PUBLIC NOTICE

Federal Communications Commission
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APPLICATION OF VCI COMPANY TO DISCONTINUE DOMESTIC TELECOMMUNICATIONS SERVICES NOT AUTOMATICALLY GRANTED, FURTHER COMMENT REQUESTED

WC Docket No. 08-251
Comp. Pol. File No. 891

Comments Due: January 28, 2009

On **November 12, 2008, VCI Company** (VCI or Applicant), located at **2228 S. 78th Street, Tacoma, WA 98409-9050,** filed an application with the Federal Communications Commission (FCC or Commission) requesting authority, under section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 63.71 of the Commission's rules, 47 C.F.R. § 63.71, to discontinue the provision of certain telecommunications services in California, Iowa, Louisiana, Michigan, Minnesota, Montana, New Mexico, North Dakota, South Dakota, Tennessee, Texas, and Wyoming.[1] The Commission has received a comment regarding VCI's proposed discontinuance filed on behalf of the Wyoming Public Service Commission (WPSC).[2] By this Public Notice, the Wireline Competition Bureau announces that VCI's application to discontinue service will not be automatically granted pursuant to section 63.71.

In its application, VCI indicates that it currently offers flat rate, basic local exchange service to residential customers, and ancillary services such as toll limitation service, throughout its service areas in California, Iowa, Louisiana, Michigan, Minnesota, Montana, New Mexico, North Dakota, South Dakota, Tennessee, Texas, and Wyoming. VCI states, however, that it currently does not serve any customers in these states. VCI asserts that the economic recession has negatively affected its business and that it now intends to exit the telecommunications industry and discontinue offering flat rate, basic local exchange service in all of the above mentioned states where it currently has the authority to do so. According to VCI, the anticipated date for the proposed discontinuance is upon approval of this application by the Commission, and upon approval of requests for cancellations of certificates and tariffs, as well as notices

[1] This application was subsequently received in the Competition Policy Division of the Wireline Competition Bureau on December 1, 2008. By Public Notice dated December 22, 2008, the Commission notified the public that, in accordance with 47 C.F.R. § 63.71(c), VCI's application would be deemed to be automatically granted on the 31st day after the release date of the notice, unless the Commission notifies the VCI that the grant will not be automatically effective. *Comments Invited on Application of VCI Company to Discontinue Domestic Telecommunications Services*, Public Notice, WC Docket No. 08-251, DA 08-2774 (WCB Dec. 22, 2008). Accordingly, the automatic grant date for VCI's application would have been January 22, 2009.

[2] *See* Letter from Christopher Petrie, Secretary and Chief Counsel, Wyoming Public Service Commission to Marlene H. Dortch, Commission Secretary, Office of the Secretary, Federal Communications Commission, WC Docket No. 08-251 (filed Jan. 6, 2009) (WPSC Comments).

of intention to relinquish eligible telecommunications carrier (ETC) designation, where such approval is required by state regulatory commissions. VCI maintains that numerous competitive carriers have been certified to provide service in the incumbent local exchange carrier (ILEC) service areas of each state VCI serves and that the ILECs and other competitive carriers have been designated ETCs in the service areas VCI plans to exit. VCI asserts that its services therefore are not unique or difficult for customers to find elsewhere. VCI asserts that it is considered non-dominant with respect to the services to be discontinued.

The Commission will normally authorize proposed discontinuances of service unless it is shown that customers or other end users would be unable to receive service or a reasonable substitute from another carrier, or that the public convenience and necessity would be otherwise adversely affected. As noted above, the Commission has received a comment on VCI's proposed discontinuance, filed on behalf of the WPSC. WPSC comments that there appear to be several discrepancies in VCI's various filings. Specifically, WPSC states that VCI notified WPSC of its intent to abandon and discontinue its provision of local exchange telecommunications service and to relinquish its ETC status and designation in Wyoming on November 17, 2008. According to WPSC, in that filing, VCI stated that it currently has no Wyoming customers, is not in possession of any deposits or prepayments, has no outstanding service or financial obligations to Wyoming customers, has no customer records for Wyoming, and has no evidence of any notice of termination of its services in Wyoming.[3] However, WPSC states that VCI has filed a report with the Wyoming Universal Service Fund (WUSF) for the third quarter of 2008 claiming local exchange revenue. Additionally, WPSC comments that the Universal Service Administrative Company (USAC) was unaware of VCI's intent to discontinue service in Wyoming and relinquish its ETC designation. WPSC further comments that USAC advised WPSC that VCI was scheduled to receive a federal low income support payment at the end of November for Wyoming customers, and that VCI in its last filing with USAC indicated it was servicing approximately 2,458 low income customers in Wyoming.[4] WPSC states that it issued a Letter Order on December 5, 2008, suspending VCI's certificate of authority to provide local exchange telecommunications services in Wyoming, canceling VCI's ETC designation, and directing VCI to file specified information to explain these discrepancies with the WPSC on or before December 19, 2008. In the Letter Order, WPSC states that Mr. Stanley Efferding, VCI's Secretary/Treasurer, stated that VCI discontinued service to all of its Wyoming customers as of November 1, 2008, without prior notification to its customers or the WPSC.[5]

According to WPSC, it also issued a Subpoena Duces Tecum requiring production of the information requested in the Letter Order. WPSC indicates that, on December 19, 2008, VCI submitted a Motion to Quash Subpoena requesting the WPSC grant VCI the relief requested in its November 17 letter.[6] WPSC comments that after being notified that WPSC intended to consider VCI's motion, VCI provided a letter dated December 23, 2008 asserting that the WPSC had no jurisdiction over VCI, that the Letter Order was not lawful, that the Subpoena was null and void, and stating that VCI would not participate in further proceedings.[7] Finally, WPSC comments that at an open meeting on December 30, 2008, the WPSC considered and denied VCI's motion, and directed its staff to prepare information to be

[3] WPSC Comments at 1.

[4] *Id.*

[5] WPSC Comments, Attachment A at 2.

[6] WPSC Comments at 2, Attachment C.

[7] WPSC Comments at 2, Attachment D.

reviewed by the Wyoming Office of Attorney General for ultimate referral to the District Attorney for Laramie County, Wyoming, for enforcement and penalty proceedings.[8]

Where comments on a discontinuance application allege that the service has no reasonable substitute or that either present or future public convenience and necessity will be adversely affected, the Commission will scrutinize the discontinuance application, consistent with its statutory obligations.[9] Because the record raises concerns regarding the potential loss or disruption of service to customers, specifically low income and Lifeline customers, in a manner that may not provide adequate notice or provide an opportunity for customers to seek alternative service in accordance with the Commission's rules, we find that the public interest will not be served by automatic grant of VCI's application. Therefore, by this Public Notice, VCI is notified that its application to discontinue domestic telecommunications services will not be granted automatically.[10] We emphasize that our removal of VCI's application from the automatic grant process should not be construed as a final determination on the merits of VCI's request for authority to discontinue service.

We seek further information on the issues in the record, and hereby request comments no later than **January 28, 2009**. In particular, we seek comment on the existence and status of VCI customers impacted by VCI's proposed discontinuance in light of the concerns raised in WPSC's comments. We seek comment to clarify the status of VCI customers in Wyoming and the other affected states at the time of VCI's filing for authority to discontinue services, and throughout this proceeding. Finally, we also seek comment regarding any alternative discontinuance date that would be reasonable and in the public interest, taking into account the concerns in the record as well as VCI's claim that it now intends to exit the telecommunications industry because the economic recession has negatively affected its business.

This proceeding is considered a "permit but disclose" proceeding for purposes of the Commission's *ex parte* rules, 47 C.F.R. §§ 1.1200-1.1216. Comments should refer to WC Docket No. 08-251 and Comp. Pol. File No. 891. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to http://www.fcc.gov/cgb/ecfs/. Filers should follow the instructions provided on the website for submitting comments. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

Parties who choose to file by paper must send an original and four copies of the comments to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. The

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[8] WPSC Comments at 2.

[9] *See* 47 U.S.C. § 214(a); 47 C.F.R. § 63.71; *see also Federal Communications Comm'n v. RCA Communications, Inc.*, 346 U.S. 86, 90 (1953).

[10] *See* 47 C.F.R. § 63.71(c) ("The application to discontinue . . . shall be automatically granted on the 31st day . . . unless the Commission has notified the applicant that the grant will not be automatically effective.")

Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East *Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail,* Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554.

Two copies of the comments should also be sent to the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 5-C140, Washington, D.C. 20554, Attention: Carmell Weathers. In addition, comments should be served upon the Applicant. Commenters are also requested to fax their comments to the FCC at (202) 418-1413, Attention: Carmell Weathers.

The application will be available for public inspection and copying during regular business hours at the FCC Reference Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554, (202) 418-0270. A copy of the application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone (202) 488-5300, facsimile (202) 488-5563, or via e-mail at FCC@BCPIWEB.COM. People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

For further information, contact Carmell Weathers, (202) 418-2325 (voice), carmell.weathers@fcc.gov, or Melissa Kirkel, (202) 418-7958 (voice), melissa.kirkel@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau. The tty number is (202) 418-0484. For further information on procedures regarding section 214 please visit **http://www.fcc.gov/wcb/cpd/other_adjud.**

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