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PUBLIC SERVICE COMMISSION OF WISCONSIN

Investigation into Practices of Halo Wireless, Inc., and Transcom
Enhanced Services, Inc.

9594-TI-100

FINAL DECISION

This is the Final Decision in the Commission's investigation of Halo Wireless, Inc. (Halo), and Transcom Enhanced Services, Inc. (Transcom), and the practices of those two entities in Wisconsin.

The participating parties are listed in Appendix A.

Introduction

The Commission opened this matter on its own motion to investigate the practices of Halo Wireless, Inc. (Halo), and Transcom Enhanced Services, Inc. (Transcom). The Notice of Proceeding, dated October 20, 2011, specifically notes that the Commission "is investigating the amount and type(s) of traffic that Halo and Transcom are terminating in Wisconsin and the payments that Halo and Transcom are (or are not) making to Wisconsin terminating carriers." The Notice identified Halo and Transcom as parties;¹ it also named Wisconsin Bell, Inc., d/b/a AT&T Wisconsin (AT&T), and the TDS Telecom incumbent local exchange carriers (ILECs)² and TDS Metrocom, LLC (together, TDS) as parties. Later, party status was also granted to the Wisconsin State Telecommunications Association, Inc. (WSTA), the Wisconsin Rural Local

¹ Halo and Transcom are affiliated entities.

² There are 21 TDS ILECs in Wisconsin. See PSC REF#: 155242.

Exchange Carriers³ (the RLECs), and the twelve CenturyLink incumbent local exchange carriers (ILECs) operating in Wisconsin (CenturyLink).

A Notice of Prehearing Conference was issued on November 9, 2011, and a Prehearing Conference was held on November 23, 2011, at which an Issues List was created.⁴ On December 2, 2011, Halo and Transcom filed a written reply to the eight issues on that issues list (see PSC REF#: 156596).

On November 18, 2011, Halo and Transcom each filed a Motion to Dismiss. The RLECs, TDS, and AT&T submitted responses to the Motions to Dismiss on December 5 and December 6, 2011. On December 13, 2011, Halo and Transcom filed replies in support of their Motions to Dismiss. At its open meeting of January 5, 2012, the Commission denied the Motions to Dismiss, some parts with prejudice and some without prejudice.⁵

Hearings were held in Madison on February 28 and 29, 2012, and March 28, 2012. Halo and Transcom, AT&T, the RLECs and TDS filed initial briefs on March 26, 2012, and reply briefs on April 9, 2012.

The Commission considered this matter at its open meeting of July 12, 2012.

Findings of Fact

1. Halo and Transcom are Texas corporations. They have some common owners and officers, and they have some commonly-located facilities in various locations across the United States. Halo and Transcom provide facilities and services to each other.

³ Thirteen rural ILECs and competitive local exchange carriers (CLECs) filed jointly. See PSC REF#: 155214.

⁴ Administrative Law Judge Michael Newmark issued a Prehearing Conference Memorandum on November 29, 2011, which includes the Issues List. See PSC REF#: 156329.

⁵ At page 4 of that Order Denying Motions to Dismiss (PSC REF#: 158138), the Commission stated, “. . . the procedural and notice arguments or claims raised in the motions are denied with prejudice. The substantive aspects related to jurisdiction are denied without prejudice.”

2. Halo has not been certified in Wisconsin as a telecommunications utility, an alternative telecommunications utility, or a telecommunications carrier. Halo has a Radio Station Authorization license from the Federal Communications Commission (FCC) for operation in the 3650-3700 MHz band.

3. Transcom has not been certified in Wisconsin as a telecommunications utility, an alternative telecommunications utility, or a telecommunications carrier.

4. Halo provides what it calls “High Volume Service” to Transcom. Transcom is Halo’s only customer and only source of revenues. Halo has no consumer customers in Wisconsin and has no paying consumer customers anywhere else.

5. Halo leases a tower site in New Glarus, Wisconsin. Halo also leases a tower site at Danville, Illinois. Calls that are terminating in Wisconsin are routed through Halo facilities at one of these two tower locations. Halo delivers calls that it has received via Transcom to an AT&T tandem switch in the same Major Trading Area⁶ (MTA) as the Halo tower. From that tandem, calls are forwarded to the local central offices of AT&T or of other ILECs or CLECs for final delivery to end user customers of those ILECs or CLECs. Neither Halo nor Transcom has paid terminating access charges for those calls.

6. Halo has an interconnection agreement (ICA) with AT&T. Part of that ICA states:

Whereas, the Parties have agreed that this Agreement will apply only to . . . (2) traffic that originates through wireless transmitting and receiving facilities before Carrier (Halo) delivers traffic to AT&T for termination by AT&T or for transit to another network.

⁶ MTAs have been established by the FCC for use in the wireless telecommunications market. MTAs are generally much larger geographically than traditional telephone exchanges. (See Ex.–PSCW Staff–Evenson–5 (PSC REF#: 158439).) The New Glarus tower is in MTA 20; the Danville tower is in MTA 3.

7. Whether landline or wireless, calls that originate in one local calling area and terminate in another local calling area are subject to access charges.

8. Traffic that does not originate on wireless transmitting and receiving facilities is not subject to the Halo-AT&T ICA.

Conclusions of Law

1. The Commission has the requisite jurisdiction and discretion under Wis. Stat. §§ 196.02(1) and (7), 196.016, 196.04, 196.203, 196.212, 196.219, 196.37, 196.39, 196.44, 196.499, 47 USC §§ 251 and 252, and relevant case law, to determine the character of the operations of Halo and Transcom, to classify the nature of their traffic subject to access charges, to determine that certification is required for Halo and Transcom for the traffic conveyed, to authorize AT&T to terminate service under an interconnection agreement with Halo, to order specific remedies, to affirm its prior motion rulings, and to otherwise act or refrain from acting as set forth herein.

2. Notwithstanding Wis. Stat. § 196.199(1), the Commission has jurisdiction under Wis. Stat. §§ 196.01(12w), 196.016, 196.04, and 196.40, to approve and enforce interconnection agreements in which one party is a commercial mobile radio service (CMRS) provider.

Opinion

Transcom delivers traffic, which it receives from its upstream customers (other providers), to Halo. Halo delivers that traffic downstream to AT&T, at various tandem switches, for ultimate delivery to the central offices of various ILECs (or CLECs) for termination to those

companies' end users. As the calls traverse the Transcom and Halo networks, they are handled at various points by various Halo or Transcom facilities in many different locations.

The way Halo has structured its network is fundamental to the case, as is the manner in which the calls are handled between Halo and Transcom. Halo and Transcom claim that the calls at issue in this proceeding are originated by Transcom via wireless equipment at a Halo leased tower site. Halo takes these calls from Transcom in one MTA and delivers those calls to an AT&T tandem switch in that same MTA. Asserting it is a CMRS provider, Halo claims that such intraMTA wireless calls are local and thus not subject to carrier access charges.⁷

Transcom claims to be an Enhanced Service Provider (ESP) and thus not subject to paying access charges on the calls that it delivers to Halo. Halo and Transcom contend that Transcom is an end user. Since it is not a carrier, there is no basis to apply access charges to the traffic that Transcom handles.

AT&T, TDS, and the RLECs reject the notion that the Halo-transmitted traffic originates from Transcom at the Halo tower sites. Rather, they argue that the calls originate with other end users at any of many locations around the country, and they simply traverse the Transcom and Halo networks en route to the intended terminating end users. Even Halo noted, "Most of the calls probably did start on other networks before they came to Transcom for processing."⁸

AT&T, TDS, and the RLECS also take the position that not all the traffic that Halo sends to the AT&T tandem, and then beyond, is wireless traffic. By examining call records, these parties note that large volumes of calls (millions of calls per month)—in some instances, the

⁷ For intercarrier compensation purposes, intraMTA wireless calls are considered to be local calls, and thus, per FCC rules, not subject to carrier access charges. If calls originate in one MTA and terminate in another MTA, those calls are interMTA calls and would not be considered to be local.

⁸ Per Halo's President, Russ Wiseman, at Wiseman-Tr. Vol. 1-Rebuttal 24. See PSC REF#: 159682.

majority of calls—come through the Halo and Transcom networks from numbers that can reasonably be concluded to have a wireline or landline origin.

TDS and the RLECs argue that much of this traffic should be subject to access charges since it is not wireless originated. AT&T argues that because it is not all wireless traffic, Halo is in breach of the AT&T-Halo ICA. As such, that traffic does not qualify for the intraMTA exemption from access charges, and it is not traffic that can properly be sent to AT&T under the AT&T-Halo ICA.

The other parties also reject Transcom's claim to be an ESP that is subject to an access charge exemption. Although Transcom relies on some decisions in bankruptcy courts that it is an ESP,⁹ the other parties dispute that these are applicable or relevant. They also disagree that Transcom in fact offers any "enhancement" of the calls that it handles.

If the view of Halo and Transcom was correct, that is, if the calls at issue here were originated by Transcom at the Halo tower sites, if the calls were in fact all wireless calls originated in the same MTA in which they were terminated, and if the calls were enhanced by Transcom, then the positions espoused by Halo and Transcom would have validity. But saying it is so does not make it so. Halo and Transcom simply do not alter the fundamental nature of the traffic by passing it through a 150 foot wireless link. The Commission concludes that the substantial evidence presented by the other parties clearly outweighs and overrides the factual and legal arguments of Halo and Transcom:

- Calls are being originated in locations outside the MTA in which they are terminated;
- Not all calls are being originated on a wireless basis;

⁹ See the cited cases at Ex.–Transcom–Johnson–1–4. See PSC REF#s: 159675-159678.

- The handling of the calls by Transcom and the handing of those calls to Halo over a short wireless link do not constitute the termination and re-origination of those calls by Transcom; and
- There is no credible basis to consider that the actions performed on this traffic in the Transcom facilities constitute enhancements that qualify or legitimize Transcom as an ESP.

These conclusions lead the Commission to other conclusions.

First, Halo is in breach of the AT&T-Halo ICA because not all the traffic at issue here is traffic “that originates through wireless transmitting and receiving facilities before Carrier (Halo) delivers traffic to AT&T for termination by AT&T or for transit to another network.” AT&T may take action to remedy this ICA violation.

Second, Transcom is not an ESP.

Third, much of the traffic at issue here is not intraMTA wireless traffic, and it is thus subject to terminating access charges. The Commission is not determining specifically which providers are owed compensation or the amount of such compensation. At this time, that matter is appropriately within the purview of ongoing bankruptcy court proceedings or other appropriate forums.

Fourth, the nature of the business being performed by Halo and Transcom in Wisconsin makes those entities subject to certification in Wisconsin. Accordingly, Halo and Transcom must cease and desist from operations in Wisconsin until certified. If they do not cease and desist within 30 days of the date of this Final Decision, the Commission will take other remedial actions to enforce compliance.

Other matters were raised and argued in this proceeding, but are not subject to specific proscription or prescription herein. The issue of the relationship of the Halo and Transcom entities and the concept of “piercing the corporate veil” need not be parsed further nor ruled on in this Final Decision. In addition, the matter of allegedly deficient or disguised call detail records and the replacement of the charge number in call records are not issues that must be addressed in this Final Decision in order to conclude this investigation. This Final Decision also need not and does not address other proffered remedies as to the establishment of trunk group requirements. No inference relating to the merits (or lack thereof) shall be drawn from the Commission’s decision to not address these issues.

Order

1. This Final Decision will be effective one day after its date of mailing.
2. Transcom, for the purposes of the calls at issue in this proceeding, is held not to be an ESP.
3. Due to Halo’s breach of the AT&T-Halo ICA, AT&T may take actions to remedy this violation, including the suspension of AT&T performance under the ICA and/or termination of the ICA.
4. Traffic, as examined on this record, that originates before it reaches Transcom and that is not intraMTA wireless, is traffic subject to access charges. Traffic that Transcom sends to Halo at the Halo-leased tower sites is not originated by Transcom at that point.
5. Halo and Transcom require certification in Wisconsin to continue operation. Absent certification, they shall cease and desist from operations in Wisconsin within 30 days from the

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date of mailing of this Final Decision. If Halo and/or Transcom continue to operate in Wisconsin after 30 days, the Commission shall proceed with other enforcement actions.

6. Jurisdiction is retained.

Dated at Madison, Wisconsin, this 27th day of July, 2012.

By the Commission:

A handwritten signature in black ink, appearing to read "Sandra J. Paske", written in a cursive style.

Sandra J. Paske
Secretary to the Commission

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Final Order and Decision.docx

See attached Notice of Rights

PUBLIC SERVICE COMMISSION OF WISCONSIN
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**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE
TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE
PARTY TO BE NAMED AS RESPONDENT**

The following notice is served on you as part of the Commission's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

PETITION FOR REHEARING

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Commission for rehearing within 20 days of mailing of this decision, as provided in Wis. Stat. § 227.49. The mailing date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The petition for rehearing must be filed with the Public Service Commission of Wisconsin and served on the parties. An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

PETITION FOR JUDICIAL REVIEW

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. In a contested case, the petition must be filed in circuit court and served upon the Public Service Commission of Wisconsin within 30 days of mailing of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of mailing of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Commission mailed its original decision.¹⁰ The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: December 17, 2008

¹⁰ See *State v. Currier*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.

APPENDIX A

This proceeding is a contested case under Wis. Stat. ch. 227. Therefore, in order to comply with Wis. Stat. § 227.47, the following persons who appeared before the agency are considered parties as defined by both Wis. Stat. § 227.01(8) and Wis. Admin. Code § PSC 2.02(6), (10), and (12), for purposes of any review under Wis. Stat. § 227.53.

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