v. FCC, provides that, where appropriate, state commissions may impose limitations on ETC eligibility.<sup>52</sup> Thus, the Commission is not prohibited from designating VCI an ETC for purposes of obtaining low-income support only, especially as VCI only requested low-income support.

Finally, the following state commissions have either acknowledged that VCI will not request high-cost funding or have limited VCI's universal service support to low-income support in designation orders: Florida, Kansas, Louisiana, Nebraska, North Dakota, South Dakota, Texas, Utah and Wyoming. In fact, VCI only receives low income support in all states it serves and neither the states nor the FCC have indicated concerns about VCI being a recipient solely of low income support.

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<sup>50</sup> Reply Comments, p.3, n4.

<sup>51</sup> The Commission wishes to restrict VCI's designation to *low-income support*, which includes both Lifeline and Link-Up support. VCI believes that the FCC did not designate TracFone for Link-Up support because it is non-facilities based. As a UNE based provider, VCI is facilities-based and, thus, eligible for Link-Up as well as Lifeline support.

<sup>52</sup> Texas Office of Pub. Util. Counsel v. FCC, 183 F.3d 393, 417, n31, 1999 U.S. App. LEXIS 17941, 16 Comm. Reg. (P & F) 871 (5th Cir. 1999).

In conclusion, VCI meets all applicable state and federal ETC requirements and therefore should be granted ETC designation.

Respectfully submitted,

/s/ Roger W. Steiner

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**CERTIFICATE OF SERVICE**

A copy of the foregoing was served via U.S. Mail to all counsel of record this 6th day of April, 2007:

/s/ Roger W. Steiner

Attorney for VCI Company, Inc.