

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

The Staff of the Missouri Public Service Commission,)	
)	
Complainant,)	
)	
vs.)	File No. TC-2013-0194
)	
Halo Wireless, Inc., and)	
Transcom Enhanced Services, Inc.)	
Respondents.)	

**TRANSCOM ENHANCED SERVICES, INC.'S
ANSWER TO COMPLAINT**

COMES NOW, Transcom Enhanced Services, Inc. (“Transcom”), and for its Answer to the Complaint filed on October 16, 2012, states as follows:

INTRODUCTION

1. Paragraph 1 of the Complaint contains the Staff’s characterization of another case recently before the Missouri Public Service Commission (the “Commission”), TC-2012-0331, and as such, does not require a response. To the extent a response is required, Transcom admits that the Complaint relies on Case No. TC-2012-0331. Transcom denies the remaining allegations contained in paragraph 1 of the Complaint.

THE PARTIES

Complainant

2. With regard to paragraph 2 of the Complaint, Transcom admits that the Complaint was filed by the Chief Staff Counsel, purportedly on behalf of the Staff. Transcom lacks sufficient information to admit or deny whether the filing was authorized.

Respondents

3. In response to the allegations contained in the second sentence of paragraph 3 of the Complaint, on information and belief, Transcom admits that Halo Wireless, Inc. (“Halo”) holds a Radio Station Authorization (“RSA”) granted by the Federal Communications Commission (“FCC”) on January 27, 2009. Transcom lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 3 of the Complaint, and therefore such allegations are denied.

4. Transcom admits the allegations contained in the first two sentences of paragraph 4 of the Complaint, but only insofar as they relate to Transcom. Halo will have to address whether the assertions regarding that entity contained in the second and third sentences of paragraph 4 are correct as to Halo. Transcom denies the allegation in the fourth sentence of paragraph 4. Concerning the fifth sentence in paragraph 4, Transcom admits it is not registered as a foreign corporation to do business in Missouri, but submits it never had and still does not have any obligation to so register. With regard to the sixth and eighth sentences of paragraph 4, which are part of a new, unnumbered paragraph, Transcom admits that a separate corporation (Transcom Communications, Inc.) sought and obtained certification, and registered as a foreign corporation in Missouri. The documents cited speak for themselves, and Transcom denies any assertion in the seventh, ninth and tenth sentences that are contrary to their actual contents. The allegations contained in the eleventh sentence constitute legal argument and as such, do not require a response. To the extent a response is required, Transcom denies the allegations contained therein. Transcom admits the allegations contained in the last sentence of the unnumbered paragraph.

JURISDICTION

5. The allegations contained in paragraph 5 of the Complaint constitute legal argument and as such, do not require a response. To the extent a response is required, Transcom denies the allegations contained in paragraph 5 and asserts an affirmative defense to the contrary in the “Affirmative Defenses” subsection herein.

6. The statutory language referenced in paragraph 6 of the Complaint speaks for itself and does not require a response from Transcom.

7. The statutory language referenced in paragraph 7 of the Complaint speaks for itself and does not require a response from Transcom.

8. The statutory language referenced in paragraph 8 of the Complaint speaks for itself and does not require a response from Transcom.

9. The statutory language referenced in paragraph 9 of the Complaint speaks for itself and does not require a response from Transcom.

10. The statutory language referenced in paragraph 10 of the Complaint speaks for itself and does not require a response from Transcom.

11. The statutory language referenced in paragraph 11 of the Complaint speaks for itself and does not require a response from Transcom.

12. The statutory language referenced in paragraph 12 of the Complaint speaks for itself and does not require a response from Transcom.

13. The statutory language referenced in paragraph 13 of the Complaint speaks for itself and does not require a response from Transcom.

FACTS COMMON TO BOTH COUNTS

14. With regard to the allegations in paragraph 14 of the Complaint, Transcom admits there was an interconnection agreement between Halo and AT&T. That document speaks for itself, and Transcom denies any characterization of that agreement inconsistent with its terms.

15. Halo will have to specifically respond to the allegations in paragraph 15 of the Complaint, but on information and belief, Transcom denies that “the only entity for whom Halo carried traffic was Transcom.”

16. Transcom denies the allegations contained in paragraph 16 of the Complaint.

17. On information and belief, Transcom denies the allegations in paragraph 17 of the Complaint.

18. With regard to the allegations in paragraph 18 of the Complaint, on information and belief, Transcom admits that Halo offered to, and did, pay reciprocal compensation to AT&T, and that Halo also paid substantial amounts for transit. None of the traffic was associated with a telephone toll service provided by or to Halo or Transcom, so tariffed exchange access rates could not apply as a matter of law. Further, the exchange access tariffs of the incumbent local exchange carriers (ILECs) in Missouri on their face did not apply to the arrangements in issue.

19. The allegations contained in paragraph 19 of the Complaint constitute legal argument, and as such, do not require a response. To the extent a response is required, Transcom denies the allegations contained in paragraph 19.

COUNT I – FAILURE TO OBTAIN CERTIFICATES OF AUTHORITY

20. Paragraph 20 of the Complaint simply realleges the allegations contained in paragraphs 1 through 19 of the Complaint, and therefore does not require a response from Transcom.

21. The allegations contained in paragraph 21 of the Complaint constitute legal argument, and as such, do not require a response. To the extent a response is required, Transcom denies the allegations contained in paragraph 21.

22. The allegations contained in paragraph 22 of the Complaint constitute legal argument, and as such, do not require a response. To the extent a response is required, Transcom denies the allegations contained in paragraph 22.

23. The allegations contained in paragraph 23 of the Complaint constitute legal argument, and as such, do not require a response. To the extent a response is required, Transcom denies the allegations contained in paragraph 23.

COUNT II – FAILURE TO PAY LAWFULLY REQUIRED ACCESS CHARGES

24. Paragraph 24 of the Complaint simply realleges the allegations contained in paragraphs 1 through 23 of the Complaint, and therefore does not require a response from Transcom.

25. The allegations contained in paragraph 25 of the Complaint constitute legal argument, and as such, do not require a response. To the extent a response is required, Transcom denies the allegations contained in paragraph 25.

26. The allegations contained in paragraph 26 of the Complaint constitute legal argument, and as such, do not require a response. To the extent a response is required, Transcom denies the allegations contained in paragraph 26.

27. The allegations contained in paragraph 27 of the Complaint constitute legal argument, and as such, do not require a response. To the extent a response is required, Transcom denies the allegations contained in paragraph 27.

AFFIRMATIVE DEFENSES

28. The Complaint fails to state a claim upon which relief may be granted.

29. The activities complained of in the Complaint have ceased, in that Halo is no longer providing service to Transcom.

30. The Commission lacks jurisdiction. Transcom is not a common carrier. In addition, the Commission does not have lawful jurisdiction over Transcom's property.

31. The Commission is preempted by federal law, under express, field, and conflict preemption.

32. Transcom's traffic is jurisdictionally interstate, and thus, Chapter 386 RSMo does not apply. *See* 386.030 and 386.250(2).

33. The requested relief would violate the Commerce Clause in the U.S. Constitution.

34. Transcom is not a public utility.

35. Transcom is not a person subject to the Commission's supervision.

36. The Commission cannot forcibly require Transcom to assume common carrier status, under either state or federal law, and it certainly cannot do so on a retroactive basis so as to retroactively subject Transcom to the Commission's jurisdiction and penalties.

37. Transcom does not provide telecommunications service. In the alternative, Transcom operates a private telecommunications system.

38. Transcom does not provide telecommunications service. In the alternative, Transcom does not provide a regulated telecommunications service.

39. Transcom does not provide telecommunications service for hire, sale, or resale to the public within Missouri.

40. Transcom is not a telecommunications company.

41. Transcom does not own, operate, control, or manage any facilities used to provide telecommunications service for hire, sale, or resale within Missouri.

42. Transcom does not provide interexchange telecommunications service.

43. Transcom is not an interexchange telecommunications company.

44. The Complaint is an impermissible collateral attack on the Commission's Report and Order in Case No. TC-2012-0331. *See* § 386.550 RSMo.

45. The Complaint is in the nature of an application for rehearing of the Commission's Report and Order in Case No. TC-2012-0331. *See* § 386.500 RSMo.

46. The Commission has already had the opportunity to consider the issues presented by the Staff in Case No. TC-2012-0331, namely whether Halo, Transcom, and the principals thereof committed fraud. In Case No. TC-2012-0331 and the related proceedings brought before the Commission, neither the parties nor the Staff requested a finding of fraud or liability of the principals of the companies involved because the facts did not and still do not support such a finding.

47. The Staff filed a response, presented testimony, and filed briefing in Case No. TC-2012-0331. During the hearing on the merits, Commissioner Kenney questioned the Staff's witness, William L. Voight, as to whether Transcom was created for the purpose of avoiding access charges. *See* Transcript, p. 492. Recognizing the seriousness of the allegation, Voight stated that he could not arrive at any other conclusion. *See* Transcript, pp. 492-93. Then, on cross-examination, Voight admitted that he actually did not know when Transcom was created or

that Transcom was created as a result of the acquisition of assets out of bankruptcy from another entity, which had been declared an ESP by the bankruptcy court. *See* Transcript, pp. 499-501. Then, when asked “are you testifying to the Commission that Transcom was set up sometime around 2003, perhaps, just for the purpose of avoiding access charges?,” Voight replied “I don’t know.” *See* Transcript, p. 501.

48. Further, Commissioner Kenney specifically asked that “if it is someone's contention that [Transcom] was created for the purposes of avoiding having to pay access charges, whether that is illegal or whether that is merely a permissible clever strategy, if somebody could address that.” *See* Transcript, pp. 509-10. The parties and the Staff were given an opportunity to address the very issue underlying the Complaint. In response, the Staff provided one conclusory page in its brief, stating “the only conclusion the Staff can draw is that Halo and Transcom went into the scheme knowing it was wrong and planning the many ways of abusing its rights to due process that would delay the shutdown of the scheme.” Staff’s Initial Brief, Case No. TC-2012-0331, p. 22. The Staff provided no evidence of such knowledge in its brief, just as it does not in the Complaint.

49. After a review of all of the pleadings, pre-filed testimony, live testimony, and post-hearing briefing, the Commission entered its Report and Order in Case No. TC-2012-0331. After hearing directly from one of the principals of Halo at the hearing and also from the Staff’s witness, under the heading “No Claim or Finding of Fraud,” the Commission failed to find that Transcom had committed any fraud. Indeed, the Commission stated that “[i]t does not matter who created Transcom or Halo, or whether they were created as part of a clever strategy whose goal was the avoidance of payment of access charges.” Report and Order, Case No. TC-2012-

0331, p. 66. The Commission has already had the opportunity to consider the prayers of the Complaint and it refrained from doing so.

WHEREFORE, having fully answered the Complaint, Transcom prays that the Commission dismiss the Complaint for the reasons aforementioned.

Respectfully submitted,

/s/ Catherine Hanaway

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served on the following via electronic mail or certified and regular mail on this 15th day of April, 2013.

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