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DOCKET NO. 48972

**PETITION TO REVOKE PHONOSCOPE §
ENTERPRISES GROUP, LLC'S §
SERVICE PROVIDER CERTIFICATE §
OF OPERATING AUTHORITY UNDER §
PURA §§ 54.008 AND 54.105 AND 16 TAC §
§ 26.111 §**

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**ORDER NO. 3
ADDRESSING RESPONDENT'S UNTIMELY REQUEST FOR HEARING AND
DENYING COMMISSION STAFF'S MOTION FOR A DEFAULT ORDER**

This order denies Commission Staff's motion for default, and grants the motion of Phonoscope Enterprises Group, LLC (Phonoscope) for leave to file an untimely hearing request.

I. BACKGROUND

On December 11, 2018, Commission Staff filed the petition in this matter in which it seeks to revoke the service provider certificate of operating authority (SPCOA) of Phonoscope. Commission Staff alleges that revocation is warranted because Phonoscope: is not actively providing telecommunications services under its SPCOA, has repeatedly failed to respond to Commission inquiries, and has failed to comply with Commission reporting requirements. In support of these grounds for revocation, Commission Staff alleges, among other things, that Phonoscope's status with the Texas secretary of state is listed as "forfeited existence," and Phonoscope has not filed a quarterly access line report with the Commission since the first quarter of 2017.

Commission Staff's petition was mailed to Phonoscope on December 11, 2019. Under 16 Texas Administrative Code (TAC) § 22.183(a), and assuming that the petition was received by Phonoscope on December 14, 2019, the company had until January 14, 2019, to request a hearing on the petition. Phonoscope did not request a hearing by this date.

On January 18, 2019, Commission Staff filed a motion for default against Phonoscope.

On January 25, 2019, the City of Houston (the City) file a motion to intervene, which was granted on February 4, 2019.

On January 28, 2019, Phonoscope filed a request for hearing, acknowledging that its request was untimely. Phonoscope also asked for leave to provide the Commission with all quarterly and annual reports that might be overdue and pay any resulting fines.

On February 1, 2019, Commission Staff filed a response opposing Phonoscope's late-filed request for hearing.

On February 12, 2019, the City filed comments in which it asserted that Phonoscope is currently providing, and has for over a decade provided, telecommunications services within the City.

On June 3, 2019, the undersigned administrative law judge (ALJ) was assigned to this case.

II. DISCUSSION

The decision of whether to default a party is made at the discretion of the ALJ. That is, under 16 TAC § 22.183(b), if a party does not timely request a hearing, then the ALJ "may," but is not required to, issue a default order. Moreover, if a party requests a hearing after the 30-day deadline, but before a default order has become final, then the ALJ may grant the request for good cause shown. 16 TAC § 22.183(e).

In this case, Phonoscope explains that it failed to timely request a hearing because it experienced internal confusion following the loss of the employee who was charged with Commission compliance matters. Phonoscope explains that it is "institutionally embarrassed by falling behind in its commitments to the PUC and has set up internal controls to prevent future non-compliance." The company included documentation which appears to indicate that it was recently re-instated to "active" status with the Texas secretary of state.

Commission Staff argues that Phonoscope has failed to show good cause for its late hearing request, arguing that the company should have known better than to have missed a deadline.

The ALJ concludes that Phonoscope has shown good cause for its failure to timely request a hearing. For this reason, Commission Staff's motion for default is denied.

Phonoscope also asked for leave to provide the Commission with all quarterly and annual reports that might be overdue. It is not necessary for the ALJ to rule on this request. The company is free to file overdue reports or otherwise attempt to come into compliance with or without the

ALJ's permission. To the extent that Commission Staff may wish to impose penalties for late compliance, those may be negotiated by the parties, or made a part of this enforcement case.

The ALJ will consider Phonoscope to have requested a hearing, but will defer acting on the hearing request (by referring the case to the State Office of Administrative Hearings) for the time being. By July 1, 2019, Commission Staff must file a status report and make a recommendation for further processing of this matter.

Signed at Austin, Texas the 4th day of June 2019.

PUBLIC UTILITY COMMISSION OF TEXAS


HUNTER BURKHALTER
ADMINISTRATIVE LAW JUDGE

