

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

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| The Staff of the Missouri Public Service Commission |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | |
| |) | |
| |) | |
| Halo Wireless, Inc., |) | |
| Transcom Enhanced Services, Inc. |) | |
| |) | |
| Respondents. |) | |

File No: TC-2013-0194

**MOTION FOR DEFAULT JUDGMENT, SUMMARY DETERMINATION
AND RESPONSE TO RESPONDENT’S MOTION AND ANSWER**

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Motion* and *Response*, states as follows:

1. On October 16, 2012, the Staff made its Complaint in this matter. After granted extension of time, Respondent Transcom Enhanced Services, Inc. (“Transcom”) filed an answer and Motion to Dismiss on April 15, 2013.

2. Halo Wireless, Inc. (“Halo”) did not answer or respond in any way. The Staff moves that the Commission enter a default determination against that company.

3. Commission Rule 4 CSR 240-2.117(1) provides as follows:

(A) Except in a case seeking a rate increase or which is subject to an operation of law date, any party may by motion, with or without supporting affidavits, seek disposition of all or any part of a case by summary determination at any time after the filing of a responsive pleading, if there is a respondent, or at any time after the close of the intervention period. However, a motion for summary determination shall not be filed less than sixty (60) days prior to the hearing except by leave of the commission.

(B) Motions for summary determination shall state with particularity in separately numbered paragraphs each material fact as to which the movant claims there is no genuine issue, with specific references to the pleadings, testimony, discovery, or affidavits that demonstrate the lack of a genuine issue as to such facts. Each motion for summary determination shall have attached thereto a separate legal memorandum explaining why summary determination should be granted and testimony, discovery or affidavits not previously filed that are relied on in the motion. The movant shall serve the motion for summary determination upon all other parties not later than the date upon which the motion is filed with the commission.

* * *

(E) The commission may grant the motion for summary determination if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the commission determines that it is in the public interest. An order granting summary determination shall include findings of fact and conclusions of law.

* * *

4. In this matter, there is no operation of law date and no hearing has been set. This Motion incorporates by reference the Staff's Complaint and the further responses set forth below. All of those averments are drawn directly from the Findings of Fact and Conclusions of Law set forth in its Report and Order in File No. TC-2012-0331, in which Transcom participated. Although Transcom denies them in its Answer, the Commission has already decided the matter; therefore, no genuine issue remains as to any material fact. The Report and Order speaks for itself, but all of the underlying testimony and other evidence is contained in the Commission's records under that case number and are too voluminous to be repeated here without wasting the Commission's time.

5. Transcom asserted in its Response that it was not a telecommunications company because it is an enhanced service provider and therefore excluded from the definition. The Commission found in TC-2012-0331 that:

The Respondent LECs [Halo and Transcom] are “telecommunications companies” and “public utilities” as those terms are defined by Section 386.020 RSMo. Supp. 2011. [page 33]

The Commission further concludes that Transcom does not qualify as an ESP. To be an ESP, Transcom must provide an “enhanced service,” which the FCC defines as:

services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. [footnote omitted]

In applying this definition, the FCC has consistently held that a service is not “enhanced” when it is merely “incidental” to the underlying telephone service or merely “facilitate[s] establishment of a basic transmission path over which a telephone call may be completed, without altering the fundamental character of the telephone service,” and that in deciding whether a service is “enhanced” one must use the end-user’s perspective. [page 43]

6. Finally, Transcom asserts that it is not a telecommunications company because it does not hold itself out as a common carrier to the general public. All of the cases cited by Transcom concerning this proposition are either not about telecommunications companies or are from a time when telecommunications companies had monopoly service areas and provided services through tariffs to all comers in their service area. Telecommunications companies are no longer regulated in this way. They are no longer required to offer services through tariffs, but may offer some or all of their services through contracts with users or on such terms and conditions as are posted on the company’s web site. Furthermore, companies need not serve all end users or offer all services in their service areas. Many telecommunications companies in Missouri serve only other carriers; others provide niche services to certain portions of the public who need those services. In any event, the Commission found that Transcom is a telecommunications company, and that, although Transcom did not originate traffic, it did carry

telecommunications traffic that traversed the public switched network [page 49]. It is the Staff's position that the carriage of this traffic on the public switched network constitutes "common carriage" as that term can be applied to a competitive, non-price-controlled market.

WHEREFORE, the Staff respectfully requests that the Commission:

a. Enter a default determination that Halo acted as a telecommunications company in the State of Missouri and should have been certificated as such prior to providing telecommunications service in Missouri.

b. Summarily determine that Transcom acted as a telecommunications company in the State of Missouri and should have been certificated as such prior to providing telecommunications service in Missouri, as all of the averments in the Staff's complaint and further delineated herein are drawn from the Findings of Fact and Conclusions of Law set forth in its Report and Order in File No. TC-2012-0331, in which Transcom participated.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by First Class United States Mail, postage prepaid, on this 25th day of April, 2013, to the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case, a copy of which is attached hereto and incorporated herein by reference.

A handwritten signature in black ink, appearing to be "Allan D. [unclear]", is centered below the text.