

This is an electronic copy. Format and font may vary from the official version. Attachments may not appear.

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1107

In the Matter of)	
)	ORDER
STAN EFFERDING dba VILAIRE)	
)	
Petition for Designation as an Eligible)	
Telecommunications Carrier Providing Service)	
to Customers Under the Oregon Telephone)	
Assistance Plan.)	

DISPOSITION: PETITION GRANTED

On September 2, 2003¹, Stan Efferding, dba Vilaire (Vilaire) filed a petition with the Public Utility Commission (Commission) pursuant to 47 U.S.C. § 214(e)(2), and 47 C.F.R. § 54.201 for designation as a federal eligible telecommunications carrier (ETC) authorized to participate in the federal Lifeline/Link Up program. Granting the petition would also result in Vilaire being designated as a state ETC authorized to participate in the Oregon Telecommunications Assistance Program (OTAP), pursuant to OAR 860-033-0005(7)(a). A description of the filing and its procedural history is contained in the Staff Report, attached as Appendix A, and incorporated by reference.

At its Public Meeting on December 4, 2003, the Commission adopted Staff's Recommendations and approved Vilaire's request.

¹ Staff report, at page 5, paragraph G, line 2 states filing date as August 29, 2003, but actual date received for filing was September 2, 2003.

ORDER

IT IS ORDERED that the application of Stan Efferding, dba Vilaire, for designation as an Eligible Telecommunications Carrier qualified to receive federal universal service fund support and State of Oregon Telephone Assistance Program support is granted.

Made, entered, and effective _____.

Lee Beyer
Chairman

John Savage
Commissioner

Ray Baum
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: December 4, 2003**

REGULAR X CONSENT _____ EFFECTIVE DATE N/A

DATE: November 25, 2003

TO: Lee Sparling

FROM: John Wright and Damara Paris through Dave Booth, Vicki McLean and Phil Nyegaard

SUBJECT: STAN EFFERDING, DBA VILAIRE: Petition for Designation as an Eligible Telecommunications Carrier Providing Service to Customers under the Federal Lifeline/Link Up Program and the State of Oregon OTAP Program.

STAFF RECOMMENDATION:

Staff recommends the Commission grant the petition of Stan Efferding, DBA Vilaire ("Vilaire"). Granting the petition will result in Vilaire being designated as a federal eligible telecommunications carrier (ETC) authorized to participate in the federal Lifeline/Link Up program. Granting the petition will also result in Vilaire being designated as a state ETC authorized to participate in the Oregon Telecommunications Assistance Program (OTAP).

DISCUSSION:

A. The Application of Stan Efferding DBA Vilaire

Stan Efferding is an individual based in Lakewood, Washington, who operates Vilaire Communications. Vilaire specializes in providing local exchange service to low income individuals and those with poor credit histories who are unable to obtain service from incumbent local exchange carriers (ILECs). Vilaire currently serves approximately 5000 such customers in the State of Washington.

Vilaire is seeking designation as a federal and state ETC throughout the Oregon service area of Qwest Corporation (Qwest). Vilaire will provide service in Oregon by purchasing unbundled network element platforms (so called, UNE-P) from Qwest.² At present, Vilaire has no

APPENDIX A
PAGE 1 OF 7

² A UNE-P consists of a bundled switch port and local loop facility allowing competitive carriers to provide local exchange service without constructing their own facilities.

customers in Oregon. However, the Company does have authority to operate as a competitive telecommunications provider under Order No. 03-165, dated March 19, 2003. Vilaire also has an Oregon interconnection agreement with Qwest that became effective July 11, 2003.

B. The Federal Lifeline/Link Up Program

The federal Lifeline/Link Up program is a universal service fund (USF) support mechanism designed to increase the availability of telecommunications services to low income consumers. The Federal Communications Commission (FCC), estimates 6.5 million consumers paid reduced rates under Lifeline in 2001 and 12 million have paid reduced connection charges under Link Up since 1987.³

The Lifeline portion of the Lifeline/Link Up program reimburses telephone companies for providing low income consumers with a discount on the cost of residential basic local exchange service. Lifeline support enables low-income consumers to save up to \$13.50. Of this amount \$3.50 per month is contributed by the OTAP program. Consumers living on Indian tribal lands may qualify for additional Lifeline discounts.⁴

The Link Up portion of the Lifeline/Link Up program reimburses telephone companies for providing low income consumers with a discount on the cost of commencing residential basic local exchange service. Link Up support enables low-income consumers to save up to 50 percent on connection fees, or \$30, whichever is less. Participants may also establish a deferred payment schedule for remaining connection charges of up to \$200. Consumers living on Indian tribal lands may qualify for additional Linkup discounts.

As is the case for the other federal USF support mechanisms such as high cost support and the rural healthcare program, funding for Lifeline/Link Up is provided by telecommunications service providers who are required to contribute a percentage of their interstate revenues. The federal USF revenue contribution factor for the fourth quarter 2003 is 9.2%. Most telecommunications service providers pass on this cost to their customers via a 9.2% surcharge on end user bills.

C. OTAP

The Commission established OTAP in response to a 1987 directive from the Oregon Legislature to establish an assistance program that provides reduced residential local exchange telephone

³ See FCC, *Trends in Telephone Service Report*, page 20-I (May 2003).

⁴ Federal regulations governing Lifeline/Link Up are contained in 47 C.F.R. §54.400 - 54.415.

service to low income consumers.⁵ OTAP is administered by Commission Staff and serves as an adjunct to the Lifeline portion of the federal Lifeline/Link Up program. Through OTAP, low income consumers can receive monthly discounts of up to \$3.50 per month for basic local exchange telephone service in addition to the discount of up to \$10.00 available via federal Lifeline support.⁶

Funding for OTAP, the Telecommunication Devices Access Program and the Oregon Telecommunications Relay Service is provided by a surcharge of up to \$0.35 per month assessed on the telephone bills of retail end users with basic service telephone lines. This surcharge is identified on end user telephone bills as the Residential Service Protection Fund (RSPF) surcharge, or other similar wording, and is set by the Commission on an annual basis.⁷

The current RSPF surcharge of \$0.13 will be in effect until December 31, 2004 when a new surcharge rate may be implemented by the Commission. Funds collected through the RSPF surcharge are held by the Oregon State Treasury. As of November 30, 2003, the RSPF fund balance was \$3.786 million. At present, Qwest, Verizon and approximately 30 rural ILECs participate in OTAP and the federal Lifeline/Link Up program. Approximately 49,000 low income customers in Oregon currently receive OTAP and Lifeline support.

D. Consumer Eligibility for Lifeline, Link Up and OTAP

In states that maintain their own low income support programs, the FCC requires consumers to meet state eligibility requirements in order to receive federal Lifeline/Link Up support. In states that do not have their own income support programs, consumers are required to meet default federal eligibility requirements. In Oregon, consumers are eligible to receive OTAP and Lifeline/Link Up assistance if they are currently receiving federal food stamps or assistance from another low income program for which eligibility requirements do not exceed 135 percent of the

APPENDIX A
PAGE 3 OF 7

⁵ The Legislature also directed the Commission to establish programs which resulted in the development of the Telecommunication Devices Access Program and the Oregon Telecommunications Relay Service for hearing and speech impaired Oregonians. See Sections 2 to 8 and 16, Chapter 290, Oregon Laws, 1987. Commission rules governing OTAP can be found in OAR 860-033-0001 through 860-033-0100.

⁶ OTAP, the Telecommunication Device Access Program and the Oregon Telecommunications Relay Service are administered by the Residential Service Protection Fund unit of the Commission's Central Services Division.

⁷ The RSPF is entirely separate from the Oregon Universal Service Fund (OUSF). Granting ETC status to Vailair for purposes of participating in the OTAP program will **not** allow the Company to receive OUSF support.

federal poverty level.⁸ In addition to food stamps, consumers receiving assistance such as Temporary Aid to Needy Families, Supplemental Security Income or coverage under the Oregon Health Plan may qualify.

E. The Federal ETC Designation Process

Before a telecommunications service provider can receive federal USF support (whether high cost support or Lifeline/Link Up), it must be designated as an ETC by a state public utility commission. State involvement in the process of designating federal ETCs stems from 47 U.S.C. § 214(e)(2) which requires state commissions to designate a common carrier as a federal ETC if it offers and advertises federal USF supported services throughout its designated service area using its own facilities.⁹ This Commission has made the requisite ETC designations for all Oregon ILECs and, as required by FCC regulations, re-certifies ILECs on an annual basis. To date, the Commission has not yet designated a competitive provider as a federal ETC.¹⁰

In areas served by non-rural ILECs, 47 U.S.C. § 214(e)(2) also provides that state commissions "**shall**" designate more than one common carrier as a federal ETC within a specific service area.¹¹ Therefore, if a carrier meets the requisite criteria of offering and advertising services supported by the federal USF mechanism, a state commission must grant ETC status with no latitude for deviation.

In areas served by rural ILECs, 47 U.S.C. § 214(e)(2) allows state commissions significantly greater latitude. State commissions "**may**" designate more than one ETC in a rural service area if they find such a designation to be in the public interest. This gives states discretion to decline an ETC application based on a public policy rationale even if the applicant complies with requisite criteria of offering and advertising USF supported services. Since Vilaire is not applying for ETC status in the service areas of any rural ILECs, the Company's application need not pass this public interest test.

Note that the federal statutes and regulations discussed above apply regardless of whether a telecommunications service provider desires federal ETC status in order to receive USF high cost

APPENDIX A
PAGE 4 OF 7

⁸ The current federal poverty guidelines as published by the Department of Health and Human services are \$8,980 annual income for a single individual and \$18,400 annual income for a family of four.

⁹ 47 C.F.R. § 51.101(1) specifies the following services as being supported by federal universal service support mechanisms: a) voice grade access to the public switched network; 2) local usage; 3) dual tone multi-frequency signaling or its functional equivalent; 4) single-party service or its functional equivalent; 5) access to emergency services; 6) access to operator services; 7) access to interexchange services; 8) access to directory assistance; 9) toll limitation for qualifying low income consumers. An ETC must offer all of these services to receive federal USF support.

¹⁰ The Commission is currently investigating two dockets in which competitive wireless carriers are seeking to be designated as federal ETCs for the purpose of receiving high cost support (*see* Dockets UM 1083 and UM 1084).

¹¹ For federal USF purposes, Qwest and Verizon are considered non-rural ILECs in the State of Oregon.

support or participate in the Lifeline/Link Up program. In its application, Vilaire explicitly disavowed any intent to receive federal USF high cost support. However, Staff believes the Company will qualify for both federal high cost support and participation in the Lifeline/Link Up program if it is designated as a federal ETC by the Commission.¹²

F. The State ETC Designation Process

In order to be designated as a state ETC for purposes of OTAP, a telecommunications service provider must comply with the federal requirements contained in C.F.R. §54.101 as discussed above. The applicant must also demonstrate that it will comply with OAR 860-033-0005 through OAR 860-033-100.¹³

G. Analysis of Vilaire's Application

Staff has made approximately twenty-five data requests since Vilaire's filed its application on August 29, 2003. The reason for this large number of data requests includes:

1. Vilaire's application required significant clarification.
2. Vilaire specializes in providing local exchange service to low income consumers. Given the vulnerability of this target market, it seemed appropriate to thoroughly investigate the Company's application.
3. Recent controversy involving the Washington Telephone Assistance Program which involved Vilaire and numerous other telecommunications service providers serving the same low income target market.

Based on Staff's research, we make the following observations:

1. Although Vilaire does not currently offer service in Oregon, the FCC has made it clear in numerous decisions that a service provider need not actually provide service throughout the service area for which it seeks ETC designation at the time of its application. Instead, the applicant must merely make a reasonable demonstration of its capability and commitment to

APPENDIX A
PAGE 5 OF 7

¹² This is somewhat of a moot point in Oregon at present. Under the FCC's current rules, non rural ILECs collect federal USF high cost support in only eight jurisdictions. Oregon is not one of the eight. Therefore, Qwest and Verizon do not receive federal high cost fund support. Qwest and Verizon do however, participate in the federal USF Lifeline and Linkup programs for low income consumers.

¹³ Vilaire is not seeking to become a state ETC in order to participate in the OUSF program. Further, the requirements to become a state ETC for OUSF purposes are different from those required to become a state ETC for OTAP purposes.

provide universal service without the actual provision of such services.¹⁴ Vilaire's operations in Washington, its certificate of service in Oregon and its interconnection agreement with Qwest demonstrate adequate capability and commitment.

2. The fact that Vilaire has not constructed its own facilities is also not an impediment to the Company being designated a federal ETC. Under 47 C.F.R. §54.201(f), ETCs are allowed to meet the requirement of providing service using their "own facilities" by purchasing unbundled network elements from another carrier. Vilaire's stated intention to provide service via Qwest UNE-P meets this criteria.
3. Vilaire's application demonstrates compliance with the requirements of 47 U.S.C. § 214(e)(2) and 47 C.F.R. § 51.101(a) regarding the offering and advertising of federal USF supported services.
4. By virtue of its compliance with 47 C.F.R. §51.101(a), Vilaire qualifies for state ETC certification per the requirements of OAR 860-033-0005(7)(a).
5. Upon investigation, Staff determined that recent controversy involving the financial solvency of the Washington Telephone Assistance Program (WTAP) stemmed from that program's flawed design. Specifically, WTAP reimbursed telecommunications service providers for the difference between the price they charged consumers and the sum of federal Lifeline support and a \$4 consumer co-payment. For example, if a service provider charged consumers \$20 per month for service, WTAP would provide a reimbursement of \$6 (\$20 price - \$10 Lifeline - \$4 co-payment). Apparently this system worked well when rate regulated ILECs were the program's sole participants. However, WTAP accumulated a \$1.5 million deficit due, at least in part, to the growing participation of competitive carriers such as Vilaire who are free to charge prices significantly higher than rate regulated ILECs.

Staff believes that this problem will not occur in Oregon given that OTAP pays a *maximum* of \$13.50 (\$10 Lifeline + \$3.50 OTAP) per month to telecommunications service providers regardless of the price they charge end user consumers. Nonetheless, the Commission should be aware that competitive providers in Oregon are free to charge prices for residential basic local exchange service far in excess of those charged by ILECs such as Qwest or

APPENDIX A
PAGE 6 OF 7

¹⁴ See paragraph 16, FCC order DA 02-3181, *RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*.

Verizon. In order to participate in OTAP, service providers need merely pass on the OTAP subsidy to consumers.¹⁵ This means that if Vilaire chooses to charge \$63.50 per month for basic residential local exchange service, it is required to charge \$50 to consumers who are qualified for OTAP. It is Staff's understanding there is a pool of low income consumers who may be willing to pay such exceptionally high prices because they are unable to obtain service from ILECs due to their poor credit and/or payment histories.

Given the reasons cited above, Staff believes the Commission does not have a basis for denying Vilaire's application. Vilaire has satisfactorily responded to Staff's data requests and has indicated it will comply with applicable federal and state requirements.

OPTIONS FOR COMMISSION ACTION:

The Commission has two options for action:

1. Approve or deny the application of Vilaire.
2. Set the matter for hearing to investigate relevant issues regarding the operations of Vilaire in other states.

Staff recommends the Commission grant the Vilaire's petition under option #1.

PROPOSED COMMISSION MOTION:

That the application by Stan Efferding DBA Vilaire, for designation as an Eligible Telecommunications Carrier qualified to receive federal universal service fund support and State of Oregon Telephone Assistance Program support be granted.

UM 1107 Stan Efferding DBA Vilaire PM Memo.doc

¹⁵ See OAR 860-033-010 and OAR 860-033-0035(1) which mandate that qualifying customers are to pay reduced monthly rates.