

BEFORE THE ILLINOIS COMMERCE COMMISSION

Docket No. 10-0454

Halo Wireless, Inc. :
: :
Application for a certificate of :
Wireless Authority to operate as a :
facilities based carrier of :
telecommunications services :
in the State of Illinois. :

ILLINOIS
COMMERCE COMMISSION
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APPLICATION FOR CERTIFICATE TO BECOME A
TELECOMMUNICATIONS CARRIER

I. Introduction

Halo Wireless is an entrepreneurial provider of Commercial Mobile Radio Service and of broadband wireless services focused on enabling competitive connectivity for consumers in suburban, rural as well as underserved urban areas widely regarded as subject to deteriorating competition, if not monopoly or duopoly conditions throughout the United States. Halo is building its network to ensure reliable competitive CMRS and stand-alone broadband services to allow customers the ability to “originate and receive high-quality voice, data graphics, and video telecommunications using any technology.”¹

On January 27, 2009 Halo was awarded a nationwide license (Radio Station Authorization or “RSA”) to register and operate fixed and base stations in the 3650-3700 MHz band and to support “mobile” and “portable” stations. The RSA recognizes and adopts Halo’s declaration and intent to provide service as a common carrier, and as a consequence expressly states that Halo’s services are “interconnected”² – and thereby entitled to interconnection with

¹ See, Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, CC Docket 98-146, *Second Report*, FCC 00-290, (rel. Aug. 21, 2000) (Section 706 Second Report).

² Section 332(d)(2) defines “interconnected service”: (2) the term “interconnected service” means service that is interconnected with the public switched network (as such terms are defined by regulation by the Commission) or service for which a request for interconnection is pending pursuant to subsection (c)(1)(B).

47 C.F.R. § 20.3 also defines “interconnected”, “interconnected service” and “public switched network”:

Interconnection or Interconnected. Direct or indirect connection through automatic or manual means (by wire, microwave, or other technologies such as store and forward) to permit the transmission or reception of messages or signals to or from points in the public switched network.

Interconnected Service. A service: (a) That is interconnected with the public switched network, or interconnected with the public switched network through an interconnected service provider, that gives subscribers the capability to communicate to or receive communication from all other users on the public switched network; or (b) For which a

LECs pursuant to §§ 201, 251(a) and (c), 252 and 332(c)(1)(B) as well as under the Federal Communications Commission's (FCC) rules, 47 C.F.R. § 20.11 and part 51. A copy of the RSA is contained in Exhibit A.

The FCC created new rules for operations within the 3650-3700 MHz band to "facilitate the rapid deployment of advanced telecommunications services and technologies to all Americans, thus promoting the objectives of Section 706 of the Telecommunications Act of 1996."³ This band was also specifically noted as suited for use with WiMAX, which technology delivers 4G wireless broadband services.⁴ In establishing this band, the FCC specifically noted that licensees could use these frequencies to provide any service, including *telecommunications services or enhanced/information service* on a non-carrier basis or *as common carriers*.⁵ That

request for such interconnection is pending pursuant to section 332(c)(1)(B) of the Communications Act, 47 U.S.C. 332(c)(1)(B). A mobile service offers interconnected service even if the service allows subscribers to access the public switched network only during specified hours of the day, or if the service provides general access to points on the public switched network but also restricts access in certain limited ways. Interconnected service does not include any interface between a licensee's facilities and the public switched network exclusively for a licensee's internal control purposes.

Public Switched Network. Any common carrier switched network, whether by wire or radio, including local exchange carriers, interexchange carriers, and mobile service providers, that use the North American Numbering Plan in connection with the provision of switched services.

³ Wireless Operations in the 3650-3700 MHz Band; Rules for Wireless Broadband Services in the 3650-3700 MHz Band; Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band; Amendment of the Commission's Rules With Regard to the 3650-3700 MHz Government Transfer Band, ET Docket Nos. 98-237, 02-380, 04-151, WT Docket No. 05-96, FCC 05-56, *Report and Order; Memorandum Opinion and Order*, 20 FCC Red 6502, 6508-9 (rel. Mar. 16, 2005) ("*3650-3700 Order*") ("We conclude that it would serve the public interest to maintain primary FS and MS allocations and a secondary FSS allocation in the band and to devise a regulatory scheme that provides flexibility for a variety of new terrestrial uses. Further, the public interest is best served by establishing minimal regulatory barriers to encourage multiple entrants in the 3650 MHz band and to stimulate the rapid expansion of broadband services - especially in America's rural heartland.").

⁴ WiMAX (Worldwide Interoperability for Microwave Access) is a "4G" transport technology. WiMAX provides wireless transport point-to-point links and can also support full mobile cellular type access. It is based on the IEEE 802.16 standard. The 802.16 specification applies across a wide swath of the RF spectrum, and WiMAX could effectively function on any frequency below 66 GHz. There is no uniform global licensed spectrum for WiMAX, although the WiMAX Forum has published three licensed spectrum profiles: 2.3 GHz, 2.5 GHz and 3.5 GHz. Restricted use on the 3650-3700 MHz spectrum can and does use a variant of the 802.16 standard.

⁵ See, *3650-3700 Order* ¶¶ 36-37 and associated notes:

36. Licensees in the 3650 MHz band may provide services on a common carrier or non-common carrier basis ^[note 67 set out below] and will have flexibility to designate their regulatory status based on any services they choose to provide. ^[note 68 set out below] Such an approach will provide them with the greatest flexibility to use the spectrum for service applications that are best suited for their needs. ^[note 69 omitted] In other words, *wireless licensees in the 3650 MHz band will be able to provide all allowable services anywhere within their service area at any time, consistent with whatever regulatory status they choose.* We believe that this approach is likely to achieve efficiencies in administrative process and provide flexibility to the marketplace.

37. While wireless licensees in the 3650 MHz band will be subject to specific licensing and operating provisions adopted in this order, other rules may also apply to these licensees depending on the type of the service they provide. For instance, if a wireless licensee provides Commercial Mobile Radio Services (CMRS), which makes the licensee a common carrier, other obligations attach as a result of that decision under Title II of the Communications Act or the Commission's rules (e.g., universal service, CALEA). ^[note 70 set out below]

^[note 67] Regulatory status as a common carrier or non-common carrier depends on the services provided pursuant to

the 3650-3700 MHz band is intended for common carriage is further reflected in the rules for the band, which appear in 47 C.F.R. Part 90, Subpart Z.⁶ Unlike some bands, the 3650-3700 band is not “exclusive” and any person can operate in the band by obtaining a license to do so. The license takes the form of a Radio Station Authorization (“RSA”). After the licensee is given the RSA, then each base and fixed station must be registered in the FCC’s database. The wording in the 3650-3700 rules also demonstrates that Halo is already a “licensee”. While it is true that individual base and fixed stations cannot be used until they are registered to provide service, Halo is already a common carrier and already has the right to interconnect. Accordingly, Halo Wireless has successfully interconnected with and/or is in negotiations with incumbent carriers who honor its FCC license as expressly and clearly granting “interconnected” status.

The FCC has held that regulatory permissions are *prima facie* valid and cannot be collaterally attacked by utilities or other carriers as a means to challenge entitlement.⁷ The FCC

the Communications Act, not the issuance of a license or authorization by the Commission. Generally, common carriers are telecommunications providers (*i.e.*, an entity that holds itself out for hire indiscriminately for the purposes of carrying transmissions provided by the customer) in so far as it provides telecommunications services (*i.e.*, the transmission of information of the user’s choosing without change in the form or content of the information). *See* 47 U.S.C. § 153. This means that a non-common carrier does not hold itself out for hire indiscriminately for the purposes of carrying transmissions provided by the customer.

^[note 68] We note that applicants may request common carrier status as well as non-common carrier status for authorization in a single license. *See* Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission’s Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, CC Docket No. 92-297, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking*, 12 FCC Rcd 12545, 12636-38 (¶¶ 205-208), 12644-45 (¶¶ 225-226), 12652-53 (¶¶ 245-251) (1997) (*LMDS Second Report and Order*); *aff’d, Melcher v. FCC*, 134 F.3d 1143 (D.C. Cir. 1998).

^[note 70] 47 C.F.R. Part 20. In addition, certain rules may be applicable generally to all wireless services. *See, e.g.*, 47 C.F.R. Part 1, 17 (provisions implementing NEPA, antenna structure registration requirements).

(emphasis added).

⁶ *See, e.g.*, 47 C.F.R. § 90.1309:

Sec.90.1309 Regulatory status. Licensees are permitted to provide services on a non-common carrier and/or on a common carrier basis. A licensee may render any kind of communications service consistent with the regulatory status in its license and with the Commission’s rules applicable to that service.

⁷ *Salsgiver Communications, Inc. v. North Pittsburgh Telephone Company*, File No. EB-06-MD-004, DA - 07-4721, *Memorandum Opinion and Order*, 22 FCC Rcd 20536 ¶¶ 5-13 (Enforcement Bureau, rel. Nov. 26, 2007) [Accepting local franchise as *prima facie* evidence of entitlement to attach as cable television system; rejecting contention that attacher must first have specific facilities (a cable head end) as precondition to entitlement]; *Salsgiver Telecom, Inc v. North Pittsburgh Telephone Company*, File No. EB-06-MD-002, DA 07-2150, *Memorandum Opinion and Order*, 22 FCC Rcd 9285 ¶¶ 4, 9-18 (Enforcement Bureau, rel. May 24, 2007) [ILEC rejected proof of entitlement through state certificate but Bureau held that state certificate is *prima facie* and presumptive proof of entitlement as telecommunications carrier]; *Fiber Technologies Networks, L.L.C. v. North Pittsburgh Telephone Company*, File No. EB-05-MD-014, DA 07-486, *Memorandum Opinion and Order*, 22 FCC Rcd 3392, ¶¶ 11-26 (Enforcement Bureau, rel. Feb. 23, 2007) [same; also rejecting contention that entity must be providing service in order to be entitled to attach, since that would create “Catch-22” situation]; *DQE Communications Network Services, LLC v. North Pittsburgh Telephone Company*, File No. EB-05-MD-027, DA 07-472, *Memorandum Opinion and Order*, 22 FCC Rcd 2112 ¶¶ 11-21 (Enforcement Bureau, rel. Feb. 2, 2007) [same; *see* especially note 34 discussing level of specificity a requestor must provide with regard to particular telecommunications services that will be provided].

also accepted the licensed status of putative telecommunications carriers as acceptable proof.⁸

II. Services

Halo offers and will provide wireless services to enterprise and residential customers. Halo will provide these services via FCC authorized 3.65-3.70 GHz equipment manufactured by several different providers including Redline, Airspan and Alvarion. This equipment will allow Halo Wireless to service customers in unserved and underserved areas and to expand competitive choices in served areas. Halo has a direct and Internet based sale service model for order fulfillment. Customers will obtain broadband transmission service by wirelessly connecting their CPE or mobile stations to Halo Wireless base stations. They will then be able to access the Internet or a private network. In addition, Halo Wireless will offer telephony services and applications and it is these telephony services and applications that require interconnection with the rest of the PSTN in order to be viable.

III. Application

I. GENERAL (To be completed by All Applicants)

1. Applicant's Name (including d/b/a, if any)

FEIN # 20-2287342

Halo Wireless, Inc. ("Halo Wireless")

Address: Street 3437 W. 7TH St., Suite 127

City: Fort Worth State/Zip: Texas, 76107

Note: Assumed business names must be provided if and only if registered with the Illinois Secretary of State's Office.

2. Authority Requested: (Mark all that apply)

Interexchange Service (*Authorities: See Sections 13-401, 13-403 and 13-404 of the IPUA*)

Facilities Based Prepaid Interexchange Service

Facilities Based Non-Prepaid Interexchange Service

Resold Prepaid Interexchange Service

Resold Non-Prepaid Interexchange Service

Interexchange Public Pay Telephone Service

Local Exchange Service (*Authorities: See Sections 13-401, 13-404, and 13-405 of the IPUA*)

⁸ Bright House Networks, LLC. v. Verizon California, Inc., *Memorandum Opinion and Order*, File No. EB-08-MD-002, FCC 08-159, 23 FCC Rcd 10704 (rel. Jun. 23, 2008), *aff'd Verizon California v. FCC*, 555 F.3d 270 (D.C. Cir., 2009). The Commission overruled an Enforcement Bureau recommendation that would have required more proof than was submitted in that case. Bright House Networks, LLC. v. Verizon California, Inc., *Recommended Decision*, File No. EB-08-MD-002, DA 08-860, 23 FCC Rcd 5857 ¶¶ 15-20 (Enforcement Bureau, rel. Apr. 11, 2008).

- Facilities Based Prepaid Local Exchange Service
- Facilities Based Non-Prepaid Local Exchange Service
- Resold Prepaid Local Exchange Service
- Resold Non-Prepaid Local Exchange Service
- Local Exchange Public Pay Telephone Service

Cellular Radio/Wireless Telephone Service (*Authorities: See Section 13-401 of the IPUA*)

- FCC Permitted or Licensed Prepaid Cellular Radio/Wireless Telephone Service
- FCC Permitted or Licensed Non-Prepaid Cellular Radio/Wireless Telephone Service
- Resold Prepaid Cellular Radio/Wireless Telephone Service
- Resold Non-Prepaid Cellular Radio/Wireless Telephone Service

Other Telecommunications Services (Specify) (*Authorities: See Section 13-401 of the IPUA*)

N/A

3. For each service that the Applicant is requesting authority to provide, please specify the area or areas of the State for which the applicant is seeking authority to provide such service and the services (as designed in question 2 above) that will be provided in each area.

Statewide consistent with its FCC Authorizations.

4. Contact Information -- Please provide contact information, including name(s), telephone number(s), address(es), and e-mail address(es), for personnel or entities responsible for the areas below:

- a) Issues related to processing this application;

Business & operational issues:

Jody Craft, President
 Halo Wireless, Inc.
 3437 W. 7th St.
 Suite 127
 Fort Worth, TX 76107
 Office: (817) 210-4004

Legal / regulatory questions may be directed to Halo Wireless counsel:

Erik J. Cecil, Esq.
 SourceLaw, PC
 511 E. South Boulder Road
 Suite C
 Louisville, CO 80027
 erik@sourcelawpc.com
 Tel: 720-319-7328

- b) Designated agent (*Note: Applicants must have an Illinois In-State Designated Agent listed. An additional Out-of-State Designate Agent is permitted, but not required.*)

C T Corporation System
208 SO LaSalle St. Suite 814
Chicago, IL 60604

- c) Business Operations (*Note: The contact numbers reported in this questionnaire are intended to be used by the ICC Staff to contact the Applicant as issues arise. They are not intended to be contact numbers used by customers or the general public. If separate contacts apply for different issues areas, please report the separate numbers by issue below.*)

- i) Consumer issues;
- ii) Customer complaint resolution;
- iii) Technical and service quality issues;
- iv) "Tariff" and pricing issues;
- v) 9-1-1 issues;
- vi) Security/law enforcement issues;
- vii) Regulatory issues.

Note: To avoid possible revocation of service authority, the name and contact information above must be kept current. Changes in the applicants Designated Agent(s) should be directed to the Chief Clerk's Office of the ICC at 217-782-7434. All other changes should be directed to the Telecommunications Division of the ICC at 217-524-5073.

See response to Question 4.a., above.

5. How is the Applicant organized?

Individual

Partnership

Corporation:

Date Corporation was formed: February 7, 2005

State of incorporation: Texas

Other (Specify)

6. Please attach a copy of articles of incorporation. Applicants that are not Illinois corporations should also submit a copy of its Certificate of Authority to Transact Business in Illinois as issued by the Secretary of State.

Please See Exhibit B, attached.

7. Has the Applicant been issued by the Federal Communications Commission a construction permit or an operating license to construct or operate a cellular radio system in the areas, or a portion of the area, for which the Applicant seeks a Certificate of Service Authority?

YES NO

If YES, please provide all relevant license or permit numbers:

See Exhibit A, attached.

VERIFICATION

This application shall be verified under oath.

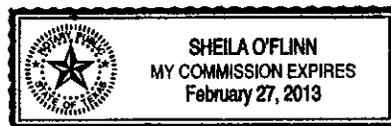
OATH

State of Texas)
) ss
County of TARRANT)

Jody Craft makes oath and says that he is President of Halo Wireless, Inc., that he has examined the foregoing application and that to the best of his knowledge, information, and belief, all statements of fact contained in the said application are true, and the said application is a correct statement of the business and affairs of the above-named applicant in respect to each and every matter set forth therein.

Jody W. Craft
(Signature of affiant)

Subscribed and sworn to before me, a Notary Public/
Notary
(Title of person authorized to administer oaths)



in the State and County above named, this 13 day of July, 2010.

Sheila O'Flinn
(Signature of person authorized to administer oath)