

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 25th
day of April, 2012.

Alma Communications Company, d/b/a)
Alma Telephone Company; Chariton Valley)
Telephone Corporation; Chariton Valley)
Telecom Corporation; Choctaw Telephone)
Company; Mid-Missouri Telephone Company,)
a Corporate Division of Otelco, Inc.; and)
MoKan Dial, Inc.,)

Complainants,)

v.)

File No. IC-2011-0385

Halo Wireless, Inc.,)

Respondent.)

BPS Telephone Company, Citizens Telephone)
Company of Higginsville, Mo., Craw-Kan Telephone)
Cooperative, Inc., Ellington Telephone Company,)
Farber Telephone Company, Fidelity Communica-)
tions Services I, Inc., Fidelity Communications)
Services II, Inc., Fidelity Telephone Company,)
Goodman Telephone Company, Granby Telephone)
Company, Grand River Mutual Telephone Corpora-)
tion, Green Hills Telephone Corporation, Green Hills)
Telecommunications Services, Holway Telephone)
Company, Iamo Telephone Company, Kingdom)
Telephone Company, K.L.M. Telephone Company,)
Lathrop Telephone Company, Le-Ru Telephone)
Company, Mark Twain Rural Telephone Company,)
Mark Twain Communications Company, McDonald)
County Telephone Company, Miller Telephone)
Company, New Florence Telephone Company,)
New London Telephone Company, Northeast)
Missouri Rural Telephone Company, Orchard Farm)
Telephone Company, Oregon Farmers Mutual)
Telephone Company, Ozark Telephone Company,)
Peace Valley Telephone Company, Inc., Rock Port)

Complainants. Again, various forms of relief were sought including a finding of violation of the ERER. This complaint generated File Number TC-2011-0404.

On August 1, 2011, the Alma Complainants filed another action with the Commission that was captioned as an “Application for Rejection of Portions of an Interconnection Agreement.” The “application” is really in the nature of a complaint and it was filed naming Halo and Southwestern Bell Telephone Company d/b/a AT&T Missouri as respondents. The complaint alleges that the interconnection agreement (“ICA”) between Halo and AT&T Missouri, which allows termination of Halo’s traffic with the Alma Complainants, is improper, discriminatory and not in the public interest. The relief sought in this matter is rejection of portions of the ICA between Halo and AT&T Missouri that allow Halo to send traffic to AT&T that is ultimately terminated with the complainants. This Complaint generated File Number TO-2012-0035.

Halo has answered all of the complaints raising various defenses based on jurisdiction and claiming the nature of the services it provides do not fall under the definition of telecommunications service. On August 10, 2011 and August 12, 2011, Halo filed suggestions in bankruptcy in all three files, and on August 19, 2011, Halo filed notices of removal to federal court.

On August 16, 2011, the Commission issued an order staying all filing deadlines in these matters except for one – the Commission had directed Staff Counsel to file a legal analysis as to whether these actions were barred pursuant to the bankruptcy code

Northeast Missouri Rural Telephone Company, Orchard Farm Telephone Company, Oregon Farmers Mutual Telephone Company, Ozark Telephone Company, Peace Valley Telephone Company, Inc., Rock Port Telephone Company, Seneca Telephone Company, Steelville Telephone Exchange, Inc., and Stoutland Telephone Company.

as Halo Wireless, Inc. had alleged. On September 13, 2011, the Commission stayed the filing deadline for Staff Counsel's legal analysis per Staff Counsel's request.

On December 21, 2011, the United States District Court, Western District of Missouri, issued remand orders in these matters. On December 29, 2011, the Commission issued notice of those orders, and on January 17, 2012, the Commission reactivated File Number TO-2012-0035 based upon the unopposed request of the Alma Complainants. Once this file was reactivated, the BPS Intervenors³ joined this complaint.

With the resumption of the procedural deadlines, AT&T answered in File Number TO-2012-0035 stating there was no basis in law for the Commission to reject an approved ICA, but that Complainants could block Halo's traffic pursuant to the Commission's EFER. Consequently, at the request of the Complainants, the Commission held File Number TO-2012-0035 in abeyance pending the outcome of the EFER proceedings. No party sought to reactivate File Numbers IC-2011-0385 and TC-2011-0404.

On April 2, 2012, Halo filed a complaint in response to the blocking requests that were initiated by the complainants and intervenors after File Number TO-2012-0035

³ The BPS Intervenors are: BPS Telephone Company, Citizens Telephone Company of Higginsville, Mo., Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Fidelity Communication Services I, Inc., Fidelity Communication Services II, Inc., Fidelity Telephone Company, Goodman Telephone Company, Granby Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Green Hills Telecommunications Services, Holway Telephone Company, Iamo Telephone Company, Kingdom Telephone Company, K.L.M. Telephone Company, Lathrop Telephone Company, Le-Ru Telephone Company, Mark Twain Rural Telephone Company, Mark Twain Communications Company, McDonald County Telephone Company, Miller Telephone Company, New Florence Telephone Company, New London Telephone Company, Northeast Missouri Rural Telephone Company, Orchard Farm Telephone Company, Oregon Farmers Mutual Telephone Company, Ozark Telephone Company, Peace Valley Telephone Company, Inc., Rock Port Telephone Company, Seneca Telephone Company, Steelville Telephone Exchange, Inc., Stoutland Telephone Company.

was held in abeyance. The EREER is self-executing, and pursuant to the EREER, blocking can commence unless a complaint is filed by the company subject to the traffic blocking. Halo's complaint stopped the blocking of its traffic pending a determination by the Commission. Halo's complaint generated File Number TC-2012-0331.

Also, on April 2, 2012, having noted that File Numbers IC-2011-0385 and TC-2011-0404 had sat idle for 95 days since the Commission's notice was issued, the Commission required complainants to show cause why these actions should not be dismissed for lack of prosecution. The complainants in each of these actions filed responses requesting these matters be held in abeyance until completion of the related Enhanced Record Exchange Rule proceeding (interrelated File Nos. TO-2012-0035 and TC-2012-0331) is complete. Halo responded on April 16, 2012.

Analysis and Decision

The Alma and BPS Complainants claim that it would serve administrative economy to hold File Numbers IC-2011-0385 and TC-2011-0404 in abeyance pending the outcome of the EREER proceeding. The Alma Complainants state that these complaints should not be dismissed until mooted by the EREER proceeding. The BPS Complainants acknowledge that in terms of relief, Halo's bankruptcy proceeding may prevent them from receiving any compensation for Halo's pre-bankruptcy use of their networks, but argue that their complaints should remain open to address Halo's post-bankruptcy use of their networks.

In response, Halo argues that keeping the inactive files open when the other proceedings involve all of the same determinations and requested relief does not serve administrative economy. Halo also asserts that the complainants in these two files

provide no authority, or good cause, for keeping those files open, but merely restate the procedural history and reargue the theories of the complaints.

As the situation stands, the Commission has four open files involving the same parties in interrelated complaints that will require similar, if not identical, determinations by the Commission. The complainants (who are represented by the same law firms in all of these actions) chose not to request the reactivation of File Numbers IC-2011-0385 and TC-2011-0404 after the remand orders were issued by the federal court. They chose, and were granted, reactivation of File Number TO-2012-0035.

In response to the show cause order, the complainants have not articulated specific relief that could be granted by the Commission in File Numbers IC-2011-0385 and TC-2011-0404 apart from what could be granted in File Numbers TO-2012-0035 and TC-2012-0331. Indeed, the relief requested in File Numbers IC-2011-0385 and TC-2011-0404 is largely based upon alleged violations of the EFER, and the primary relief sought is the blocking of Halo's traffic. While the Complainants in File Numbers IC-2011-0385 and TC-2011-0404 also state that they should be compensated for Halo's traffic, they cite no legal authority for the Commission to order such compensation.⁴ And if the determination in the EFER proceedings will moot out the complaints, then there is no reason to keep all of these files open.

⁴ The Commission cannot enforce, construe or annul contracts, nor can it enter a money judgment, order a refund or grant equitable relief. *State ex rel. GS Technologies Operating Co., Inc. v. Public Service Comm'n of State of Mo.*, 116 S.W.3d 680, 696 (Mo. App. 2003); *DeMaranville v. Fee Fee Trunk Sewer, Inc.*, 573 S.W.2d 674 (Mo. Ct. App. 1978); *Am. Petroleum Exch. v. Pub. Serv. Comm'n*, 172 S.W.2d 952, 955 (Mo.1943); *May Dep't Stores Co. v. Union Elec. Light & Power Co.*, 341 Mo. 299, 107 S.W.2d 41, 49 (Mo.1937);

To “show cause” why a tribunal should act, or refrain from acting, a litigant must provide sufficient reason.⁵ This is synonymous with a showing of “good cause,” which is defined as showing a “legally sufficient ground or reason” under the circumstances.⁶ Good cause means a good faith request for reasonable relief.⁷ To constitute good cause, the reason “must be real, not imaginary, substantial, not trifling, and reasonable, not whimsical, and good faith is an essential element.”⁸

The Commission finds that the complainants in File Numbers IC-2011-0385 and TC-2011-0404 have not adequately shown cause for keeping these files open. However, there is no statute of limitations on complaints before the Commission, and dismissing these actions without prejudice will allow complainants to file any additional complaints against Halo, if required, following the EREER proceedings. Indeed, if the complainants prevail in the EREER proceeding and can articulate additional specific relief that this Commission has the authority to grant, they may seek such relief on an expedited basis with a motion for summary determination.

Since the complaints articulated in File Numbers IC-2011-0385 and TC-2011-0404 are based on the same theories as those in the pending blocking proceeding (File Number TC-2012-0331, which is proceeding on an expedited procedural schedule), dismissing these two actions serves administrative economy, especially when the determinations to be made in these actions, and the potential relief to be granted in these actions, are virtually identical. In addition to the EREER proceeding, the

⁵ *Black’s Law Dictionary*, 6th ed., West Group, 1990, pp. 1379-1380.

⁶ *Id.* at 692.

⁷ *American Family Ins. Co. v. Hilden*, 936 S.W.2d 207 (Mo. App. 1996).

⁸ *Schuenemann v. Route 66 Rail Haven, Ltd.*, 353 S.W.3d 691, 696 (Mo. App. 2011), *citing to*, *Belle State Bank v. Indus. Comm’n*, 547 S.W.2d 841, 846 (Mo. App. 1977).

Commission has held File Number TO-2012-0035 in abeyance, where complainants do seek a different form of relief directed toward Halo's ICA with AT&T Missouri. The Commission has provided adequate venues for the complainants to proceed in File Numbers TO-2012-0035 and TC-2012-0331.

THE COMMISSION ORDERS THAT:

1. The complaints in File Numbers IC-2011-0385 and TC-2011-0404 are dismissed without prejudice.
2. File Numbers IC-2011-0385 and TC-2011-0404 shall be closed.
3. This order shall become effective on May 5, 2012.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Gunn, Chm., Jarrett and Kenney, CC., concur.

Stearley, Deputy Chief Regulatory Law Judge