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JAN 12 2012

PUBLIC SERVICE COMMISSION OF WISCONSIN

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

9594-TI-100

**ORDER DENYING MOTIONS TO DISMISS
IN PART WITH PREJUDICE AND IN PART WITHOUT PREJUDICE**

This Order denies, in part with prejudice and in part without prejudice, the Motions to Dismiss that were filed by Halo Wireless, Inc. (Halo), and Transcom Enhanced Services, Inc. (Transcom), on November 18, 2011.

The Commission opened this docket on its own motion by a Notice of Proceeding dated October 20, 2011. On November 18, 2011, Halo and Transcom each filed a Motion to Dismiss. On November 23, 2011, a Prehearing Conference was held in this docket that identified an issues list for the docket and set a schedule for the filing of testimony and a hearing date. On December 5 and December 6, 2011, responses to the Motions to Dismiss were filed by the Wisconsin Rural Local Exchange Carriers, the TDS Telecom Companies,¹ and Wisconsin Bell, Inc., d/b/a AT&T Wisconsin. On December 13, 2011, Halo and Transcom each filed a reply 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, as more fully described below.

In the Motions to Dismiss, Halo and Transcom raise issues or arguments of procedure and notice and of substantive jurisdiction. On procedure and notice, Halo and Transcom argue the Commission erred in the opening of the docket (referencing a staff request for a

¹ On December 6, 2011, the Wisconsin State Telecommunications Association filed a letter to join the TDS Telecom Companies' response.

Docket 9594-TI-100

docket number), in the identification of this docket as a “proceeding” as opposed to an “investigation,” in the specification of this matter as a Class 1 contested case, and in failing to notice potential adverse outcomes. Halo and Transcom also argue that the Commission was effectively estopped from acting in this case because of bankruptcy court actions and activities in other states. On the jurisdictional matters, Halo argues that it is a Commercial Mobile Radio Service (CMRS) provider and thus not subject to Commission jurisdiction. Further, because Halo views Transcom as an end user customer, it contends that the services it provides to Transcom are exchange services, not toll services, and thus access charges are not applicable. Likewise, Transcom identifies itself as an enhanced service provider (ESP), and as such, it alleges, it is not subject to Commission jurisdiction. Transcom argues that as an ESP, it provides no telecommunications service and thus would generate no traffic subject to access charges.

The procedural and notice arguments raised by Halo and Transcom are unconvincing and without merit. The opening of the matter and the notice process used followed traditional and standard Commission process and practice and further yielded no harm to the ability of Halo and Transcom to fully participate in this docket. Halo and Transcom have a full opportunity to explain, defend, and argue the issues at the hearing as scheduled at the Prehearing Conference. Further, nothing in the bankruptcy court actions cited by Halo and Transcom impacts any of the actions taken by the Commission to move this case forward for investigation. The Commission finds no merit in the Halo and Transcom collateral estoppel arguments and the alleged violations of the scope of the current bankruptcy stay. The procedural and notice matters raised in the

Docket 9594-TI-100

Motions to Dismiss, and the collateral estoppel arguments and the alleged violations of the scope of the bankruptcy stay arguments raised, are thus denied with prejudice.

As to the jurisdiction arguments, the self-identification of Halo and Transcom as a CMRS provider and an ESP, respectively, do not trump the very basis for opening the docket – to investigate the nature of these two entities and the services they are providing in Wisconsin. By identifying these very matters as issues for the docket and setting a process for data requests, testimony and hearing (including cross-examination) and subsequent briefing, the Commission docket provides Halo and Transcom ample due process to make their factual arguments² and related jurisdictional claims. Investigating who these providers are and what they are doing will determine, per Wisconsin statutes and other relevant law, what their appropriate classifications are and thus what obligations exist or do not exist as to the handling of their traffic and the appropriate compensation mechanisms that should apply. A claim of no jurisdiction is quite different than a “finding” of no jurisdiction, and this proceeding will focus exactly on the latter. Thus, the substantive jurisdictional arguments related to the Motions to Dismiss are denied without prejudice.

The Commission has jurisdiction to issue this Order under Wis. Stat. §§ 196.02(1) and (7), 196.016, 196.04, 196.219, 196.26, 196.28, 196.44, and other pertinent provisions of Wis. Stat. ch. 196.

ORDER

1. This Order is effective the day after the date of mailing.

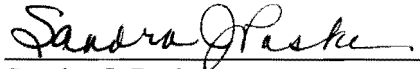
² For instance, the arguments raised by Transcom about the Commission’s lack of jurisdiction over an ESP (pages 10-15 of its Motion) and Halo’s arguments about the Commission’s lack of jurisdiction over CMRS providers (pages 11-24 of its Motion).

Docket 9594-TI-100

2. The November 18, 2011, Motions to Dismiss of Halo Wireless, Inc., and Transcom Enhanced Services, Inc., are denied. As described above, 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.

Dated at Madison, Wisconsin, January 10, 2012

By the Commission:



Sandra J. Paske
Secretary to the Commission

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See attached Notice of Rights

Docket 9594-TI-100

PUBLIC SERVICE COMMISSION OF WISCONSIN
610 North Whitney Way
P.O. Box 7854
Madison, Wisconsin 53707-7854

**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.³ 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

³ See *State v. Currier*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.