



Control Number: 40035



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January 3, 2012

Ms. Tracie Lowrey, Filing Clerk
Texas Public Utility Commission
1701 North Congress Avenue
Austin, Texas 78711

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RE: Docket No. 40035, *Petition of Peoples Telephone Cooperative, Inc. for Compulsory Arbitration with Halo Wireless, Inc., Under the Federal Telecommunications Act Relating to Interconnection Rates, Terms and Conditions*; Reply Addressing Petition's Deficiencies.

Dear Ms. Lowrey:

On behalf of Halo Wireless, Inc. ("Halo"), I am writing to reply to Peoples Telephone Cooperative, Inc. ("Peoples") response of December 29, 2011. Peoples' response admits that it failed to provide Halo with a copy of its arbitration petition on December 22, 2011, but argues that service should be deemed complete on that date under the PUC's "mailbox rule." Peoples' position is flatly inconsistent with § 252(b)(2)(B) of the *federal statute*, which expressly provides that the petitioner "shall provide a copy of the petition and any documentation to the other party or parties not later than the day on which the State commission receives the petition."¹ Further, Peoples has failed to read the entirety of the PUC's rule for service of pleading, which states that the mailbox rule does not apply to the extent that federal law requires same-day delivery. Peoples therefore has two related but separate problems: (1) it did not comply with the jurisdictional mandate in § 252(b)(2)(B) and (2) the petition is deficient under PUC Proc. R. 21.95.

With regard to the statutory requirement, Peoples' response attempts to distinguish the Missouri PSC cases cited by Halo in ways that are immaterial to the present situation. These precedents are of import to Peoples' failure to comply with 47 U.S.C. § 252(b)(2)(B) because, in conjunction, they demonstrate that service of an arbitration petition upon the respondent the day following submission to the state commission has been deemed "late service"² and that dismissal is appropriate for a petitioner's failing to strictly comply with the statute's procedures. Peoples failed to timely serve the petition upon Halo and comply with the federal statute.³ Untimely service constitutes noncompliance with the Act and deprives the Commission of jurisdiction over the matter. The failure is jurisdictional.

¹ See 47 U.S.C. § 252(b)(2)(B) (Emphasis added.).

² See *Southwestern Bell Telephone, L.P., d/b/a SBC Missouri's Petition for Compulsory Arbitration of Unresolved Issues for a Successor Interconnection Agreement to the Missouri 271 Agreement ("M2A")*, Case No. TO-2005-0336, 2005 Mo. PSC LEXIS 478 (2005) at *10-*11.

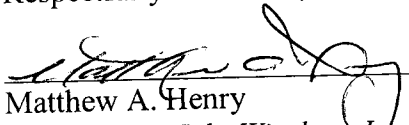
³ See *In the Matter of TelCove Operations, Inc.'s Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, to Establish an Interconnection Agreement with Southwestern Bell Telephone Company, L.P. d/b/a SBC Missouri*, Case No. TO-2005-0157, 2004 Mo. PSC LEXIS 1855 (2004) at *1-*2.

Even if the matter is not jurisdictional, the failure to timely serve renders the petition deficient under the PUC's rules. Peoples' interpretation of PUC Rule 21.35(b) is incorrect. That section, by its own explicit terms, does not apply when it differs from any "applicable law." The very first sentence of 21.35(b) states that the PUC's service of pleadings rule does not apply when the requirements for service are "otherwise expressly provided by order, rule, or other applicable law[.]"⁴ Because 47 U.S.C. § 252(b)(2)(B) specifically establishes when service of the petition upon the respondent must occur by, the normal mailbox rule set out in PUC Rule 21.25(b) does not govern petitions for compulsory arbitration. Although Peoples' response has ignored the clear implication of this exception to § 21.35(b), the PUC cannot do the same and must find the petition did not comply with PUC Proc. R. 21.95 and be rejected as deficient.

As Halo observed in its December 27, 2011 letter the petition is also deficient because it did not separately contain the material required by PUC Proc. Rs. 21.95(a)(5)(D) and (E). Peoples claims that it has complied with these rules because the requisite information can be gleaned from the Decision Point List Peoples supplied in purported compliance with § 21.95(a)(5)(C), and/or the parties respective contract proposals that were attached in an attempt to comply with § 21.95(a)(5)(G). Subsections (C) and (G) of § 21.95(a)(5), however, are independent and separate from subsections (D) and (E); a petitioner cannot be said to sufficiently comply with one subsection by asserting compliance with a separate subsection. If these rules were intended to be redundant, the PUC would not have established different subsections for this material. It was the responsibility of Peoples to submit all proposed and agreed contract language in a form that is readily accessible and decipherable.⁹ It is not the responsibility of the PUC or Halo to attempt to glean this information from other parts of the petition and assemble it independently. Peoples failed to meet its procedural obligations and Halo respectfully requests that the PUC duly find petition deficient.

An original and eleven (11) copies of this letter are being submitted for filing with the PUC. If you have any questions or comments, please contact me at the above-listed address and telephone number. Your assistance in this matter is greatly appreciated.

Respectfully submitted,


Matthew A. Henry
Counsel for Halo Wireless, Inc.

⁴ See PUC Proc. R. 21.35(b) ("Except as otherwise expressly provided by order, rule, or other applicable law, service on a party may be made by delivery of a copy of the pleading or document to the party's authorized representative" (Emphasis added.)).

⁹ See *Western Radio Servs. Co. v. CenturyTel of Eastern Or., Inc.*, 2010 U.S. Dist. LEXIS 117149 (D. Or. 2010) ("Western's Petition for Arbitration does not set forth all of the unresolved issues between the parties, nor does it state either party's positions on the unresolved issues. Western's Petition for Arbitration also does not elucidate what issues have been discussed and resolved by the parties. ... Yet, under 47 U.S.C. 252(b)(4)(A), a State commission is limited to considering the unresolved issues set forth by the petitioner. State commissions do not have the authority to define the issues." (Quoting from OPUC Order.)).