



COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

D.T.C. 11-10

January 20, 2012

Investigation by the Department of Telecommunications and Cable on its own motion into the Petition of Verizon New England Inc., d/b/a Verizon Massachusetts and Halo Wireless Services, Inc. for Approval of an Interconnection Agreement and Amendment No. 1.

ORDER

I. INTRODUCTION

On June 22, 2011, the Department of Telecommunications and Cable ("Department") received from Verizon New England Inc., d/b/a Verizon Massachusetts ("Verizon") an Interconnection Agreement and Amendment No. 1 (collectively, "Agreement"), adopted by negotiation between Verizon and Halo Wireless Services, Inc. ("Halo") (collectively, the "Parties"). After an initial review of the Agreement, and in light of certain concerns the Department had regarding Halo, the Department decided to investigate Halo before making a decision to approve or reject the Agreement. Accordingly, the Department conducted a series of technical sessions, during which Halo provided details about its corporate structure and business operations. The Department now determines that the Agreement does not discriminate against other telecommunications carriers and that the implementation of the Agreement is consistent with the public interest. *See* 47 U.S.C. § 252(e)(2)(A). Accordingly, the Department approves the Agreement.

II. PROCEDURAL HISTORY

In August 2011, while its review of the Agreement was pending, the Department reviewed several press reports regarding Halo and another entity, Halo Wireless, Inc. (“HWI”). Based upon this review, the Department determined that it needed additional information before it could approve the Agreement under Section 252(e)(2)(A) of the Telecommunications Act of 1996 (“Act”). The Department had specific concerns regarding Halo’s financial viability due to the apparent relationship between Halo and HWI. In particular, the Department knew that: (1) soon after Halo’s formation, HWI filed a Chapter 11 bankruptcy petition;¹ (2) HWI was engaged in ongoing litigation in several jurisdictions where other parties alleged improper conduct and practices by HWI;² and (3) Halo and HWI appeared to have an interlocking ownership and management relationship.³ The Department determined that a more transparent picture of the

¹ *See In re: Halo Wireless, Inc.*, Case No. 11-42464 (Bankr. E.D. Tex. 2011) (filed on August 8, 2011).
² To the best of the Department’s knowledge, HWI was involved with at least three federal court cases and 12 regulatory proceedings in ten different states. *See Halo Wireless, Inc. v. TDS Telecomms. Corp.*, Case 2:11-cv-00158-WCO (N.D. Ga. 2011); *Halo Wireless, Inc. v. Citizens Tel. Co. of Higginsville, Mo.*, Case 4:11-cv-00682-FJG (W.D. Mo. 2011); *Halo Wireless, Inc. v. Livingston Tel. Co.*, Case 4:11-cv-00359 (E.D. Tex. 2011); *Compl. of BellSouth Telecomms., LLC d/b/a AT&T Ala. v. Halo Wireless, Inc.*, Ala. Pub. Serv. Comm’n Docket No. 31682 (filed July 26, 2011); *Compl. of BellSouth Telecomms., LLC d/b/a AT&T Fla. Against Halo Wireless, Inc.*, Fla. Pub. Serv. Comm’n Docket No. 110234-TP (filed July 25, 2011); *Compl. of TDS Telecom Against Halo Wireless, Inc., et al. for Failure to Pay Terminating Intrastate Access Charges for Traffic and for Expedited Declaratory Relief and Authority to Cease Termination of Traffic*, Ga. Pub. Serv. Comm’n Docket No. 34219 (filed June 14, 2011); *In the Matter of BellSouth Telecomms., LLC d/b/a AT&T Ky. v. Halo Wireless, Inc.*, Ky. Pub. Serv. Comm’n Case No. 2011-00199 (filed Aug. 5, 2011); *Compl. of Alma Commc’ns Co. d/b/a Alma Tel. Co., et al. v. Halo Wireless, Inc.*, Mo. Pub. Serv. Comm’n Case No. IC-2011-0385 (filed May 25, 2011); *Compl. of BPS Tel. Co., et al. v. Halo Wireless, Inc.*, Mo. Pub. Serv. Comm’n Case No. TC-2011-0404 (filed June 22, 2011); *Compl. of BellSouth Telecomms., LLC d/b/a AT&T N.C. v. Halo Wireless, Inc.*, N.C. Pub. Utils. Comm’n Docket No. P-55, Sub 1841 (filed July 26, 2011); *Joint Pet. of Verizon Pa. Inc. and Halo Wireless Services, Inc. for Approval of an Interconnection Agreement and Amendment No. 1 to the Interconnection Under Section 252(e) of the Telecomms. Act of 1996*, Pa. Pub. Util. Comm’n Docket No. A-2011-2251147, Comments, Protest and Objections of the Pa. Tel. Assoc. (filed Aug. 2, 2011); *Compl. and Pet. for Relief of BellSouth Telecomms., LLC d/b/a AT&T Southeast d/b/a AT&T S.C. v. Halo Wireless, Inc. for Breach of the Parties’ Interconnection Agreement*, Pub. Serv. Comm’n of S.C. Docket No. 2011-304-C (filed July 29, 2011); *Compl. of Concord Tel. Exch., Inc., et al. Against Halo Wireless, LLC*, Tenn. Regulatory Auth. Docket No. 11-00108 (filed July 7, 2011); *Compl. of BellSouth Telecomms., LLC d/b/a AT&T Tenn. v. Halo Wireless, Inc.*, Tenn. Regulatory Auth. Docket No. 11-00119 (filed July 26, 2011); *Compl. for Informal Resolution Pursuant to P.U.C. Proc. R. 22.242(c) and Req. for Mediation Pursuant to P.U.C. Interconnection Rule 21.91*, Pub. Util. Comm’n of Texas Docket No. 39409 (filed May 17, 2011).

³ Compare Certificate of Formation of a For-Profit Corporation in the State of Texas, Halo Wireless Services, Inc. (filed Apr. 21, 2011) (listing Russell Wiseman as the only director of Halo), with Annual Report in the Commonwealth of Massachusetts, Halo Wireless, Inc. (filed Apr. 1, 2011) (listing Russell Wiseman as the president of HWI).

relationship between the two entities was necessary to ensure that approval of the Agreement was “consistent with the public interest, convenience, and necessity.” 47 U.S.C. § 252(e)(2)(A)(ii).

Beginning on August 31, 2011, Department staff requested that Halo provide information about itself and HWI, including annual reports, identities of shareholders, and certifications of incorporation for both companies. While Halo’s outside counsel initially provided some of the requested information about Halo, on September 2, 2011, Halo terminated discussions with the Department and stated that any inquiries regarding HWI were not relevant to the Department’s consideration of the Agreement. In light of Halo’s counsel’s lack of cooperation and because many of its concerns remained unresolved, on September 16, 2011, the Department opened a formal investigation to determine whether to approve the Agreement. *See* Order Opening Investigation at 2, 3.

On October 4, 2011, Halo filed a Motion to Dismiss for Want of Jurisdiction and/or Mootness and Associated Motion to Eliminate (or in the Alternative Defer) Publication of Notice (“Motion”).⁴ On October 12, 2011, Verizon filed a brief response supporting the legal basis for Halo’s Motion, but also expressing a willingness to extend the docket for up to 90 days to permit the Department to complete its investigation. *See* Response of Verizon.

Shortly after Verizon filed its response, Halo’s newly retained local counsel expressed a willingness to engage in technical sessions with Department staff to address the Department’s concerns about Halo and HWI. After several informal discussions with the Parties, the Department suspended the procedural schedule on November 16, 2011, and Halo responded to several Department inquiries regarding Halo’s corporate structure and financial viability. *See*

⁴ The Department notes that “[e]xcept as otherwise directed by the presiding officer . . . the filing of a motion . . . and any action thereon shall not delay the conduct of [a] proceeding.” 220 C.M.R. § 1.04(5)(b).

Hearing Officer Order Suspending Procedural Schedule. The Department met with the Parties on November 29, 2011, and December 7, 2011, to engage in extensive discussions about Halo's organization, business operations, and proposed service in Massachusetts.

Based on the information from these discussions, the Department determines that it is unnecessary to move forward with the formal investigation. Further, the Department now approves the Agreement as consistent with Section 252(e) of the Act.

III. ANALYSIS AND FINDINGS

A. The Interconnection Agreement

Pursuant to Section 252(e)(1) of the Act, the parties to an adopted interconnection agreement must submit the agreement to the Department for approval. *See* 47 U.S.C. § 252(e)(1). The Department may reject a negotiated interconnection agreement submitted for review only if the Department determines that the Agreement “discriminates against a telecommunications carrier not a party to the Agreement,” or that the implementation of the Agreement “is not consistent with the public interest, convenience, and necessity.” *Id.* § 252(e)(2)(A)(i)-(ii).

The Department finds that the Agreement does not discriminate against any telecommunications carriers who are not a party to the Agreement.⁵ No third party has objected to or otherwise filed comments in response to the Agreement, which was posted on the Department's website on June 22, 2011.⁶ Further, although rural incumbent local exchange

⁵ The Department retains a Bulletin on its website informing all interested parties that upon the Department's posting of a negotiated interconnection agreement, parties have 30 days in which to file written comments with the Department. *See* Department Bulletin (updated July 8, 2011), available at <http://www.mass.gov/ocabr/docs/dtc/telecom/212commagr.pdf>.

⁶ For the list of all interconnection agreements pending before the DTC, see <http://www.mass.gov/ocabr/government/oca-agencies/dtc-lp/competition-division/telecommunications-division/doing-business/other-topics/interconnection-agreement.html>.

carriers (“ILECs”) have, in other states, raised concerns about HWI’s treatment of voice traffic,⁷ no Massachusetts rural carriers have raised concerns about Halo’s (or HWI’s) business model or practices in this proceeding. Moreover, nothing in the Agreement prevents other carriers from negotiating their own arrangements with the Parties. As a result, the Department determines that the Agreement is proper and does not discriminate against any telecommunications carrier. *See* 47 U.S.C. § 252(e)(2)(A)(i).

The Department also finds that the Agreement is consistent with the public interest, convenience, and necessity. As noted above, the Department’s initial concern under Section 252(e)(2)(A)(ii) with Halo as an organization involved its financial viability due to its apparent relationship with HWI. However, Halo has since presented sufficient information to alleviate the Department’s concerns. The Department finds that Halo and HWI appear to be separate corporate entities, and HWI’s financial difficulties do not appear to implicate Halo.⁸ As a result of the information presented, the Department is satisfied that Halo is a new entrant into the telecommunications market distinct from HWI, and determines that the implementation of the Agreement is consistent with the public interest, convenience, and necessity. *See id.* § 252(e)(2)(A)(ii). Accordingly, the Department hereby approves the Agreement.

B. Halo’s Motion To Dismiss

In the Motion, Halo sought dismissal of this proceeding and a determination that the Agreement took effect on September 18, 2011. Motion at 1, 2. While reserving its rights, Halo agreed to engage in technical sessions with the Department and Verizon, notwithstanding the

⁷ *See, e.g., In the Matter of Connect America Fund*, WC Docket No. 10-90, *Report and Order and Further Notice of Proposed Rulemaking*, ¶¶ 1005-06 (rel. Nov. 18, 2011) (discussing complaints raised about HWI treating voice traffic in a manner that avoids switched access charges that would otherwise ordinarily be paid to rural ILECs).

⁸ Halo customers may reach out to the Department should they seek a forum for dispute resolution with Halo. Although Halo asserts that federal law preempts regulation of its rates and entry into the Massachusetts market, it has acknowledged that federal law permits the Department to review customer complaints regarding “other terms and conditions.” *See* 47 U.S.C. § 332(c)(3)(A).

pendency of the Motion. With the issuance of this Order, the Agreement is approved and this proceeding is concluded. Since there remains no relief requested in the Motion that the Department can grant to Halo in light of this Order, the Motion is denied as moot.

C. ORDER

After review and consideration, it is

ORDERED: that the Agreement is APPROVED; and it is

FURTHER ORDERED: that Halo's Motion is DENIED as moot.

BY ORDER OF THE DEPARTMENT,

/s/ Geoffrey G. Why
Geoffrey G. Why, Commissioner