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

<u>OFFICE OF THE PUBLIC COUNSEL'S POST HEARING BRIEF</u>

The Office of the Public Counsel asks the Public Service Commission to deny the VCI Company's application for designation as an Eligible Telecommunications for purposes of obtaining USF funds. In the Opening Statement, Public Counsel identified some of the key reasons it had "reservations" about the application based upon the information in the application and in VCI witness Johnson's prefiled testimony. (tr. 11-12) With the evidentiary hearing, Public Counsel's reservations hardened into opposition. The evidence fails to make an affirmative case that approval would be in harmony with the state and federal law, would benefit the low income customers in the AT&T service areas, and would be consistent with the public interest.

VCI Company has not demonstrated that it meets the applicable state and federal requirements for designation as an Eligible Telecommunications Carrier.

The VCI's evidence is not persuasive and does not support the application for ETC. Public Counsel opposes the grant of ETC status to this prepaid carrier as it is not within the intent and purpose of the USF law and the regulations, both state and federal. VCI Company fails to provide the essential and basic telephone services required for ETC status.

VCI provides local telephone service on a prepaid basis. (Cecil Rebuttal, 2). VCI's explanation that it will be a post-paid company for low-income USF customers and a prepaid for all others is not reasonable or credible. Although it was certified on May 31, 2006 with a tariff effective July 9th and with an approved interconnection agreement by July 11, 2006, VCI has not commenced marketing and does not provide any telecommunications services in Missouri.

It will only conduct operations in Missouri for low income if it is granted ETC status. In its application, it anticipates that it will not provide service for at least 8 months after the designation (Cecil R. 3).

VCI claims that it will provide local service resold from AT&T. Although VCI and Staff indicate that service may be provided by UNEs, the actual plan to include UNEs is far from firm.

VCI does not offer comparable services at comparable prices

VCI does not provide all of the basic local services defined in Section 386.020 (34), RSMo but instead offers only a subset of the components of basic local service.

VCI does not provide the "essential services" defined in 4 CSR 240-31.010 (5) for purposes of qualifying for state universal service fund support. It does not provide access to basic local operator services (Subsection (5) (C)), access to basic directory assistance (Subsection (5) (D)), and equal access to interexchange carriers consistent with rule and regulations of the FCC (Subsection (5) (F). It does not offer all the basic services that the incumbent offers. VCI blocks access to all direct dialed toll calls, collect calls, DA calls, operator-completed calls, 900 calls, and third party calls.

VCI's tariff does not offer assistance programs for installation of, or access to, basic local telecommunications services for qualifying economically disadvantaged or disabled customers or both, including, but not limited to, lifeline services and link-up Missouri services for low-income customers or dual- party relay service for the hearing impaired and speech impaired.

Prepaid service providers, such as VCI, do not offer the full scope of basic local service at a price and under similar terms and conditions that are offered by the incumbent or other "full service" CLECs. Prepaid service providers do not offer its services in the same manner or with comparable and substitutable quality as does the incumbent local exchange company. The prepaids offer an "inferior" service that has limitations and restrictions on the customer that the incumbent's. local customer does not have. These restrictions include blocking the ability to dial 1+ and 0+ calls, blocking the ability to reach a presubscribed toll carrier via 1+ dialing parity, general toll blocking requiring use of prepaid calling cards obtained from third party telecom companies to make any toll calls from the customer's residence or place of business.

Under any reasonable view, VCI does not offer quality services at affordable rates comparable to AT&T. VCI's original subscription fee was tariffed at $300, but was reduced in January, 2007 to $150. The proposed lifeline rate is $19. The life line customer gets a $30 discount on the subscription fee and the $120 is payable at $10/month for a year. This rate structure for lifeline service is inconsistent with the purpose of USF since the service is substantially less in quality and more in price than AT&T's and the full service CLECs' basic local rates.

VCI is only seeking low income support from the federal USF. Even though it does not seek high cost support, the current ETC status comes in only one size that includes the low-income and high cost aspects. With its business plan relying on resold AT&T service (and perhaps UNEs), VCI will not be a facilities based provider. Without a presence in the state, VCI will not be ready, willing, and able to serve as a carrier of last resort. *See*, Section 254 of the Federal Telecommunications Act of 1996.

OPC questions whether the public interest will be served and consumers protected from excessive local rates. Even with discounts, the customer pays rates considerably above rates available from the incumbent and other CLECs. VCI has a "subscription fee" of $300 to initiate service which does not indicate a customer friendly service for persons who cannot obtain traditional wireline service due to lack of credit history or poor credit status. VCI claims that as part of its low income program it will reduce that fee to $150 and then deduct the $30 discount; the $120 can be paid over the first 12 months of service. However, the evidence is that this is not comparable in price, terms, and conditions and quality to offerings by the incumbent. The evidence is that this prepaid provider does not market the essential services the PSC has required for LECs, such as equal access to the customer's provider of choice for long distance and toll service, operator services and directory assistance.

Public Counsel also has serious questions that this company should be granted ETC status. VCI's method of providing service is not clear, defined or settled. (Cecil Reb.3, lines 6-9) Resale, UNE, and some of its own facilities are mentioned, with resale most often mentioned, but it needs an unequivocal statement. This is especially true when VCI is not providing any service in Missouri at this time. The evidence adduced by

VCI indicates that VCI lacks a clear vision of how it intends to do business in Missouri. The record gives OPC little confidence that VCI should be designated a ETC.

The abandonment of service in its home state of Washington and in Oregon is troubling as is the Minnesota Attorney General consumer complaints. (Tr 90-92).

Staff's testimony on VCI's rates alone could stand as the basis for OPC's opposition.

For an applicant that purports to only seek USF funds for low income service, Public Counsel is troubled by Staff witness Cecil's comment:

> "**Service subscription fees at the level proposed by VCI may not be in the public interest for lifeline customers**. However, it is worth noting **VCI's ongoing monthly recurring rate for service is among the lowest if not the lowest for prepaid companies.** Its proposed monthly rate is $19.Even when the $120 is prorated at $10 per month (making the monthly payment for the first year $29), **VCI's monthly rate will be among the lowest prepaid local rates."** (Cecil Reb. 3-4) (Emphasis added)

Comparison with other prepaid providers is inappropriate. The standard is to offer Link-Up and Lifeline programs and discounts comparable to the ILEC, here AT&T.

On the question whether the state can waive or modify FCC or other federal requirements and mandates for ETC status, Public Counsel doubts that the PSC can vary the mandated requirements for federal USF purposes. Unless there is a clear indication that the FCC does not intend to preempt a specific requirement, then it should be applied. The PSC must use the federal criteria, but has authority to add to it and make it more stringent.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was electronically transmitted, mailed or hand-delivered to all counsel of record on this 4th day of June 2007.

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