

The Virgin Islands Consortium

PSC Suspends Decision To Let New Telecom Company Enter Local Market, Approves WAPA's Fuel Hedging, Solar Projects Requests

Government / **Published On March 27, 2015 05:29 PM /**

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At the year's first Public Services Commission (PSC) meeting held at the commission's offices Thursday night on St. Thomas, members unanimously voted to suspend making a decision to grant Momentum Telecom, Inc. the authority to provide telecommunication services in the territory until a public hearing on the matter could be held. If approved, the decision would effectively open, for the first time, competition on wireline services in the U.S. Virgin Islands market, an arena that has historically been monopolized by VITELCO.

The commission's decision came following a motion to approve Momentum's application was made by Commissioner Joseph San Martin and seconded by Commissioner M. Thomas Jackson, but which received objection from the commission's legal council, Atty. Tanisha Bailey-Roka.

"It is very unorthodox to make a decision of this magnitude before having a public hearing," Bailey-Roka advised the body, adding that it should exercise caution in moving forward before "knowing all the facts." Jackson withdrew his support for the motion following Bailey-Roka's explanation.

Prior to the decision to suspend its vote on Momentum's application, the commission sought to answer the question of whether it should have jurisdictional power over telecommunications service providers, specifically wireline providers, seeking to enter the Virgin Islands market.

"If the commission, after due deliberation, decides that it has a role in overseeing competitive entry into the USVI market, it would be in a position to encourage the deployment of new services while safeguarding the interests of the consumer," a representative from the commission's consultants, Georgetown Consulting Group, pointed out.

The consultant said the commission could, for example, "Look into service-related complaints for billing issues," stating the commission has, so far, only taken a "limited role" in "overseeing competition through the approval and designation of ETCs for universal service purposes." To date, "all of those competitive ETCs have been wireless carriers," the Georgetown consultant said.

The representative went on to say that if PSC chooses not to take a greater role in providing governance of telecom companies coming into the local market, "new wireline services would be three-twelfths of their services without any local regulatory oversight."

Conversely, the consultant said if PSC does decide to exercise a role in overseeing the competitive entry of wireline companies into the territory's market, "one issue that would immediately surface is whether the commission wants to protect VITELCO from land line competition in order to preserve universal service," the definition of which, he said, "is undergoing reexamination."

The Georgetown consultant also said VITELCO has lost many of its land-line customers to wireless carriers over the last 10 years. He also said that in recent years some states have tried to place restrictions on competition entering rural areas -- as which the territory is classified -- but they were preempted by the Federal Communication Commission (FCC). While the commission could face the same fate from the FCC, the consultant warned, he said the FCC has been "sympathetic to the Virgin Islands in the past."

"So, in making this decision, the commission should receive relevant testimony, and weigh the public interest and the possibility of an FCC preemption," he advised.

Attorney Bailey-Roka made clear that in the past local District Court had ruled in the commission's favor against a company seeking to enter the USVI's wireline market but had argued that VITELCO should be stripped of its rural exemption status. She pointed out it was not that the commission had opposed the company coming into the

market, but that the entrant's quest to strip VITELCO of the benefits the telecommunications company receives for operating in a rural community was challenged.

However, in explaining Momentum's position, attorney Chris Savage offered: "There may be people, who at some point in the future and maybe in the past, who have entered the USVI who want to disrupt the protections that VITELCO enjoys as a rural carrier or who wants to challenge your authority to establish reasonable regulations and obligations on a regulated entity. But that's not Momentum. Momentum accepts that it is a telephone company, subject to your jurisdiction and accepts that VITELCO is a rural carrier with rural exemptions."

He went on to say that while he commended the commission for addressing issues that have surfaced as "competition is making its way to the U.S.V.I.," he believes "it would be a mistake to say or to think that all of these high-level policy issues need to be, should be, or legally can't be required to be addressed before addressing Momentum's application."

The commission will vote on Momentum's application at its next meeting after a public hearing has been held.

The commission also took action on various Virgin Islands Water and Power Authority (WAPA) matters. It voted unanimously in favor of the public utility moving forward with its agreements with USVI Solar I and USVI Solar II to purchase electric energy for St. Croix through the development of solar photovoltaic power generation projects, as well as for WAPA to reestablish its fuel risk management program.

WAPA officials testified that with the approval of the purchase of 6 megawatts of solar power for St. Croix and 3 megawatts for St. Thomas, by a solar company that is yet to be determined, residential customers using 500 kilo watt hours would see a savings of \$1.71 each month and commercial customers at 5,000 kilo watt hours would see a monthly savings of \$17.06.

While commission members congratulated WAPA's Executive Director Hugo Hodge on his efforts to reduce customers' electricity bills with the use of solar power, Sen. Nellie O'Reilly, a non-voting member of the commission, said she was not impressed with the savings.

"Well, you're not going to get any congratulatory messages from me. A \$1.71 monthly savings, I'm not sure how that impacts, in any positive way, rate payers," she said, jokingly adding, "but you're lucky I don't get to vote."

With the commission's approval of the reestablishment of WAPA's fuel hedge program, which previously existed for a three-year period in 2008, the utility can lock in current reduced prices for the next five years for all of its fuel sources, particularly for its propane program expected to go online in the third and fourth quarters of this year.

Other items discussed at the meeting included an investigation into the rate increases for ferry boat services on St. John, which the commission approved in August 2013. Of particular interest was the increase in the fare for adult non-residents from \$6 to \$7. Ferry operators testified that all of their rate increases -- baggage, student and teacher, bulk,

and adult non-resident -- were justified in helping the companies, Transportation Services of St. John, Inc. and Varlack Ventures, Inc., remain financially afloat. A vote was not taken on the matter.

An update on the minimum filing requirements for electric and water LEAC was also given, and the following assessments were approved to be received by the commission for consulting services it was provided:

Docket 641: Momentum Telecom, Inc. application for authority to provide telecommunications services in the USVI - \$17,000

Docket 582: VITELCO transfer of control - \$50,000

Docket 556: VITELCO universal services fund - \$6,000

Docket 640: Transportation Services of St. John, Inc. and Varlack Ventures, Inc. rate investigation - \$3,500

Docket 289: WAPA's petition for reestablishment of fuel risk management program - \$85,000

Docket 614: Minimum filing requirements for electric and water LEAC - \$82,000

Docket 638: WAPA management audit - \$68,000

The following assessments were not approved:

Docket 643: WAPA petition for approval of solar projects - \$13,000

Docket 612: WAPA electrical system rate petition - \$34,000 (additional time was given to WAPA to review details of the petition)