Comprehensive Exhibit List for Entry into Hearing Record

Hearing I.D. #	Witness	I.D. # As Filed	Exhibit Description	Entered
STAFF - EXHIBITS				
1		Exhibit List	Comprehensive Exhibit List	
2	AT&T	Discovery	AT&T Florida's Answers to Staff's First Set of Interrogatories (Nos. 1-5) *[Bates Nos. 00001-00096]*	**stipulated**
3	AT&T	Discovery	AT&T Florida Responses to Staff's First Set of Interrogatories (Nos. 2.a and 2.c), which contains customer specific network information that may be considered confidential and proprietary to Halo. [x-ref. DN 03700-12] **(Confidential)** *[Bates No. 00097]*	**stipulated**
4	AT&T	Discovery	AT&T Florida's Objections and Responses to Halo's First Set of Interrogatories, Requests For Admission and Requests For Production of Documents *[Bates Nos. 00098-00130]*	**stipulated**
5	AT&T	Discovery	AT& T Florida Responses to Halo's First Request for PODs (No. 5), containing portions of customer specific traffic and calling records and billing information that may be considered confidential to Halo. [CLK note: Document consists of 1 DVD only.] **(Confidential)** *[Bates No. 00131]*	**stipulated**

DOCUMENT NUMBER-DATE
04918 JUL 23 ≥
FPSC-COMMISSION CLERK

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP **EXHIBIT** 1
PARTY Florida Public Service Comm. Staff - Exhibits
DESCRIPTION Comprehensive Exhibit List
DATE 07/12/12

Comprehensive Exhibit List for Entry into Hearing Record				
Hearing I.D. #	**Witness**	**I.D. # As Filed**	**Exhibit Description**	**Entered**
6	Halo	Discovery	Halo Wireless Inc.'s Responses to Staff's First Set of Interrogatories to Halo Wireless, Inc. (Nos. 1-6) *[Bates Nos. 00132-00141]*	**stipulated**
7	Halo	Discovery	Halo Wireless, Inc.'s Objections and/or Responses to First Set of Interrogatories and Request for Production of Documents of AT&T Florida *[Bates Nos. 00142-00161]*	**stipulated**
BELLSOUTH TELECOMMUNICATIONS, LLC d/b/a AT&T FLORIDA (AT&T) - DIRECT				
8	J. Scott McPhee	JSM-1	Halo and Transcom Answers to Issues 1-8, with Exhibits 1-5 (Wisconsin Public Service Commission Docket No. 9594-TI-100)	
9	J. Scott McPhee	JSM-2	Excerpts from 9-19-11 Halo Bankruptcy Proceeding Transcript (U.S. Bankruptcy Court, E.D. Texas, Case No. 11-42464)	
10	J. Scott McPhee	JSM-3	Transcom WebPages	
11	J. Scott McPhee	JSM-4	AT&T Wholesale Agreement with Halo Wireless, Inc.	
12	J. Scott McPhee	JSM-5	Amendment to AT&T Wholesale Agreement with Halo Wireless, Inc.	
13	J. Scott McPhee	JSM-6	8-12-11 Halo Letter and Presentation to FCC re: 8-10-11 Meeting	
14	J. Scott McPhee	JSM-7	10-17-11 Halo *Ex Parte* Letter to FCC	

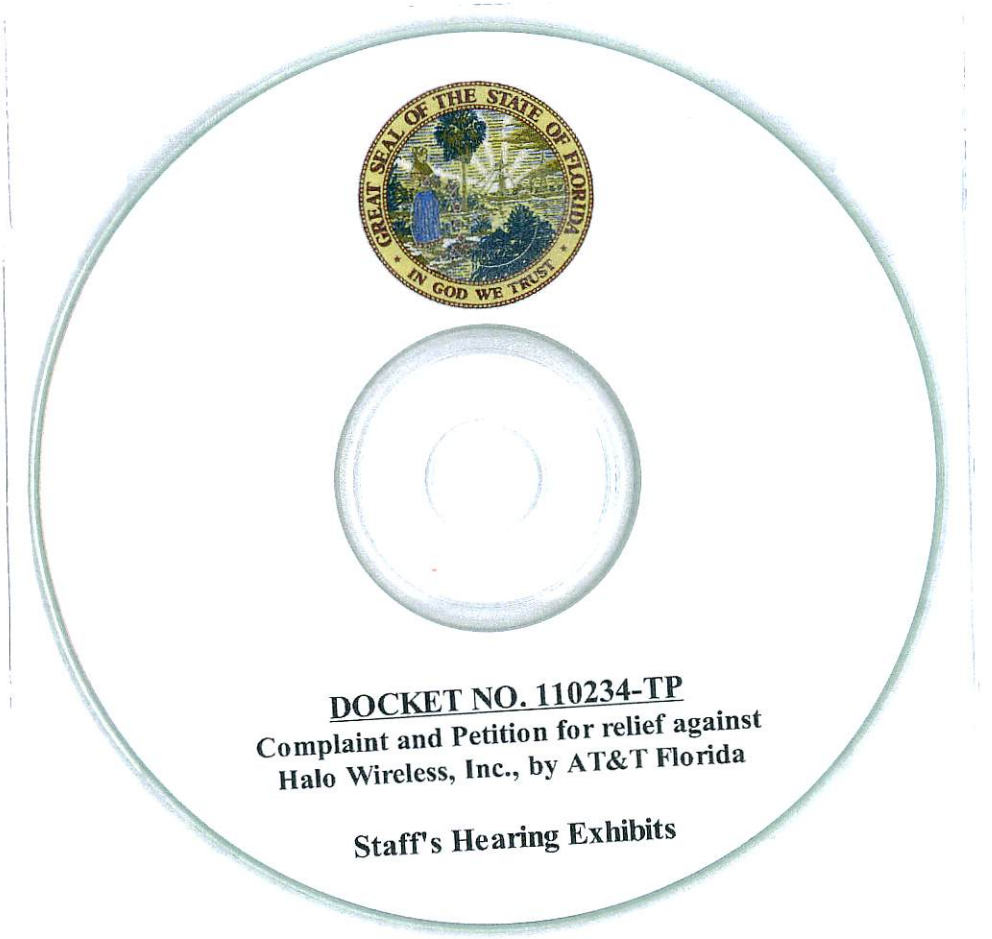
Comprehensive Exhibit List for Entry into Hearing Record				
Hearing I.D. #	**Witness**	**I.D. # As Filed**	**Exhibit Description**	**Entered**
15	J. Scott McPhee	JSM-8	Excerpts from 2-28-12 Proceeding Transcript (Wisconsin Public Service Commission Docket No. 9594-TI-100)	
16	J. Scott McPhee	JSM-9	1-26-12 Order (Tennessee Regulatory Authority Docket No. 11-00119)	
17	Mark Neinast	MN-1	1-26-12 Order (Tennessee Regulatory Authority Docket No. 11-00119)	
18	Mark Neinast	MN-2	3-9-12 Direct Testimony of Christopher J. Rozycki (South Carolina Office of Regulatory Staff Docket No. 2011-304-C)	
19	Mark Neinast	MN-3	Diagram of How Halo Sends Traffic to AT&T	
20	Mark Neinast	MN-4	Analysis of Landline-Originated vs. Wireless-Originated Calls sent by Halo	
21	Mark Neinast	MN-5	Example of Halo Calls Terminating to BellSouth Telecom Inc. (AT&T FL) with 50 State LNP and Split Number Range Look Up	
22	Mark Neinast	MN-6	Florida Traffic Analysis Comparison	
23	Mark Neinast	MN-7	Simplified Call Flow Diagram	
24	Mark Neinast	MN-8	Sample SS7 Call Records	
HALO WIRELESS, INC. (HALO) - DIRECT				
25	Russ Wiseman	RW-1	Correspondence with FCC re *Connect America Fund*	

Comprehensive Exhibit List for Entry into Hearing Record				
Hearing I.D. #	**Witness**	**I.D. # As Filed**	**Exhibit Description**	**Entered**
26	Russ Wiseman	RW-2	Correspondence with AT&T's Randy Ham	
27	Robert Johnson	RJ-1	*In re Transcom Enhanced Services, LLC*, Bankr. N.D. Tex., Memorandum Opinion re Transcom's Status as an Enhanced Service Provider, April 29, 2005	
28	Robert Johnson	RJ-2	*In re Transcom Enhanced Services, LLC*, Bankr. N.D. Tex., Order Confirming Debtor's and First Capital's Original Joint Plan of Reorganization, May 16, 2006	
29	Robert Johnson	RJ-3	*In re Transcom Enhanced Services, LLC*, Bankr. N.D. Tex., Order Granting Transcom's Motion for Partial Summary Judgment Based on the Affirmative Defense that Transcom Qualifies as an Enhanced Service Provider, September 20, 2007	
30	Robert Johnson	RJ-4	*In re Transcom Enhanced Services, LLC*, Bankr. N.D. Tex., Order Granting Motion for Entry of Orders (i) Authorizing and Approving Sale of Substantially All Assets Free and Clear of Liens, Claims, Encumbrances, Interests and Exempt from Any Stamp, Transfer, Recording or Similar Tax, etc., May 28, 2003	

Comprehensive Exhibit List for Entry into Hearing Record				
Hearing I.D. #	**Witness**	**I.D. # As Filed**	**Exhibit Description**	**Entered**
AT&T - REBUTTAL				
31	Raymond W. Drause	RD-1	Drause Resume	
32	Raymond W. Drause	RD-2	Typical Halo Tower Site	
33	Raymond W. Drause	RD-3	Call Path for Typical Transcom/Halo Call	
34	Mark Neinast	MN-9	Excerpts of Pre-filed Rebuttal Testimony of Russ Wiseman on behalf of Halo Wireless, Inc. filed on February 8, 2012 (Wisconsin Public Service Commission Docket No. 9594-TI-100)	
35	Mark Neinast	MN-10	Excerpts of Pre-filed Direct Testimony of Russ Wiseman on behalf of Halo Wireless, Inc. filed on March 19, 2012 (Georgia Public Service Commission Docket No. 34219)	
Exhibits 36 & 38 added				
36	Robert Johnson - AT&T		Johnson Deposition Excerpts	
38	Russ Wiseman - Halo		Halo's Radio Station Authorization	

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- **110234.Staff Hearing Exhibits.BATES.PDF** - This is a 161-page document, which contains Staff Hearing Exhibits 2 through 7, bates-stamped.



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AT&T Florida's Answers to Staff's First Set of Interrogatories (Nos. 1-5)

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 2
PARTY Florida Public Service Comm. Staff - Exhibits
DESCRIPTION AT&T - Discovery
DATE 07/12/12

REDACTED

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of BellSouth Telecommunications, LLC d/b/a AT&T Florida Against Halo Wireless, Inc.	)	Docket No.: 110234-TP
	)	Filed: May 17, 2012

AT&T FLORIDA'S ANSWERS TO STAFF'S FIRST SET OF INTERROGATORIES (NOS. 1-5)

BellSouth Telecommunications, LLC d/b/a AT&T Florida ("AT&T Florida"), pursuant to Florida Public Service Commission Order No. PSC-12-2020-PCO-TP (Order Establishing Procedure) hereby serves its Answers to the First Set of Interrogatories (Nos. 1-5) issued by the Staff of the Florida Public Service Commission, dated May 7, 2012.

INTERROGATORY: Please refer to Page 3, Lines 17-18, of witness McPhee's direct testimony. Please identify the specific timeframe (month/year) that you believe Halo disguised traffic by modifying the call records.

ANSWER: Beginning on February 14, 2011, Halo started modifying the call records for traffic it was sending to AT&T Florida. Halo continued modifying the call records until approximately December 29, 2011.

Responsible Person: Scott McPhee and Mark Neinast.

110234 Hearing Exhibits 00003

INTERROGATORY: Please refer to Page 24, Line 2, of witness McPhee's direct testimony.

a. Please explain how Halo ordered the DS1 and DS3 channelized facilities (i.e., via AT&T's OSS systems)?

b. When were the facilities ordered?

c. When were the facilities provisioned and at what location(s)?

ANSWER:

a. Halo sent its orders to AT&T Florida through spreadsheets attached to emails. See attached CD.

b. In July 2010.

c. [redacted]

Responsible Person: Scott McPhee and Mark Neinast.

INTERROGATORY: Please refer to Page 24, Lines 10-13, of witness McPhee's direct testimony.

a. When did AT&T bill Halo for these facilities?

b. Has Halo disputed those charges as outlined in the ICA?

c. If the answer to Interrogatory No. 3.b. is yes, when was the billing dispute filed?

d. If the answer to Interrogatory No. 3.b. is no, did AT&T make any attempt to terminate services for failure to comply with the ICA's billing provisions? Please fully explain your response.

ANSWER:

a. AT&T Florida began billing Halo for the DS3 Facilities in August 2010.
b. Yes
c. AT&T Florida received the earliest dispute from Halo in December 2010.
d. N/A

Responsible Person: Scott McPhee

INTERROGATORY: Please refer to Exhibit JSM-1, Page 3. Do you agree with the federal court decisions regarding Transcom's regulatory classification? Please fully explain your response.

ANSWER:

AT&T Florida is only aware of one federal bankruptcy court decision that involved AT&T and in which the issue of whether Transcom was an enhanced service provider ("ESP") was actually litigated and decided. That is the April 14, 2005 decision quoted on page 4 of JSM-1, which notably was vacated on appeal. See Pre-Filed Rebuttal Testimony of Robert Johnson, Ex. 1 at 1 (noting in upper right-hand corner that decision was vacated on appeal).

The other decisions referenced in JSM-1 merely confirmed Transcom's later bankruptcy plan of reorganization; the question of whether Transcom was an ESP was not litigated or decided in those cases.

AT&T Florida does not agree with the bankruptcy court decision concluding that Transcom is an ESP, for the reasons summarized in the Direct Testimony of Mark Neinast (page 24, line 1 to page 27, line 17) and discussed more fully below.

As a threshold matter, AT&T Florida respectfully states that it does not matter to the issues in this docket whether the bankruptcy court's finding that Transcom was an ESP was correct. That is because the issue here is whether the calls from Halo to AT&T originated as landline or wireless calls, and the bankruptcy decisions never discussed or decided that issue. Halo's arguments that Transcom is an ESP; that Transcom therefore must be deemed to be an "end user" for all purposes; and that Transcom therefore must be deemed to originate (or re-originate, wirelessly) every call that passes through it are invalid.

First, even if Transcom were an ESP, that would mean only that it can be treated as an end user for the limited purpose of being exempted from access charges (and can pay retail business rates for its connections). The FCC has made clear that ESPs "are treated as end-users *for the purpose of applying access charges*"[1] only and "are treated as

[1] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd. 9151, ¶ 11 (2001) ("*ISP Remand Order*") (emphasis added, subsequent history omitted).

end users *for purposes of our access charge rules*."[2] This narrowly-crafted "ESP exemption" is thus quite limited and does not mean that an ESP is treated as an end-user for any and all purposes.

Second, even if Transcom were an ESP, and even if it were classified as an end-user, that still would not mean that Transcom terminates and then originates anew every call that passes through its equipment. The origination issue was never discussed or addressed in the bankruptcy court cases. The FCC flatly rejected Halo's argument on this point in the *Connect America* proceeding when it found that the calls originate with the calling party, not with an ESP in the middle. *Connect America Order*, 2011 WL 5844975, at ¶¶ 1003-06 & nn. 2120-22, 2128.

Third, even if the question of whether Transcom is an ESP were relevant, more recent decisions from state commissions confirm that Transcom is not an ESP and the prior bankruptcy court finding was in error. For example, in its recent decision that resolved in AT&T Tennessee's favor all the issues presented in this case, the Tennessee Regulatory Authority ("TRA") specifically held that "Transcom Is Not an Enhanced Service Provider." Order, *In re: BellSouth Telecommunications LLC d/b/a AT&T Tennessee v. Halo Wireless, Inc.*, Docket No. 11-00119, at 20 (Tenn. Reg. Auth. Jan. 26, 2012), which has also been submitted as Exhibit MN-1 to Mr. Neinast's Direct Testimony and as JSM-9 to Mr. McPhee's Direct Testimony. As support for its decision, the TRA explained:

- The "FCC has held that services are not 'enhanced' when customers use the same dialing method for allegedly 'enhanced' calls that they would for any other call, or where the alleged 'enhancement' was made 'without the advance knowledge or consent of the 'customer' that placed the call and the customer is not provided with the 'capability' to do anything other than make a telephone call." *Id.* at 20-21.

- "[T]he record . . . indicates that Transcom provides no services to actual end-users and does not offer any enhancements discernible to the person that actually places the call." *Id.* at 21.

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[2] *Northwestern Bell Tel. Co. Petition for Declaratory Ruling*, 2 FCC Rcd. 5986, ¶ 21 (1987) ("*Northwestern Bell Order*"). Five years after it was issued, this decision was vacated as moot. 7 FCC Rcd. 5644 (1992). The decision still carries weight, however, as to the FCC's explanation of the ESP exemption.

- "The record also supports the conclusion that end-users are completely unaware that Transcom is even involved in call delivery." *Id.*

- "Despite [Halo's] claim of computer processing of data, Transcom only reduces background noise and inserts 'comfort noise' in periods of silence so that those periods of silence are not mistaken for the end of a call. . . . The alleged 'enhancements' . . . are simply processes to improve the quality of the call. Telecommunications networks have been routinely making those types of improvements for years . . . yet none of these processes are deemed 'enhancements' in the sense of an ESP." *Id.* at 21-22 (citations omitted).

The Pennsylvania commission reached a similar decision in a case involving Global NAPs and Transcom. Global NAPs, much like Halo here, argued that "Transcom's removal of background noise, the insertion of white noise, the insertion of computer developed substitutes for missing content, and the added capacity for the use of short codes to retrieve data during a call all constitute 'enhancements' to the traffic that Transcom passes on to GNAPs." *Palmerton Tel. Co. v. Global NAPs South*, Docket No. C-2009-2093336, 2010 Pa. PUC LEXIS 245, *59 (Pa. Pub. Util. Comm'n March 16, 2010). The Pennsylvania Commission rejected that argument, stating, "we find that Transcom does not supply GNAPs with 'enhanced' traffic under applicable federal rules. Consequently, such traffic cannot be exempted from the application of appropriate jurisdictional carrier access charges." *Id.* at *62.

Copies of the Tennessee and Pennsylvania decisions are attached.

110234 Hearing Exhibits 00008

INTERROGATORY: Please refer to Page 24, Lines 8-10 of witness Neinast's direct testimony. Please list and identify with pinpoint citation the body of law that addresses what is and what is not an enhanced service.

ANSWER:

A number of FCC decisions address what is and what is not an "enhanced service." The decisions typically turn on the specific nature of the service at issue. AT&T Florida discusses the most pertinent decisions for this case below, but respectfully notes that it cannot, as a practical matter, identify each and every legal authority that addresses what is and what is not an enhanced service.

To be an ESP, Transcom must provide an "enhanced service." The FCC defines "enhanced services" as:

> services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information.

47 C.F.R. § 64.702(a). In applying this definition, the FCC has consistently held that a service is not "enhanced" when it is merely "incidental" to the underlying telephone service or merely "facilitate[s] establishment of a basic transmission path over which a telephone call may be completed, without altering the fundamental character of the telephone service," and that in deciding whether a service is "enhanced" one must use the end-user's perspective. *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934*, 11 FCC Rcd. 21905, ¶ 107 (1996). The FCC typically describes services that do not alter the fundamental character of the telephone service as "adjunct-to-basic," meaning they are not "enhanced services." *See AT&T Calling Card Order*, ¶ 16 & n.28.

In the *AT&T Calling Card Order*, for example, the FCC addressed whether a calling card service was "enhanced" because, during call set-up, the caller heard an advertising message from the retailer that sold the card and was given options to push buttons to do things other than complete the call (*e.g.*, buy more calling card minutes), and also because some of the transport of the call was over AT&T's Internet backbone

using Internet Protocol ("IP") technology. *AT&T Calling Card Order*, ¶¶ 6, 11-12. The FCC held that this service was not "enhanced" under FCC Rule 64.702. *Id.* ¶ 16. As the FCC explained:

> Because the advertising message ***is provided automatically, without the advance knowledge or consent of the customer, there is no "offer" to the customer of anything other than telephone service, nor is the customer provided with the "capability" to do anything other than make a telephone call.***
>
> . . . We find that the advertising message provided to the calling party in this case is ***incidental to the underlying service offered to the card-holder and does not in any way alter the fundamental character of that telecommunications service***. From the customer's perspective, the advertising message is merely a necessary precondition to placing a telephone call . . . .

Id. ¶¶ 15-16 (emphasis added). The FCC noted that none of the packaging material for the calling card service in the *AT&T Calling Card Order* even mentioned the alleged enhancement of using the cards to listen to advertisements, which led the FCC to conclude that no enhancement or special capability was actually being "offered" to customers. *AT&T Calling Card Order*, ¶ 15.

The FCC's *IP-in-the-Middle Order* is also relevant to the question of what is and is not an enhanced service. In that case, the FCC held that AT&T's IP telephony service was not an enhanced service, finding that it "(1) use[d] ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originate[d] and terminate[d] on the public switched telephone network (PSTN); and (3) under[went] no net protocol conversion and provide[d] no enhanced functionality to end users due to the provider's use of IP technology." *Petition for Declaratory Ruling That AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, 19 FCC Rcd. 7457, ¶ 1 (2004) ("*IP-in-the-Middle Order*"). As the FCC put it, "[e]nd-user customers do not order a different service, pay different rates, or place and receive calls any differently than they do through AT&T's traditional circuit-switched long distance service," which means that the IP-in-the-middle service was no an enhanced service. *Id.* ¶ 15.

The cases above make clear that Transcom's service is not "enhanced." The end-users that make calls do not order a different service (indeed, they do not order any service from Transcom); they do not pay different rates; and they place and receive calls in exactly the same way they would if Transcom did not exist. Thus, "[f]rom the customer's perspective" – the perspective of the end-user making the call – anything

Transcom does is merely "incidental" to or "adjunct to" the underlying voice service provided by the caller's carrier, does not alter the "fundamental character" of that underlying service, and is therefore not an "enhanced service." *AT&T Calling Card Order*, ¶ 16.

Other decisions and legal authorities that address the definition of an enhanced service include:

- Order, *In the Matter of Federal-State Joint Board on Universal Service*, 22 FCC Rcd. 11811, ¶¶ 3, 6-9 (Wireline Competition Bureau, 2007), which applied the factors identified in the *IP-in-the-Middle Order* to find that a service providing "supplements to the information typically provided on a caller ID display," such as "advertisements, the time, date, and temperature, account balance, available talk time, and other customized messages" and other functionalities was not enhanced, but was merely "adjunct-to-basic," because the functionalities "do not in any way alter the fundamental character of that telecommunications service";

- *The Time Machine*, 11 FCC Rcd. 1186, ¶ 40 (Common Carrier Bureau 1995), which held that the provision of information regarding the time remaining on a calling card is "incidental to the provision of basic communications services, and therefore is not an enhanced service"; and

- John T. Nakahata, *Regulating Information Platforms: The Challenge of Rewriting Communications Regulation From the Bottom Up*, 1 J. Telecomm. & High Tech. Law 95, 108 n.52 (2002), which noted that the FCC has classified services such as "speed dialing, call forwarding, computer-provided directory assistance, call monitoring, caller ID, call tracing, call blocking, call return, repeat dialing and call tracking" as "adjunct-to-basic" service, not enhanced service.

110234 Hearing Exhibits 00011

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 26, 2012

IN RE:	)	
	)	**DOCKET NO.**
BELLSOUTH TELECOMMUNICATIONS LLC D/B/A AT&T TENNESSEE V. HALO WIRELESS, INC.	)	**11-00119**
	)	

ORDER

This matter came before Chairman Kenneth C. Hill, Director Sara Kyle and Director Mary W. Freeman of the Tennessee Regulatory Authority ("Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on January 23, 2012 for consideration of the *Complaint* filed by BellSouth Telecommunications, LLC d/b/a AT&T Tennessee ("AT&T") against Halo Wireless, Inc. ("Halo") and Halo's *Motion to Dismiss Complaint With Prejudice.*

TRAVEL OF THE CASE

On July 26, 2011, AT&T filed a *Complaint* against Halo, pursuant to 47 U.S.C. § 252 and TRA Rule 1220-1-2-.02, requesting that the TRA issue an order "allowing it to terminate its wireless Interconnection Agreement ("ICA") with Halo based on Halo's material breaches of that ICA."[1] The *Complaint* also states that AT&T "seeks an Order requiring Halo to pay AT&T Tennessee the amounts Halo owes" as a result of "an access charge avoidance scheme."[2] On August 10, 2011, Halo filed a Suggestion of Bankruptcy informing the TRA that "on August 8, 2011 Halo filed a voluntary petition under Chapter 11 of Title 11 of the United States Code in the

[1] *Complaint*, p. 1 (July 26, 2011).
[2] *Id.*

United States Bankruptcy Court for the Eastern District of Texas (Sherman Division)" ("Bankruptcy Court").[3] Accordingly, Halo stated, "the automatic stay is now in place" and "prohibits further action against [Halo] in the instant proceeding."[4]

On August 19, 2011, Halo filed a notice of removal to federal district court, which references a separate notice of removal and states that this matter has been removed to the United States District Court for the Middle District of Tennessee, Nashville Division ("District Court") "pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure."[5] On November 10, 2011, AT&T filed a letter informing the TRA that it may now hear this matter, the District Court having remanded it to the TRA and the Bankruptcy Court having lifted the automatic stay on a limited basis. AT&T requested that this matter be placed on the agenda for the Authority Conference scheduled for November 21, 2011 "for appointing a Hearing Officer and other action as necessary."[6] On November 17, 2011, Halo filed a *Motion to Abate*, in which Halo requested that the TRA "abate" this proceeding until conclusion of Halo's appeal of the Bankruptcy Court's October 26, 2011 Order to the United States Court of Appeals for the Fifth Circuit.

At the regularly scheduled Authority Conference held on November 21, 2011, the Authority voted unanimously to deny the *Motion to Abate* and to convene a contested case in this matter and appoint Chairman Kenneth C. Hill as Hearing Officer to handle any preliminary matters, including entering a protective order, ruling on any intervention requests, setting a procedural schedule, and addressing other preliminary matters.[7] Immediately following the Authority Conference, the Hearing Officer convened a scheduling conference in this matter.

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[3] *Suggestion of Bankruptcy*, p. 1 (August 10, 2011).
[4] *Id.* at 2.
[5] *Notice of Removal to Federal Court*, p. 1 (August 19, 2011).
[6] Letter from Joelle Phillips to Chairman Kenneth C. Hill (November 10, 2011).
[7] *Order Denying Motion to Abate, Convening a Contested Case and Appointing a Hearing Officer* (December 19, 2011).

110234 Hearing Exhibits 00013

On December 1, 2011, Halo filed *Halo Wireless, Inc.'s Partial Motion to Dismiss and Answer to the Complaint of BellSouth Telecommunications, LLC d/b/a AT&T Tennessee* ("*Partial Motion to Dismiss*"), and AT&T filed its response to Halo's motion on December 8, 2011. The Hearing Officer heard arguments from AT&T and Halo (collectively, "the Parties") on the *Partial Motion to Dismiss* on December 12, 2011, and issued an order denying the *Partial Motion to Dismiss* on December 16, 2011.[8] The Parties submitted pre-filed direct testimony of their witnesses on December 19, 2011, and pre-filed rebuttal testimony on January 3, 2012. In addition, the Parties submitted pre-hearing memoranda on January 6, 2012.

MOTION TO DISMISS COMPLAINT WITH PREJUDICE

After business hours on Friday, January 13, 2012, Halo filed *Halo Wireless, Inc.'s Notice of May 16, 2006 Order Confirming Plan of Reorganization of Transcom Enhanced Services and Motion to Dismiss Complaint With Prejudice* ("*Motion to Dismiss Complaint With Prejudice*"). At the beginning of the Hearing on January 17, 2012, Chairman Hill addressed the *Motion to Dismiss Complaint With Prejudice*, giving AT&T an opportunity to respond and setting the matter for consideration during the January 23, 2012 Authority Conference. AT&T filed *BellSouth Telecommunications, LLC dba AT&T Tennessee's Response to Halo Wireless, Inc's Motion to Dismiss Complaint With Prejudice* ("*Response*") on January 19, 2012.

As more fully explained in the discussion of AT&T's *Complaint* below, Halo's business plan is centered on their assertion that Transcom Enhanced Services, Inc. ("Transcom") is an Enhanced Service Provider ("ESP"). In its *Motion to Dismiss Complaint With Prejudice*, Halo requests that the TRA dismiss AT&T's *Complaint* with prejudice on the grounds that during

[8] *Order Denying Motion to Dismiss* (December 16, 2011).

110234 Hearing Exhibits 00014

Transcom's 2005 bankruptcy proceeding,[9] BellSouth/AT&T Corporation were creditors/parties in interest.[10] In the Transcom Bankruptcy Court's April 28, 2005 Memorandum Opinion, the Court concluded that "[Transcom]'s service is an enhanced service, not subject to payment of access charges."[11] Some of the creditors appealed the April 28, 2005 order to the United States District Court for the Northern District of Texas, Dallas Division ("Transcom District Court"), but the Transcom District Court dismissed the appeal as moot and vacated the bankruptcy court's Order and Memorandum Opinion.[12] However, the Transcom Bankruptcy Court entered an order on May 16, 2006 confirming Transcom's bankruptcy plan.[13] In this Confirmation Order, the Transcom Bankruptcy Court again stated that Transcom's services are not subject to access charges, but rather qualify as information services and enhanced services that must pay end-user charges.[14] No creditor appealed the May 16, 2006 Order.[15] Halo argues that because this Confirmation Order is binding, AT&T cannot challenge Transcom's status as an ESP.[16] In addition, Halo asserts that *res judicata* or collateral estoppel bars the claims that have been litigated in the bankruptcy court.

To assert a *res judicata* defense, a party must establish: 1) the parties must be identical in both suits; 2) the prior judgment must have been rendered by a court of competent jurisdiction; 3) there must have been a final judgment on the merits; and 4) the same cause of action must be involved in both cases.[17] Halo claims that these standards are satisfied because 1) BellSouth was a party to the Transcom bankruptcy case and litigants who have a close and significant relationship (e.g. Transcom/Halo) satisfy the "identical parties" test; 2) the Transcom Bankruptcy Court had

[9] Transcom filed a voluntary petition for Chapter 11 bankruptcy in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, ("Transcom Bankruptcy Court") on February 18, 2005 in Case No. 05-31929-HDH-11 ("Transcom bankruptcy"). *See Motion to Dismiss Complaint With Prejudice*, p. 2, ¶ 3 (January 13, 2012).
[10] *Motion to Dismiss Complaint With Prejudice*, p. 2, ¶ 4 (January 13, 2012).
[11] *Id.* at 3, ¶ 7.
[12] *Id.*
[13] *Id.* at 4, ¶ 10.
[14] *Id.*
[15] *Id.* at 4, ¶ 11.
[16] *Id.* at 6, ¶ 14.
[17] *Id.* at 6, ¶ 17, *citing Osherow v. Ernst & Young, LLP (In re Intelogic Trace, Inc.)*, 300 F.3d 382, 386 (5th Cir. 2000).

110234 Hearing Exhibits 00015

jurisdiction over the 2006 Confirmation Order; 3) the 2006 Confirmation Order is final; and 4) the two actions are based on the same nucleus of operative facts, because the primary issue in both proceedings is whether Transcom provides enhanced services.[18]

Collateral estoppel precludes a party from litigating an issue already raised in an earlier action if: 1) the issue at stake is identical to the one involved in the earlier action; 2) the issue was actually litigated in the prior action; and 3) the determination of the issue in the prior action was a necessary part of the judgment in that action.[19] Halo asserts that 1) AT&T's *Complaint* confronts the authority with an identical issue to that raised in the 2006 Transcom Bankruptcy Court's Confirmation Order, i.e. that Transcom is an ESP not subject to access charges; 2) the issue was litigated in 2006 in the Transcom bankruptcy proceeding; and 3) the determination that Transcom is an ESP was a necessary part of the Confirmation because if it were not, the Plan would not have been feasible and the Confirmation would have been denied.[20]

AT&T opposes the *Motion to Dismiss Complaint With Prejudice* on the grounds that the Motion is at odds with the Federal Communications Commission's ("FCC") *Connect America Fund* Order.[21] AT&T argues that none of the Transcom bankruptcy court proceedings or other earlier proceedings cited by Halo is binding on either AT&T or the Authority.[22] None of the Transcom Bankruptcy Court orders states or suggests that Transcom actually is an end-user, and none of them implies or says anything about the termination or origination of calls.[23] Rather, an ESP is treated as

[18] *Motion to Dismiss Complaint With Prejudice*, pp. 7-8, ¶¶ 18-26 (January 13, 2012).
[19] *Id.* at 10, ¶ 28, *citing Petro-Hunt, L.L.C. v. U.S.*, 365 F.2d 385, 397 (5th Cir, 2004).
[20] *Id.* at 10-11, ¶¶ 27-30.
[21] *Response*, p. 1 (January 19, 2012); *See Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208; FCC 11–161, __ FCC Rcd __ ("*Connect America Fund Order*") (November 18, 2011).
[22] *Response*, p. 3 (January 19, 2012).
[23] *Id.* at 4.

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an end-user for the purpose of being exempted from access charges, nothing more.[24] Further the exemption applies only to ESPs, not carriers (like Halo) that transport calls for ESPs.[25] AT&T asserts that the Authority rejected Halo's *res judicata* and collateral estoppel arguments when it rejected Halo's *Partial Motion to Dismiss*.[26] AT&T further asserts that *res judicata* and collateral estoppel cannot apply because: 1) the main order Halo relies upon was vacated by the federal district court; 2) the bankruptcy cases involved Transcom, not Halo, and therefore were not between identical parties; 3) the Transcom bankruptcy cases did not involve the same cause of action as this case, since this case involves claims for Halo's breach of a contract that was not even formed until after the bankruptcy cases, while the bankruptcy cases involved the issue of whether Transcom was subject to access charges; and 4) the issue in this case (whether Transcom must be deemed to originate or re-originate calls) was never raised, much less decided, in the bankruptcy cases.[27]

The Authority agrees with AT&T that neither *res judicata* nor collateral estoppel applies in this case. The panel finds that *res judicata* does not apply because the Transcom bankruptcy case and this docket do not involve identical parties and this is a breach of contract case and, therefore, is not the same cause of action. The panel also finds that collateral estoppel does not apply because the issue in this case - the origination or re-origination and termination of Halo's calls – was not raised in the Transcom bankruptcy case. Based on these findings, the Authority concludes unanimously that Halo's *Motion to Dismiss Complaint With Prejudice* should be denied.

THE HEARING

A Hearing in this matter was held before the voting panel of Directors assigned to this docket on January 17, 2012. The Hearing was publicly noticed by the Hearing Officer on

[24] *Id.*
[25] *Id.* at 4, n. 8.
[26] *Id.* at 3, n. 6.
[27] *Id.*

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December 16, 2011 and January 12, 2012. Participating in the Hearing were the following parties and their respective counsel:

> **For BellSouth Telecommunications, LLC d/b/a AT&T Tennessee – Joelle Phillips, Esq.**, 333 Commerce Street, Suite 2101, Nashville TN 37201 and **J. Tyson Covey, Esq.**, Mayer Brown, LLP, 71 S. Wacker Drive, Chicago, IL 60606.
>
> **For Halo Wireless, Inc. – Paul S. Davidson, Esq.**, Waller Lansden Dortch & Davis, LLP, 511 Union Street, Suite 2700, Nashville, TN 37219; **Steven H. Thomas, Esq.** and **Jennifer M. Larson, Esq.**, McGuire, Craddock & Strother, P.C., 2501 N. Harwood, Suite 1800, Dallas, TX 75201; **W. Scott McCollough, Esq.**, McCollough/Henry PC, 1250 S. Capital of Texas Highway, Bldg. 2-235, West Lake Hills, TX 78746.

During the Hearing, the Authority heard testimony from AT&T witnesses J. Scott McPhee and Mark Neinast. Russ Wiseman and Robert Johnson testified for Halo.

AT&T'S *COMPLAINT*

In its *Complaint*, AT&T seeks to terminate its wireless ICA with Halo because Halo has violated the ICA by sending AT&T large volumes of traffic that does not originate on a wireless network. AT&T further asks the TRA to order Halo to pay it the amounts that it owes AT&T. AT&T asserts that the TRA has jurisdiction over this matter, because it involves (1) violations of an ICA entered into under 27 U.S.C. §§ 251 and 252 that was approved by the Authority and (2) violations of AT&T Tennessee's state tariffs.[28] The *Complaint* contains four counts:

Count 1 - Breach of ICA: Sending Wireline-Originated Traffic to AT&T Tennessee: AT&T charges that Halo sends AT&T traffic that is wireline-originated, interstate, interLATA or intraLATA toll traffic and that Halo disguises it as local traffic to avoid access charges that apply to such traffic. AT&T asks the TRA to order Halo to terminate the Parties' ICA for this breach or, in

[28] *Complaint*, p. 3 (July 26, 2011).

the alternative, to order Halo to cease and desist from sending wireline-originated traffic not authorized by the ICA to AT&T.[29]

Count 2 - Breach of ICA: Alteration or Deletion of Call Detail: AT&T alleges that Halo consistently alters the Charge Number ("CN"), which prevents AT&T from properly billing Halo based on where the traffic originated. AT&T requests that the Authority authorize it to terminate the Parties' ICA, or, in the alternative, to order Halo to cease and desist from altering the CN on traffic that it delivers to AT&T.[30]

Count 3 – Payment for Termination of Wireline-Originated Traffic: The wireline-originated traffic that Halo previously sent to AT&T is not governed by the Parties' ICA but is instead subject to tariffed switched access charges. AT&T therefore asks the Authority to order Halo to pay all access charges due to AT&T within thirty days of the Authority's order.[31]

Count 4 – Breach of ICA: Non-payment for Facilities: AT&T asks the TRA to order Halo to pay it for transport facilities that AT&T has provided but for which Halo has refused to pay.[32]

POSITIONS OF THE PARTIES

The Parties have set forth their arguments in full in the record of this docket, in their pre-hearing memoranda and in the presentation of their cases at the Hearing. The following section is intended as a *brief* summary of the positions of AT&T and Halo in this matter.

Position of AT&T Tennessee

AT&T asserts that Halo has engaged in three separate types of breaches of the Parties' ICA.[33] Although the ICA requires Halo to send only wireless-originated traffic to AT&T, 74% of

[29] *Id.* at 3-4.
[30] *Id.* at 4-5.
[31] *Id.* at 5-6.
[32] *Id.* at 6.
[33] *Pre-hearing Memorandum of BellSouth Telecommunications, LLC dba AT&T Tennessee*, p. 1 (January 6, 2012).

the traffic Halo sends to AT&T is landline-originated traffic.[34] According to AT&T, Halo's contention that it is not breaching the ICA is based on a "wireless in the middle" theory, where Transcom is an ESP; ESPs are treated as end-users; and Transcom must be deemed to "re-originate" every call that passes through Transcom to Halo.[35]

AT&T argues that the FCC has expressly rejected Halo's theory in the *Connect America Fund Order*, where the FCC singled out Halo by name.[36] The FCC rejected Halo's theory that calls that begin with an end-user dialing a call on a landline network can be "re-originated" as wireless calls by passing through an ESP with wireless equipment in the middle of the call. [37] Further, the ESP exemption from access charges applies only to ESPs themselves, not to carriers like Halo that serve them.[38] AT&T asserts, however, that Transcom is not an ESP because reducing background noise and inserting "comfort noise" in periods of silence do not alter the fundamental character of the service from the end-user's perspective.[39]

AT&T argues that its call study showing 74% of the calls Halo sends to AT&T are landline-originated is reliable. Further, Halo does not deny that at least some of its calls it sends to AT&T are landline or IP-originated,[40] which results in a breach of the ICA.[41]

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[34] *Id.* at 5. The terms "wireline" and "landline" are used interchangeably in the parties' testimony. For background, federal law specifies that wireless calls that originate and terminate within the same Major Trading Area ("MTA") are "local calls" and subject to reciprocal compensation rates. Calls exchanged between end-users in different MTAs are considered "InterMTA" and are subject to tariffed interstate or intrastate access charges, which are higher than reciprocal compensation rates. Calls that originate from landline telephones are considered "local" if they both originate and terminate within the same local exchange area. Intercarrier compensation rates for intra-exchange calls are set by the landline ICA; the rates for intrastate inter-exchange calls are set by the state access tariff, and the rates for interstate inter-exchange calls are set by the FCC access tariff. *See* J. Scott McPhee, Pre-filed Direct Testimony, p. 9 (December 19, 2011).

[35] *Id.*

[36] *Pre-hearing Memorandum of BellSouth Telecommunications, LLC dba AT&T Tennessee*, p. 6 (January 6, 2012).

[37] *Id.* at 7.

[38] *Id.* at 9.

[39] *Id.* at 10-11.

[40] The term "IP" refers to Internet Protocol.

[41] *Id.* at 11-12.

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AT&T asserts that Halo also breached the ICA by inserting false charge numbers; specifically, Halo inserts a Transcom Charge Number ("CN") on every call, and the effect is that every call appears local.[42]

AT&T alleges that Halo is breaching the ICA by refusing to pay for interconnection facilities it obtains from AT&T. Because 100% of the traffic between the Parties is traffic that Halo terminates on AT&T's network, Halo is responsible for 100% of the cost of the interconnection facility under the Parties' wireless ICA.[43]

Position of Halo Wireless, Inc.

Halo asserts that it is not in breach of the ICA and AT&T is not entitled to "significant amounts of money" from Halo for the traffic at issue.[44] Halo further asserts that it has a valid and subsisting Radio Station Authorization from the FCC authorizing Halo to provide wireless service as a common carrier and to operate stations in the "3650-3700" MHz band,[45] and is therefore governed exclusively by federal law.[46] Halo argues that the FCC has exclusive jurisdiction over federal licensing and that a state commission cannot take any action that would amount to a suspension or revocation of a federal license.[47]

Halo provides Commercial Mobile Radio Service ("CMRS") and sells telephone exchange service to Transcom, which is a high volume customer.[48] Halo asserts that Transcom is an ESP because it changes the information content of every call that passes through its system and also

[42] *Id.* at 12-13.
[43] *Id.* at 14-15.
[44] *Halo Wireless, Inc.'s Pre-hearing Memorandum*, p.1 (January 6, 2012).
[45] Russ Wiseman Pre-filed Direct Testimony, p. 2 (December 19, 2011).
[46] *Halo Wireless, Inc.'s Pre-hearing Memorandum*, p. 2 (January 6, 2012).
[47] *Id.* at 2-3.
[48] *Id.* at 1.

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offers enhanced capabilities.[49] Transcom is an end-user, not a carrier.[50] Therefore, Halo argues that it is a CMRS carrier selling wireless telephone exchange service to an ESP end-user and its traffic is not wireline-originated.[51] All of the calls received from Transcom within a particular MTA are terminated in the same MTA, so that all of the traffic is subject to local charges in the ICA. [52]

Halo argues that it does not alter or delete call detail in violation of the ICA.[53] Halo populates the CN parameter with the Billing Telephone Number ("BTN") of its end-user customer - Transcom.[54] AT&T alleges improper modification of signaling information related to the CN parameter, but the basis of this claim once again results from the assertion that Transcom is a carrier rather than an end-user.[55] Halo is exactly following industry practice applicable to an exchange carrier providing telephone exchange service to an end-user, and in particular a communications-intensive business end-user with sophisticated Customer Premises Equipment ("CPE").[56]

Halo asserts that it does not owe facilities charges to AT&T.[57] Under the ICA, AT&T may only charge for interconnection facilities when AT&T-provided facilities are used by Halo to reach the mutually agreed Point of Interconnection ("POI").[58] Under the terms of the ICA, the POI is where Halo's network ends.[59] AT&T is attempting to shift cost responsibility for what it calls facilities" to Halo when the ICA assigns responsibility to AT&T because the "facilities" are all on AT&T's side of the POI.[60]

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[49] *Id.*
[50] *Id.* at 4.
[51] *Id.* at 4-6.
[52] *Id.* at 1.
[53] *Id.* at 6-8.
[54] *Id.* at 8.
[55] *Id.*; *see also* Russ Wiseman Pre-filed Direct Testimony pp. 26-28 (December 19, 2011).
[56] *Id.*
[57] *Id.* at 9-14.
[58] *Id.* at 9.
[59] *Id.*
[60] *Id.* at 14.

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FINDINGS AND CONCLUSIONS

Jurisdiction

Throughout these proceedings, Halo has raised objections and challenged the jurisdiction of the Authority to consider the *Complaint* in this matter. The Authority finds that it has jurisdiction to consider the *Complaint* pursuant to both federal and state law. The Authority approved the interconnection agreement between AT&T Tennessee and Halo by order dated June 21, 2010 in TRA Docket No. 10-00063.[61] Interconnection agreements are reviewable and enforceable by the Authority pursuant to 47 U.S.C. § 252 and, in instances where the "market regulation" statute applies, are enforceable pursuant to Tenn. Code Ann. § 65-5-109(m). Further, the Authority has jurisdiction over complaints concerning telecommunications service providers who have elected "market regulation" such as AT&T, pursuant to Tenn. Code Ann. § 65-5-109(m). Halo did not object to the Authority's jurisdiction to approve the interconnection agreement that now lies at the center of this dispute.[62]

The District Court, in its Order remanding this matter back to the Authority, also recognized the TRA's jurisdiction over the interpretation of the ICA. The District Court explained the respective roles of the Court and the Authority, stating:

> The Telecommunications Act of 1996 ("the Act") requires that all ICAs be approved by a state regulatory commission before they become effective. State commissions such as the TRA have authority to approve and disapprove interconnection agreements, such as the one at issue herein. 47 U.S.C. § 252(e)(1). That authority includes the authority to interpret and enforce the provisions of agreements that the state commissions have approved. *Southwestern Bell Telephone Co. v. Public Utility Comm'n of Texas*, 208 F.3d 475, 479 (5th Cir. 2000); *Millennium One Communications, Inc. v. Public Utility Comm'n of Texas*, 361 F.Supp.2d 634, 636 (W.D. Tex. 2005). Federal district courts have jurisdiction to review interpretation

[61] *See In Re: Petition For Approval Of The Interconnection Agreement and Amendment Thereto Between BellSouth dba AT&T Tennessee and Halo Wireless, Inc.*, Docket No. 10-00063, *Order Approving the Interconnection Agreement and Amendment Thereto* (June 21, 2010).

[62] *See In Re: Petition for Approval of the Interconnection Agreement and Amendment Thereto Between BellSouth dba AT&T Tennessee and Halo Wireless, Inc.*, Docket No. 10-00063.

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and enforcement decisions of the state commissions. *Id.; Southwestern Bell* at p. 480, 47 U.S.C. § 252(e)(6). Here, as noted above, there is no state commission determination to review.

In *Central Telephone Co. of Virginia v. Sprint Communications Co. of Virginia, Inc.*, 759 F.Supp.2d 772 (E.D. Va. 2011), the court held that federal district courts have federal question jurisdiction to interpret and enforce an ICA, pursuant to 28 U.S.C. § 1331. *Id. at 778; see also BellSouth Telecommunications, Inc. v. MCImetro Access Transmission Servs., Inc.*, 317 F.3d 1270, 1278-79 (11th Cir. 2003) (federal courts have jurisdiction under Section 1331 to hear challenges to state commission orders interpreting ICAs because they arise under federal law) and *Michigan Bell Telephone Co. v. MCI Metro Access Transmission Servs.*, 323 F.3d 348, 353 (6th Cir. 2003)(federal courts have jurisdiction to review state commission orders for compliance with federal law). Although these cases involved state commission orders, their holdings provide guidance on this issue.

Based on the reasoning in the above-cited cases, the Court finds that it has subject matter jurisdiction to hear this matter, pursuant to 28 U.S.C. § 1331 because the ICAs arise under federal law. As stated in *Verizon Maryland*, ICAs are federally mandated agreements and to the extent the ICA imposes a duty consistent with the Act, that duty is a federal requirement. *Verizon Maryland, Inc. v. Global NAPS, Inc.*, 377 F.3d 355, 364 (4th Cir. 2004).

The fact that this Court has jurisdiction does not end the matter, however. The fact that the Court *could* hear this action does not necessarily mean the Court *should* hear this action. Although the Act details how parties, states and federal courts can draft and approve ICAs, it is silent on how and in what fora parties can enforce ICAs. *Global NAPS, Inc. v. Verizon New England Inc.*, 603 F.3d 71, 83 (1st Cir. 2010). Because the Act does not specifically mandate exhaustion of state action, whether to construe the Act as prescribing an exhaustion requirement is a matter for the Court's discretionary judgment. *Ohio Bell Tel. Co., Inc. v. Global NAPS Ohio, Inc.*, 540 F.Supp.2d 914, 919 (S.D. Ohio 2008).

The Third Circuit Court of Appeals has held that interpretation and enforcement actions that arise after a state commission has approved an ICA must be litigated in the first instance before the relevant state commission. *Core Communications, Inc. v. Verizon Pennsylvania, Inc.*, 493 F.3d 333, 344 (3d Cir. 2007). A party may then proceed to federal court to seek review of the commission's decision. *Id.* Citing *Core*, a district court in Ohio has also held that a complainant is required to first litigate its breach-of-ICA claims before the state commission in order to seek review in the district court. *Ohio Bell*, 540 F.Supp.2d at 919-920 (citing cases from numerous district courts).

On the other hand, in *Central Telephone*, the court held that a party to an ICA is not required to exhaust administrative remedies by bringing claims for breach of an ICA first to a state commission. *Central Telephone*, 759 F.Supp.2d at 778 and 786.

> The Court agrees with the reasoning of the *Core* and *Ohio Bell* opinions. The Act provides for judicial review of a "determination" by the state commission. Until such determination is made, the Court cannot exercise this judicial review. *See Ohio Bell,* 540 F.Supp.2d at 919. As the *Core* court stated: "a state commission's authority to approve or reject an interconnection agreement would itself be undermined if it lacked authority to determine in the first instance the meaning of an agreement that it has approved." *Core,* 493 F.3d at 343 (citing *BellSouth Telecommunications,* 317 F.3d at 1278, n.9).[63]

The Authority is mindful, however, of the restrictions placed upon these proceedings by the Order of the Bankruptcy Court. In an Order issued on October 26, 2011, the Bankruptcy Court ruled that "pursuant to 11 U.S.C. § 362(b)(4), the automatic stay imposed by 11 U.S.C. § 362 . . . is not applicable to currently pending State Commission Proceedings," including proceedings brought by AT&T.[64] However, the Bankruptcy Court further stated that

> any regulatory proceedings . . . may be advanced to a conclusion and a decision in respect of such matters may be rendered; provided however, that nothing herein shall permit, as part of such proceedings:
>
> A. liquidation of the amount of any claim against the Debtor; or
>
> B. any action which affects the debtor-creditor relationship between the Debtor and any creditor or potential creditor.[65]

Therefore, nothing in this Order is intended to permit as part of these proceedings the liquidation of the amount of any claim against Halo or to affect the debtor-creditor relationship between the Parties beyond that permitted in the Bankruptcy Court's October 26, 2011 Order.

AT&T's *Complaint* - Count 1

Count 1 of the *Complaint* alleges that Halo has breached the ICA by impermissibly sending traffic originating from wireline telephones to AT&T, although the interconnection agreement only

[63] *BellSouth Telecommunications, Inc. v. Halo Wireless, Inc,* Case No. 3-11-0795, M.D. Tenn., *Memorandum*, pp. 4-6 (November 1, 2011).
[64] *In re: Halo Wireless, Inc.*, Case No. 11-42464, Bkrtcy. E. D. Tex., *Order Granting Motion of the AT&T Companies to Determine Automatic Stay Inapplicable and for Relief from the Automatic Stay*, p. 1 (October 26, 2011).
[65] *In re: Halo Wireless, Inc.*, Case No. 11-42464, Bkrtcy. E. D. Tex., *Order Granting Motion of the AT&T Companies to Determine Automatic Stay Inapplicable and for Relief from the Automatic Stay*, p. 2.

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permits Halo to send AT&T traffic that originates from wireless networks. The applicable language from the interconnection agreement reads:

> Whereas, the Parties have agreed that this Agreement will apply only to (1) traffic that originates on AT&T's network or is transited through AT&T's network and is routed to Carrier's wireless network for wireless termination by Carrier; and (2) traffic that originates through wireless transmitting and receiving facilities before [Halo] delivers traffic to AT&T for termination by AT&T or for transit to another network.[66]

The Authority interprets the language of the ICA to require Halo only to deliver traffic that has originated through wireless transmitting and receiving facilities. Thus, evidence that Halo has delivered wireline-originated traffic will result in a finding that Halo has breached the ICA.

The Authority has reviewed Halo's *ex parte* filings with the FCC in the *Connect America Fund* docket, where the description of Halo and Transcom's operations is the same as that which has been presented to the TRA in this proceeding. Indeed, reviewing the *ex parte* filings made by Halo makes it clear that the FCC was aware of Halo's assertion that it provided service to ESPs and used wireless technology. In the resulting *Connect America Fund Order*, the FCC addressed and rejected Halo's assertion that traffic from its customer Transcom is wirelessly originated. The *Connect America Fund Order* states:

> We first address a dispute regarding the interpretation of the intraMTA rule. Halo Wireless (Halo) asserts that it offers "Common Carrier wireless exchange services to ESP and enterprise customers" in which the customer "connects wirelessly to Halo base stations in each MTA." It further asserts that its "high volume" service is CMRS because "the customer connects to Halo's base station using wireless equipment which is capable of operation while in motion." Halo argues that, for purposes of applying the intraMTA rule, "[t]he origination point for Halo traffic is the base station to which Halo's customers connect wirelessly." On the other hand, ERTA claims that Halo's traffic is not from its own retail customers but is instead from a number of other LECs, CLECs, and CMRS providers. NTCA further submitted an analysis of call records for calls received by some of its member rural LECs from Halo indicating that most of the calls either did not originate on a CMRS line or were not intraMTA, and that even if CMRS might be used "in the middle,"

[66] J. Scott McPhee, Pre-filed Direct Testimony, pp. 6-7 (December 19, 2011).

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> this does not affect the categorization of the call for intercarrier compensation purposes. These parties thus assert that by characterizing access traffic as intraMTA reciprocal compensation traffic, Halo is failing to pay the requisite compensation to terminating rural LECs for a very large amount of traffic. Responding to this dispute, CTIA asserts that "it is unclear whether the intraMTA rules would even apply in that case."[67]

After clearly describing the operations of Halo, including its use of wireless technology and relationship with Transcom, the FCC found that calls are not originated by Transcom and that wireline originated calls are not reclassified as wireless calls because of a wireless link in the middle of the call path. The FCC in the *Connect America Fund Order* continues:

> We clarify that a call is considered to be originated by a CMRS provider for purposes of the intraMTA rule only if the calling party initiating the call has done so through a CMRS provider. Where a provider is merely providing a transiting service, it is well established that a transiting carrier is not considered the originating carrier for purposes of the reciprocal compensation rules. Thus, we agree with NECA that the "re-origination" of a call over a wireless link in the middle of the call path does not convert a wireline-originated call into a CMRS-originated call for purposes of reciprocal compensation and we disagree with Halo's contrary position.[68]

The Authority agrees with the FCC's rejection of Halo's assertions and finds that the "re-origination" of a call over a wireless link in the middle of the call path does not convert a wireline-originated call into a wireless-originated call for purposes of reciprocal compensation.

Nor does Halo deny that it is sending traffic that originated on the wireline PSTN.[69] In response to the question, "Do you admit that some of the communications in issue actually started on other networks?" Halo's witness Mr. Wiseman responds "Most of the calls probably did start on other networks before they came to Transcom for processing. It would not surprise me if some of them started on the PSTN."[70]

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[67] *Connect America Fund Order*, ¶ 1005 *(footnotes omitted)*. The term "CLEC" refers to Competitive Local Exchange Carrier.
[68] *Connect America Fund Order*, ¶ 1006 *(footnotes omitted)*.
[69] The term "PSTN" refers to the Public Switched Telephone Network, which means the calls were originated on the landline network.
[70] Russ Wiseman, Pre-filed Direct Testimony, p. 14 (December 19, 2011).

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AT&T's traffic study also demonstrates that Halo has delivered wireline traffic to AT&T. AT&T estimates that about 74% of the traffic Halo sends to AT&T originates on the networks of landline carriers.[71] Even though Halo does not deny it has likely sent wireline traffic to AT&T, it contests the accuracy of AT&T's traffic study. Halo's arguments against AT&T's traffic study are: (1) that telephone numbers are an unreliable indictor of who originates a call, if wireless technology is used for the call and where the call originates and (2) calls that originate using IP technology are not landline calls.

The Authority acknowledges that a certain degree of imprecision can occur when analyzing the origin to individual telephone calls, due to factors such as the advent of number portability and the growth of wireless and IP telephony. However, because of these technical issues, the industry has developed conventions and practices to evaluate calls for the purpose of intercarrier compensation. The Authority finds that the methodology used to collect the data and the interpretation of the data in the AT&T study are based upon common industry practices to classify whether traffic is originated on wireline or wireless networks. In addition, the Authority finds that the convention of collecting data for a single week is sufficient to demonstrate whether wireline traffic was sent to AT&T by Halo. Further, Halo identifies several calls included in AT&T's traffic study as likely being IP-originated,[72] which is considered by the industry to be wireline-originated for the purpose of intercarrier compensation rules.[73]

Based upon the Authority's agreement with the FCC's dispositive decision in the *Connect America Fund Order*, Halo's admission that it has delivered wireline-originated and IP-originated traffic to AT&T, and the information contained in AT&T's traffic study, the Authority finds that Halo has materially breached its interconnection agreement with AT&T.

[71] Mark Neinast, Pre-filed Direct Testimony, pp. 3, 11 and Attachment MN-3 (December 19, 2011).
[72] Russ Wiseman, Pre-filed Rebuttal Testimony, pp. 8-9 (January 3, 2012).
[73] Mark Neinast, Pre-filed Rebuttal Testimony, p. 6 (January 3, 2012).

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AT&T's *Complaint* - Count 2

Count 2 of the *Complaint* alleges that Halo breached its interconnection agreement with AT&T by improperly altering call detail information that allows AT&T to properly classify calls for the purpose of intercarrier compensation. Section XIV.G of the ICA requires:

> The parties will provide each other with the proper call information, including all proper translations for routing between networks and any information necessary for billing where BellSouth provides recording capabilities. This exchange of information is required to enable each party to bill properly.[74]

In addition, Section XIV.E of the ICA also requires Halo to provide many types of call detail information, including the Charge Number.

In most cases, industry members use the Calling Party Number ("CPN") to determine whether a call is jurisdictionally long-distance or local. In rare cases a CN is included in the call detail record to indicate the number that will actually be financially responsible for the call. For example, some businesses want all calls made by its employees in a particular office to be billed to single number. Halo admits that it uses Transcom's BTN to populate the CN fields on traffic since February 2011.[75]

As with Count 1, the Authority finds that the FCC's *Connect America Fund Order* dispositively resolves this issue. Because the FCC dismisses "re-origination" by Transcom, Transcom clearly cannot be the originating entity and thus inserting Transcom's number as the Charge Number is inappropriate. Therefore, because Halo has improperly altered call detail information, the Authority finds that Halo has materially breached its interconnection agreement with AT&T.

[74] *Complaint*, p. 4 (July 26, 2011).
[75] Russ Wiseman, Pre-filed Direct Testimony, pp. 29-30 (December 19, 2011).

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AT&T's *Complaint* – Count 3

Count 3 of the *Complaint* alleges that Halo has not properly compensated AT&T for the traffic it has delivered. Halo has been paying AT&T reciprocal compensation, which is only appropriate if the end-user initiated the call wirelessly within the MTA in which it is terminated, instead of switched access charges, which are appropriate for wireline-originated calls. The FCC's decision in the *Connect America Fund Order*, with which the Authority concurs, is that Halo's traffic does not originate within an MTA with its customer Transcom. In addition, AT&T's traffic study demonstrates that AT&T terminated calls that originated outside the MTA where it was terminated. Further, Halo's use of MTA specific numbers to assert a 100% intra-MTA factor necessarily implies that switched access charges were avoided since Transcom was not the true originating party.

The Authority's findings on Counts 1 and 2 of the *Complaint* concerning the wireline and IP-origination of Halo's traffic necessarily lead to the conclusion that Halo has not been properly compensating AT&T for the traffic it has delivered. The payment of reciprocal compensation is only appropriate if the end-user, which is not Transcom, initiated the call wirelessly within the MTA where it is terminated. Thus, Halo has failed to compensate AT&T for calls where it was due switched access charges. Therefore, the Authority finds that Halo is liable to AT&T Tennessee for access charges on the interstate and intrastate interLATA and intraLATA landline traffic it has sent to AT&T Tennessee.

AT&T's *Complaint* - Count 4

Count 4 of the *Complaint* alleges that Halo has refused to pay AT&T for transport facilities. Section V.B, page 10 of the ICA states:

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> BellSouth will bear the cost of the two-way trunk group for the proportion of the facility utilized for the delivery of BellSouth originated Local traffic to Carrier's POI within BellSouth's service territory and within the LATA (calculated based on the number of minutes of traffic identified as BellSouth's divided by the total minutes of use on the facility), and Carrier will provide or bear the cost of the two-way trunk group for all other traffic, including Intermediary traffic.[76]

Halo does not dispute that it terminates all of its traffic on AT&T's network, but it does dispute AT&T's charges for the two-way trunk groups that connect the Parties. Halo details the arrangement of facilities with which it connects to AT&T in various locations, and it cites from FCC rules to argue that AT&T cannot charge Halo for facilities on AT&T's side of the POI.[77] This line of reasoning might be appropriate if Halo were a CLEC. However, Halo is not a CLEC but rather a CMRS provider, and under the ICA it signed with AT&T, each party is required to pay its share of the facilities cost. The Authority finds that Halo owes AT&T for the proportionate share of the facilities that connect Halo's Point of Presence ("POP") to AT&T's network as required by the ICA. The ICA allocates the costs of facilities based on the proportion of traffic each party sends to the other party, and since Halo sends 100 % of its traffic to AT&T, the Authority finds that Halo should pay 100% of the cost for these facilities as required by the ICA.

Transcom Is Not an Enhanced Service Provider

The FCC has established a bright-line rule that the "enhanced" service designation does not apply to services that merely "facilitate establishment of a basic transmission path over which a telephone call may be completed, without altering the fundamental character of the telephone service," and that a service is not "enhanced" when the service does not alter the fundamental character of the service *from the end-user's perspective*.[78] Thus, for example, the FCC has held that

[76] Mark Neinast, Pre-filed Direct Testimony, p.19 (December 19, 2011).
[77] Russ Wiseman, Pre-filed Direct Testimony, p. 41 (December 19, 2011).
[78] *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934*, 11 FCC Rcd. 21905, ¶ 107 (1996).

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services are not "enhanced" when customers use the same dialing method for allegedly "enhanced" calls that they would for any other call,[79] or where the alleged "enhancement" was made "without the advance knowledge or consent of the customer" that placed the call and the customer is not "provided with the 'capability' to do anything other than make a telephone call."[80]

The Authority finds that Transcom's services fail to meet the FCC's bright-line rule, since the record in this proceeding indicates that Transcom provides no services to actual end-users and does not offer any enhancements discernable to the person that actually places the call.[81] The record also supports the conclusion that end-users are completely unaware that Transcom is even involved in call delivery.[82] Nor does Halo's testimony prove that Transcom is an ESP. Halo asserts that Transcom

> ... employs computer processing applications that act on the format, content, code, protocol or similar aspects of the received information. The platform will provide the customer additional, different, or restructured information. This is done by generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information via telecommunications.[83]

However, despite the claim of computer processing of data, Transcom only reduces background noise and inserts "comfort noise" in periods of silence so that those periods of silence are not mistaken for the end of a call.[84] The Pennsylvania Public Utility Commission rejected a similar claim relating to Transcom's services, finding that "the removal of background noise" and

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[79] *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, 19 FCC Rcd. 7457, ¶ 15 (2004) ("*IP-in-the-Middle Order*").
[80] *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, 20 FCC Rcd. 4826, ¶ 16, n. 28 (2005) ("*AT&T Calling Card Decision*").
[81] Mark Neinast, Pre-filed Rebuttal Testimony, p. 5 (January 3, 2012).
[82] *Id.*
[83] Robert Johnson, Pre-filed Rebuttal Testimony, p. 12 (January 3, 2012).
[84] *Id.* at 12-13.

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"the insertion of white noise" do not make Transcom an ESP.[85] The alleged "enhancements" that Transcom claims it makes to calls that transit its network are simply processes to improve the quality of the call. Telecommunications networks have been routinely making those types of improvements for years and, in some cases, decades. Carriers have routinely incorporated equipment into networks that have, for example, expanded the dynamic range of a voice call to improve clarity. The conversion from analog to digital and back to analog has significantly improved call quality, yet none of these processes are deemed "enhancements" in the sense of an ESP.[86] For the reasons above, the Authority finds that Transcom is not an ESP for this particular traffic.

IT IS THEREFORE ORDERED THAT:

1. Halo Wireless Inc.'s *Motion to Dismiss Complaint With Prejudice* is denied.

2. BellSouth Telecommunications, LLC d/b/a AT&T Tennessee is authorized to terminate the interconnection agreement previously approved by the Authority in TRA Docket No. 10-00063 and to stop accepting traffic from Halo Wireless, Inc.

3. Halo Wireless, Inc. is liable to BellSouth Telecommunications, LLC d/b/a AT&T Tennessee for access charges on the interstate and intrastate interLATA and intraLATA landline traffic it has sent to AT&T Tennessee thus far and for the interconnection facilities it has obtained from AT&T Tennessee. However, nothing in this Order is intended to permit as part of these proceedings the liquidation of the amount of any claim against Halo or to affect the debtor-creditor relationship between the Parties beyond that permitted in the *Order Granting Motion of the AT&T*

[85] *Palmerton Tel. Co. v. Global NAPS South, Inc., et al.*, PA PUC Docket No. C-2009-2093336, 2011 WL 1259661, at 16-17 (Penn. PUC, March 16, 2010). ("We find that Transcom does not supply GNAPS with 'enhanced' traffic under applicable federal rules"). Note that the Pennsylvania Public Utility Commission specifically rejected the Transcom Bankruptcy Court's April 28, 2005 Memorandum Opinion finding Transcom to be an ESP on the basis that Transcom had indicated in that proceeding that it provided "data communications services over private IP networks (VoIP)." *Id.* The Authority is not persuaded by the Transcom bankruptcy court rulings regarding Transcom's status as an ESP, either.

[86] *Id.*

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Companies to Determine Automatic Stay Inapplicable and for Relief From the Automatic Stay [Dkt. No. 13], issued by the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division, in Case No. 11-42464-btr-11 on October 26, 2011. AT&T Tennessee may pursue further action for the collection of access charges or facilities charges in the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division, or other appropriate fora as permitted by that Court.

4. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen days from the date of this Order.

5. Any party aggrieved by the Authority's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty days from the date of this Order.

Kenneth C. Hill, Chairman

Sara Kyle, Director

Mary W. Freeman, Director

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held February 11, 2010

Commissioners Present:

James H. Cawley, Chairman
Tyrone J. Christy, Vice Chairman, Statement
Kim Pizzingrilli
Wayne E. Gardner, Statement
Robert F. Powelson

Palmerton Telephone Company

v. Docket C-2009-2093336

Global NAPs South, Inc., Global NAPs Pennsylvania, Inc., Global NAPs, Inc. and Other affiliates

OPINION AND ORDER

BY THE COMMISSION:

I. Introduction

Before the Commission for consideration and disposition are the Exceptions of Palmerton Telephone Company (Palmerton), and of Global NAPs South, Inc., Global NAPs Pennsylvania, Inc., Global NAPs, Inc. and Other affiliates (Global NAPs), to the Initial Decision (ID) of Administrative Law Judge

Wayne L. Weismandel (ALJ) issued August 7, 2009. Reply Exceptions were filed by Palmerton, Global NAPs and Verizon Pennsylvania, Inc. (Verizon).

II. History of the Proceeding

The history of this proceeding is very involved and is set forth with admirable clarity by the ALJ on pages 1-11 of his ID. We will, therefore, adopt that History, providing a summary here.

On March 4, 2009, Palmerton filed a multi-count Formal Complaint (Complaint) with the Commission at Docket No. C-2009-2093336, against Global NAPs. In its Complaint, Palmerton alleged that Global NAPs: (1) has refused to pay tariffed access charges for interexchange services provided by Palmerton, in violation of 66 Pa. C.S. § 3017(b); (2) has obtained interexchange traffic termination service from Palmerton without submitting an access service request, in violation of Palmerton's tariff; (3) has asserted a bad faith dispute of the carrier access bills (CABs) submitted by Palmerton for termination of traffic; (4) has failed to pay terminating access bills within thirty days of submission of the bill, in violation of Palmerton's intrastate switched access charge tariff on file with the Commission; (5) is operating as an access provider and/or an interexchange carrier (IXC) without certification by the Commission in violation of 66 Pa. C.S. § 1102(a); and (6) is violating its competitive local exchange carrier (CLEC) certificate from the Commission, by failing to maintain its financial and legal fitness.

Simultaneously with its Complaint, Palmerton filed a Petition for Interim Emergency Order (Petition), pursuant to 52 Pa. Code § 3.6, which requested that Global NAPs be required to provide adequate assurance of payment

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ability or to pay all outstanding intrastate, interexchange access bills, pending final resolution of this proceeding.

By Opinion and Order entered May 5, 2009, we directed the presiding ALJ to schedule this matter for expedited consideration with the goal of completing the proceeding on Palmerton's Complaint within 120 days of the entry date of the Commission's Order.

On April 20, 2009, the ALJ issued an Order joining Verizon as an indispensable party in this case.

On May 18, 2009, the ALJ issued an Order Establishing Financial Security directing Global NAPs to provide documentation no later than May 28, 2009, demonstrating that Global NAPs had obtained a surety bond in favor of Palmerton in the amount of $246,108.20, pending a Final Order by the Commission in the underlying Complaint case.

On May 19, 2009, Global NAPs discontinued terminating traffic to Palmerton.

On May 26, 2009, the ALJ reduced the amount of the surety bond to $205,972.79 reflecting the fact that Global NAPs is no longer sending Voice over Internet Protocol (VoIP) traffic to Palmerton. However, Global NAPs subsequently failed to file the documentation required by the ALJ.

On May 29, 2009, Palmerton filed a Request for Sanctions against Global NAPs with the ALJ.

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By Opinion and Order entered on June 5, 2009, the ALJ issued an Initial Decision Imposing Sanctions which ordered a civil penalty in the amount of $1,000 per day commencing on May 29, 2009, and accruing until such time as Global NAPs provides documentation to the Commission and to Palmerton demonstrating that Global NAPs has obtained a surety bond in favor of Palmerton in the amount of $205,972.79.

On June 10, 2009, Global NAPs filed Exceptions to the Initial Decision Imposing Sanctions, and on June 15, 2009, Palmerton filed Reply Exceptions.

On June 25, 2009, we denied Global NAPs' Exceptions and adopted the ALJ's Initial Decision Imposing Sanctions.

On July 9-10, 2009, hearings were held with respect to the substantive issues of the Complaint.

On July 20, 2009, Palmerton and Global NAPs each filed and served their Main Brief. Also on July 20, 2009, Verizon filed and served a letter stating that it would not be filing a Main Brief.

On July 27, 2009, Palmerton, Global NAPs and Verizon each filed and served their Reply Briefs.

On August 7, 2009, the ALJ issued his Initial Decision: (1) dismissing Palmerton's Complaint except as applicable to Global NAPs South, Inc.; (2) imposing a civil penalty of $750 on Global NAPs South, Inc. for three violations of the provisions of 52 Pa. Code § 63.36; (3) imposing a civil penalty of $1,000 per day commencing May 29, 2009, through and including the date of a

final Commission Order in this case; and (4) issuing a directive that Global NAPs South, Inc. cease and desist from further violations of the Pennsylvania Public Utility Code and of the regulations and orders of the Commission. The Initial Decision set forth sixty-four Findings of Fact and ninety Conclusions of Law.

As noted, on August 31, 2009, Palmerton and Global NAPs filed Exceptions to the Initial Decision. Verizon filed a letter stating that it would not be filing Exceptions.

On September 10, 2009, Palmerton, Global NAPs and Verizon each filed Reply Exceptions.

III. Discussion

This Formal Complaint constitutes a case of first impression for this Commission. In sum, the Complaint concerns a dispute over intercarrier compensation involving the termination of certain calls by Palmerton where those calls have been indirectly transmitted to Palmerton by GNAPs. It is beyond doubt that a number of these calls are VoIP calls. Because of certain actions or inaction of the Federal Communications Commission (FCC) and certain decisions of federal appellate courts that relate to VoIP and Internet Protocol (IP) enabled services, there exists a certain degree of confusion in this proceeding regarding whether this Commission possesses and can exercise the appropriate subject matter jurisdiction to resolve this intercarrier compensation dispute. However, based on existing Pennsylvania and federal law, this Commission's subject matter jurisdiction can resolve this intercarrier compensation dispute.

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A. The Commission's Subject Matter Jurisdiction

1. Analytical Framework

ALJ Weismandel's analysis of whether this Commission possesses subject matter jurisdiction is predicated on the type of traffic delivered by GNAPs to Palmerton. ALJ Weismandel's ID states in relevant part:

> Complicating the question of subject matter jurisdiction in this case is the fact that *the key issue of dispute between the parties, the very nature of the telephone traffic delivered by Global NAPs to Palmerton, is determinative of the Commission's jurisdiction.* Palmerton's Complaint alleges that Global NAPs owes intrastate access charges pursuant to the Pennsylvania Telephone Association Access Service Tariff, PA P.U.C. Tariff No. 11. To state the obvious, if the telephone traffic is truly intrastate, and not otherwise excluded from the imposition of access charges or from Commission jurisdiction, then Palmerton has a meritorious claim. However, if the traffic is of a type over which the Commission's jurisdiction has been preempted or *is not a telecommunications service*, then Palmerton's claim for unpaid access charges is dependent upon Palmerton's ability to establish that the telephone traffic for which it billed Global NAPs is, in fact, intrastate telecommunications service not otherwise removed from the Commission's jurisdiction.

ID at 22-23 (emphasis added).

First, excluding any consideration of the interstate versus intrastate *jurisdictional* classification of the traffic at issue – a matter that is addressed below — we find that strict reliance on the traffic protocols for the related calls that are being transmitted by GNAPs and eventually terminate in Palmerton's network is not determinative of the Commission's subject matter jurisdiction both in terms of applicable Pennsylvania and federal law and sound policy. We find that strict reliance on these traffic protocols for these calls places the legal and technical

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analysis in this matter on a legally unsustainable course. This approach also has the capacity of creating undesirable regulatory policy results. To use a simple analogy to the situation that the Commission faces in this proceeding, consider the following simplified hypothetical situation:

- The Commission regulates both the equipment and the transportation *services* of a truck company that conveys *mixed* merchandise which ends up at a transshipment terminal.

- The Commission exercises a certain degree of regulation over the access and the access fees for the use of the transshipment terminal facilities by the trucking company.

- Different fee schedules apply for the transshipment terminal access and handling of the mixed merchandise items carried by the trucking firm. The merchandise items that carry a discernible label identifying their origin as being within the Commonwealth are charged access fees prescribed by the Commission. Certain origin classifications may have further effects on these fees that are under the Commission's jurisdiction.

In this hypothetical situation, the Commission, the trucking firm, and the transshipment terminal operator are or should be totally indifferent as to the types of merchandise carried by the transport vehicles of the trucking firm. The Commission focuses on the common carrier transportation function and service of the trucking company, the access service provided by the transshipment facility that is open to all trucking common carriers, and the transshipment facility's access fees that involve merchandise items of intrastate origin. It goes without saying that the Commission would face an interesting situation – as it does in this proceeding – if the trucking firm asserts that it is able to access and drop off certain types of merchandise items at the transshipment facility (which is then obliged to appropriately handle them), but it is not obligated to pay any access or handling fees for certain "unique types" of merchandise items. The problem would become even more complex if the trucking firm were also to assert that the

Commission cannot address this situation because of the "unique type" of these merchandise items.

Assuming that the Commission was to somehow voluntarily abstain from addressing this situation, one would wonder what could be the incentive of the transshipment facility to accept and handle any and all of the merchandise items delivered to it by the trucking firm while potentially incurring a financial loss in the process. On the other hand, the Commission has the choice of more precisely focusing its analysis of the pertinent situation on the trucking firm's common carrier transportation service and the transshipment facility's access function. Under this analytical prism, the trucking firm still performs a common carrier transportation service no matter the type of merchandise that it conveys to the transshipment facility for final handling and, in the hypothetical situation, this activity is squarely within the Commission's subject matter jurisdiction.

2. GNAPs Provides Telecommunications Services and the Commission Has Subject Matter Jurisdiction

GNAPs' function of transmitting and then indirectly accessing and terminating traffic at Palmerton's network facilities is a common carrier telecommunications service, and the Commission has subject matter jurisdiction. GNAPs' fundamental telecommunications service function is not *altered* by the fact that GNAPs transports a "mix" of traffic including the "unique type" of VoIP calls. A large part of the evidentiary record in this proceeding has been consumed in an attempt to ascertain whether the Commission's subject matter jurisdiction is dependent upon the traffic protocols of the calls transported by GNAPs and indirectly terminated at Palmerton's facilities rather than on the overall transportation function that, in and of itself, legally and technically constitutes a common carrier telecommunications service *irrespective* of the technical protocol

classification of the traffic being carried. This telecommunications service is clearly provided by a common carrier telecommunications utility that has been duly certificated to operate as such by this Commission within specific areas of the Commonwealth.[1]

The overwhelming weight of both Pennsylvania and federal legal authority in this matter supports our legal conclusion that GNAPs is engaged in the provision of common carrier telecommunications service in transporting VoIP and other types of traffic calls that are not IP-based, e.g., conventional wireline voice call traffic transmitted under time division multiplexing or TDM, wireless calls, asynchronous transfer mode or ATM traffic, etc. We recognize that the technical fact that GNAPs accepts, handles, and transports traffic of various technical transmission protocols is well established.[2] The fact that GNAPs handles and transports IP-based traffic does not detract from the overall common carrier telecommunications service which GNAPs performs. Also, we rely on the fact that this Commission found in its landmark *Core* decision that the provision of common carrier access for information service providers (ISPs) constitutes

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[1] GNAPs is a competitive local exchange carrier (CLEC) authorized to operate in the service areas of various incumbent local exchange carrier (ILEC) telephone companies. ID at 12. Although GNAPs is not authorized to operate in Palmerton's service area and does not have a direct interconnection agreement with Palmerton, GNAPs' transported call traffic indirectly terminates at Palmerton's facilities by transiting the network of Verizon Pennsylvania Inc. (Verizon PA), another ILEC. Verizon PA and GNAPs have an interconnection agreement. *Petition of Global NAPs South, Inc. For Arbitration pursuant to 47 U.S.C. §252(b) of Interconnection Rates, Terms and Conditions with Verizon Pennsylvania Inc.*, Docket No. A-310771F7000, Order entered April 21, 2003.

[2] GNAPs Witness Mazuret, Tr. 850, 925. For a technical description of the ATM and TDM types of traffic, see Harry Newton, *Newton's Telecom Dictionary*, 20th ed. (CMP Books, San Francisco, CA 2004), at 78 and 834.

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"telephone exchange service" and, naturally, a telecommunications service. The Commission stated:

> We find the FCC's treatment of dial-up access to ISPs to be more consistent with the Core position. That is ISPs themselves, are treated as end users of telecommunications services, while the underlying service they provide to ISP subscribers, Internet access, is information.[3]

In affirming the Commission's *Core* decision, the Commonwealth Court relied on applicable federal law, stating:

> The FCC Pole Attachment Decisions hold that the offering of *transmission path service on a non-discriminatory basis to the public by a common carrier is telecommunications service.* The FCC Pole Attachment Decisions confirm that internet service is an information service, but that the *transmission path* needed to provide that internet service *is a telecommunications service if the transmission path service is offered to the public by a common carrier.* Thus, the Commission was correct in determining that transmission path service is a telecommunications service *under state and federal law.*

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[3] This observation is not to suggest a particular position on the "one-call" versus "two calls" debate associated with ISP-bound compensation litigation. *Application of Core Communications, Inc. for Authority to amend its existing Certificate of Public Convenience and necessity and to expand Core's Pennsylvania operations to include the Provision of competitive residential and business Local exchange telecommunications services throughout the Commonwealth of Pennsylvania, et al.*, Docket Nos. A-310922F0002AmA, A-3100922F0002AmB, (Order entered December 4, 2006) at 26, *aff'd Rural Tel. Co. Coalition v. Pa. Pub. Util. Comm'n*, 941 A.2d 751 (Pa. Cmwlth. 2008) (*Core Appeal Decision*).

Core Appeal Decision, 941 A.2d at 758 (emphasis added).[4]

We also reached a similar conclusion when this Commission certificated Sprint Communications Company L.P. as a CLEC provider of wholesale telecommunications "platform" services. Our *Sprint* Order noted with approval Sprint's position that the "mere fact that Sprint uses Internet Protocol – a particular technology adopted by most of the cable industry for placing voice traffic onto a hybrid fiber coax network – does not render Sprint's service an internet service."[5] The Commission's *Core* and *Sprint* decisions were paralleled by the federal *Time Warner* declaratory ruling that was issued by the FCC in March 2007. The FCC stated:

> 9. Consistent with Commission precedent, we find that the Act [federal Communications Act of 1934, as amended] does not differentiate between the provision of telecommunications services on a wholesale or retail basis for the purposes of sections 251(a) and (b), and we confirm that providers of wholesale telecommunications services enjoy the same rights as any "telecommunications carrier"

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[4] The Commonwealth Court relied on the following FCC decisions: *In the matter of Fiber Technology Networks, L.L.C. v. North Pittsburgh Telephone Company*, FCC File No. EB-05-MD-014, 22 FCC Rcd 3392, 2007 FCC LEXIS 1593 (February 23, 2007); *In the matter of DQE Communications Network Services, LLC v. North Pittsburgh Telephone Company,* FCC File No. EB-05-MD-027, 22 FCC Rcd 2112, 2007 FCC LEXIS 1066 (February 2, 2007) (collectively, FCC Pole Attachment Decisions).

[5] *Application of Sprint Communications Company L.P. For Approval of the Right to Offer, Render, Furnish or Supply Telecommunications Services as a Competitive Local Exchange Carrier to the Public in the Service Territories of Alltel Pennsylvania, Inc., Commonwealth Telephone Company and Palmerton Telephone Company*, Docket Nos. A-310183F0002AMA, A-310183F0002AMB, A-310183F0002AMC, (Order entered December 1, 2006) at 36.

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under these provisions of the Act.[6] We further conclude that the statutory classification of the end-user service, *and the classification of VoIP specifically, is not dispositive of the wholesale carrier's rights under section 251.*

10. The Act defines "telecommunications" to mean "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." [47 U.S.C. § 153(43)] The Act defines "telecommunications service" to mean "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." [47 U.S.C. § 153(46)] Finally, any provider of telecommunications services is a "telecommunications carrier" by definition under the Act. [47 U.S.C. § 153 (44)]

The FCC went on to state the following on how its *Time Warner* ruling relates to intercarrier compensation issues:

17. Certain commenters ask us to reach other issues, including the application of section 251(b)(5) and the classification of VoIP services. [*See, e.g.,* Qwest Comments at 6 ("The Nebraska position is obviously dependent on how the Commission ultimately classifies

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[6] To resolve the confusion over the meaning of "wholesale," we affirm the longstanding Commission [FCC] usage of a wholesale transaction of a service or product as an input to a further sale to an end user, in contrast to a retail transaction for the customer's own personal use or consumption. *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Second Report and Order, 14 FCC Rcd 19237, 19423, ¶ 13 (1999) ("Black's Law Dictionary defines retail as '[a] sale for final consumption in contrast to a sale for further sale or processing (*i.e.*, wholesale) ... to the ultimate consumer") (quoting Black's Law Dictionary 1315 (6th ed. 1990)). *In re Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55 (FCC March 1, 2007), Memorandum Opinion and Order, DA-07-709, *slip op.*, ¶¶ 9-10, at 5 (emphasis added) (*Time Warner* FCC decision). *See also* Palmerton Exc. at 26.

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> VoIP service").] We do not find it appropriate or necessary here to resolve the complex issues surrounding the interpretation of Title II more generally or the subsections of section 251 more specifically that the Commission is currently addressing elsewhere on more comprehensive records. [*See, e.g., Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, CC Docket No. 01-92, 20 FCC Rcd 4685 (2005).] For example, the question concerning the proper statutory classification of VoIP remains pending in the *IP-Enabled Services* docket. [*IP-Enabled Services*, 20 FCC Rcd at 10245. Similarly, we disagree with the assertions that it is necessary to complete the proceedings pending in the IP-enabled services, intercarrier compensation, and universal service dockets in order to take action on or instead of taking action on this Petition. *See, e.g.*, NTCA Reply Comments at 5-6.] Moreover, in this declaratory ruling proceeding we do not find it appropriate to revisit any state commission's evidentiary assessment of whether an entity demonstrated that it held itself out to the public sufficiently to be deemed a common carrier under well-established case law. In the particular wholesale/retail provider relationship described by Time Warner in the instant petition, the wholesale telecommunications carriers have assumed responsibility for compensating the incumbent LEC for the termination of traffic under a section 251 arrangement between those two parties. We make such an arrangement an explicit condition to the section 251 rights provided herein. [*See, e.g.,* Verizon Comments at 2 (stating that one of the wholesale services it provides to Time Warner Cable is "administration, payment, and collection of intercarrier compensation, including exchange access and reciprocal compensation"); Sprint Nextel Comments at 5 (offering to provide for its wholesale customers "intercarrier compensation, including exchange access and reciprocal compensation").] We do not, however, prejudge the Commission's determination of what compensation is appropriate, or any other issues pending in the *Intercarrier Compensation* docket.

Time Warner FCC Decision, ¶ 17, at 11. *See also* Palmerton Exc. at 26.

The FCC Pole Attachment Decisions that were cited by the Commonwealth Court also confirm that there are no material differences between Pennsylvania and federal law in determining whether entities that have been

certificated by this Commission as competitive telecommunications carriers indeed provide *common carrier telecommunications services.*[7] In short, we determine that GNAPs is a telecommunications common carrier providing telecommunications services in Pennsylvania.

The next area of focus must be whether the Commission has subject matter jurisdiction over the present intercarrier compensation dispute.

The overwhelming majority of available legal authority clearly indicates that both state utility regulatory commissions and various courts have adjudicated intercarrier compensation disputes involving GNAPs in a number of jurisdictions. The related adjudications took place even though these intercarrier compensation disputes involved the common carrier exchange of VoIP traffic between GNAPs and other telecommunications service providers. These state utility regulatory commissions and courts conducted these adjudications by asserting the appropriate subject matter jurisdiction over these intercarrier compensation disputes. The fact that the underlying traffic exchanged between GNAPs and other telecommunications carriers was of the VoIP type did not prove to be determinative of subject matter jurisdiction for these regulatory bodies and courts, nor did it become an insurmountable legal barrier. Similarly, the fact that the FCC has not yet made definitive pronouncements in its long pending but still unresolved proceedings relating to intercarrier compensation and the proper classification of IP-based services, including VoIP, did not detract from the adjudication of intercarrier compensation disputes involving GNAPs by a majority of state utility regulatory commissions and courts of proper jurisdiction.

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[7] *In re Fiber Technologies Networks, L.L.C. v. North Pittsburgh Telephone Company*, File No. EB-05-MD-014 (FCC Rel. February 23, 2007), DA-07-486, *slip op.*, ¶¶ 11-16, at 5-7; *In re DQE Communications Network Services, LLC v. North Pittsburgh Telephone Company*, File No. EB-05-MD-027 (FCC Rel. February 2, 2007), DA-07-472, *slip op.*, ¶¶ 11-13, at 5-6.

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A relevant decision of the United States District Court for the Eastern District of New York observed the following while deciding opposing motions for partial summary judgment and dismissal:

> There are several fatal flaws in Global's [GNAPs'] argument. First and foremost, it is not essential to determine what the entire regulatory regime for VoIP traffic should be in order to determine the dispute pending before the Court. Critically, as is currently the case regarding traditional reciprocal compensation, even if the FCC had made such a determination, the parties would have been free to opt out of any such regulatory regime by a mutual nondiscriminatory, arms length agreement. *See Iowa Utilities Bd.*, 525 U.S. at 372-73, 119 S.Ct. 721; *Verizon Maryland, Inc. v. Public Service Comm'n of Maryland*, 535 U.S. 635, 638-39, 122 S.Ct. 1753, 152 L.Ed.2d 871 (2002)
>
> Shotgun wedding notwithstanding, the parties [Verizon New York Inc. and GNAPs] have developed a complex technical and contract-based infrastructure of long standing to deliver for their customers a variety of telecommunications services. VoIP traffic delivery is certainly one of them; in fact Global acknowledges that the lion's share of the traffic covered by the [interconnection] agreements now before the Court was VoIP traffic *when the agreements were executed. See* Masuret Aff. at ¶ 6. Neither side was waiting for the FCC to decide VoIP's regulatory regime when they made their bargain. And, what is in issue here is the bargain. Who pays for what *as agreed.*
>
> Ultimately, Verizon is correct: at its essence the dispute is a billing dispute. There is no reason to wait for Godot or the adoption of a regulatory scheme for VoIP traffic by the FCC. The determination of disputed contractual obligations is well within the conventional experience of the district court.
>
> This point dovetails well in applying the second and fourth prong of the test. Although the FCC is quite appropriately concerned with creating a uniform scheme to regulate VoIP traffic going forward, when the parties brought to the FCC their contractual dispute arising out of the VoIP traffic that they were actually handing off to each

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> other every day, Cmplt. at ¶ 36, the FCC took a pass and sent them packing. *See* Ingram Aff. in Opposition to Motion to Dismiss at 4-5, 13. It was a response that is most instructive. Obviously the FCC had to be well aware of the existence of substantial VoIP traffic in the telecommunications marketplace otherwise it would not be pondering overall regulation. Equally obvious, the FCC had to be aware also that the existing VoIP traffic was moving at someone's expense. The fact that neither on the complaint of Global nor in any other proceeding referred to us by the parties has the FCC deemed it necessary to intervene to upset compensation schemes involving such traffic agreed to by the carriers, *see, e.g., In re Vonage Holding Corp.*, 19 F.C.C.R. at 22,404, leads to the inescapable conclusion that the FCC is in the interim deferring to the existing intercarrier agreements as controlling such billing issues and has left for courts or arbitration to resolve any contractual disputes about VoIP traffic arising out of them.

Verizon New York Inc. v. Global NAPS, Inc., 463 F.Supp.2d 330, 342 (E.D.N.Y. 2006), 2006 U.S. Dist. LEXIS 87085 (emphasis in original).[8] *See also* Palmerton MB at 39, Palmerton Exc. at 28.

In an interconnection agreement dispute involving GNAPs and Verizon New England, the U.S. Court of Appeals for the First Circuit sustained the initial findings *and jurisdiction* of the Massachusetts Department of Telecommunications and Energy (Mass. DTE). The First Circuit Court established that the Mass. DTE was not preempted by the FCC's *ISP Remand Order*[9] on deciding an interconnection agreement dispute even when it related to

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[8] The same court observed that: "To state the obvious, cost does attach to the provision of these [access] services" for the completion of interexchange calls. 463 F.Supp.2d at 334.

[9] *Local Competition Provisions In the Telecommunications Act of 1996 (ISP Remand Order)*, 16 FCC Rcd. 9151 (2001), 2001 WL 455869.

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information or ISP bound traffic between GNAPs and Verizon New England.[10] The First Circuit Court stated:

> Global NAPs' argument ignores an important distinction. The FCC has consistently maintained a distinction between local and "interexchange" calling and the intercarrier compensation regimes that apply to them, and reaffirmed that states have authority over intrastate access charge regimes. Against the FCC's policy of recognizing such a distinction, a clearer showing is required that the FCC preempted state regulation of both access charges and reciprocal compensation for ISP-bound traffic.

Global NAPs Inc. v. Verizon New England, Inc., 444 F.3d 59, 73 (1st Cir. 2006). *See also* Palmerton MB at 41, Palmerton Exc. at 24.

An intercarrier compensation dispute between GNAPs and certain rural ILECs that are subsidiaries of the Telephone and Data Systems Inc. (TDS) holding company in the State of New Hampshire presents strong parallels with the case before us. The November 10, 2009 ruling of the New Hampshire Public Utilities Commission (NH PUC) is relevant here. The NH PUC observed the following in its decision:

> TDS [four TDS ILECs] complains that Global NAPs is accessing TDS' local exchange network to terminate long distance toll calls to end-user customers located in TDS service areas without paying applicable charges. Nine other carriers [ILECs] intervened in this proceeding with similar concerns. Global NAPs argues that the calls it transmits via TDS's network are not subject to charges of any kind because they are Enhanced Service Provider (ESP) calls exempted by the FCC from access charges. Global NAPs is not itself an ESP,

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[10] *Global NAPs Inc. v. Verizon New England, Inc.*, 444 F.3d 59 (1st Cir. 2006). The present reference to this court case that affirmed the Mass. DTE intercarrier compensation treatment for VNXX ISP-bound calls is not dispositive of the same issue in other proceedings that are still pending before this Commission. Palmerton MB at 41-42 n. 99.

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> however, rather, it provides *call transport services* to ESPs, who, in turn, provide call initiation and reception services to end users. To resolve this dispute, we must consider the legal framework pertaining to network access, the nature of Global NAPs traffic, and the applicable burden of proof.

Hollis Telephone, Inc., Kearsarge Telephone Co., Merrimack County Tel. Co., and Wilton Telephone Co., DT 08-28, Order No. 25,043 (NH PUC November 10, 2009) NH PUC Order at 14 (footnotes omitted, emphasis added).

In that case, the NH PUC established the following points regarding the applicable legal framework and its jurisdiction:

- ILECs *must interconnect directly or indirectly* with the facilities and equipment of other telecommunications providers per Section 251(a) of TA-96, 47 U.S.C. § 251(a), and the U.S. Congress was clear in its expectation that local exchange carriers (LECs) would be compensated for *access to* and *use of their network facilities by other carriers*. NH PUC Order at 15 (citing 47 U.S.C. § 252(d) (establishing pricing standards for the provision of interconnection and network element charges)).

- The FCC has confirmed that any carrier that wishes to avail itself of an ILEC's network must pay for that privilege. Without such payment, the added cost to the ILEC of transporting and terminating the traffic is borne fully by the incumbent. NH PUC Order at 15.

- Rates, terms and conditions of access are generally established through interconnection agreements or interstate and intrastate access tariffs which govern interstate and intrastate traffic originating or terminating on a carrier's local exchange network. NH PUC Order at 15 (citing 47 U.S.C. § 251(c) (interconnection agreements); 47 U.S.C. § 252(f) (statements of generally available terms)).

- Interstate telecommunications traffic falls under the jurisdiction of the FCC. ILECs generally provide exchange access to their networks through interconnection agreements negotiated under Section 251 of TA-96. Such agreements often specify that interstate and intrastate exchange access shall be governed by applicable tariffs. The applicable interstate exchange access tariff for the TDS ILECs is filed by the National Exchange Carrier

Association (NECA) with the FCC, and such tariffs establish the applicable rates for terminating interstate switched access services to exchanges served by the TDS ILECs in New Hampshire. NH PUC Order at 15-16.

- The FCC has reaffirmed that states have authority over intrastate access charge regimes, and that intrastate telecommunications traffic in New Hampshire is governed by intrastate access tariffs and subject to the jurisdiction of the NH PUC. *Id.* at 16 (citing *Global NAPs, Inc. v. Verizon New England, Inc.*, 444 F.3d 59, 63, 73 (1st Cir. 2006)). It is well settled that tariffs filed with the NH PUC have the force and effect of law, and each of the TDS ILECs has filed an intrastate exchange access tariff with the NH PUC. These intrastate access tariffs establish the applicable rates for terminating intrastate switched access services to exchanges served by these companies. NH PUC Order at 17.

The NH PUC was not persuaded by GNAPs' reliance on the FCC's *Vonage* decision and argument that all of the traffic at issue is interstate and therefore not subject to the NH PUC's intrastate jurisdiction.[11] The NH PUC decided otherwise:

> Global NAPs argues that the traffic at issue in this proceeding is interstate and, therefore, not subject to the jurisdiction of this Commission. To reach that conclusion, Global NAPs argues that the calls are Internet Protocol (IP)-enabled and cannot be distinguished as intrastate versus interstate traffic; as a result, they must all be considered interstate. Global NAPs cites certain decisions of the FCC and other state commissions to support its argument. We have reviewed the cited cases and find none to be dispositive with respect to the traffic at issue here.

NH PUC Order at 17.

> In the *Vonage* decision, the FCC preempts states from imposing market entry requirements such as certification, tariffing and related requirements on Vonage's interstate IP-enabled services as

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[11] *In re Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211 (FCC Rel. November 12, 2004), Memorandum Opinion and Order, FCC 04-267, 19 FCC Rcd. 22,404 (2004) (FCC *Vonage* decision), *aff'd*, *Minnesota Pub. Util. Comm'n v. FCC*, 483 F.3d 570 (8th Cir. 2007).

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> conditions to offering such services within a state. *Vonage* at ¶ 46... Underlying the FCC's decision is the recognition of the impracticability of separating intrastate from interstate calls in an IP-enabled system, such as that used by Vonage. *Id.* at ¶¶ 31-31 [*sic*]. The FCC noted that "state regulation violates the Commerce Clause if the burden imposed on interstate commerce by state regulation would be 'clearly excessive in relation to the putative local benefits.'" *Vonage* at 38.

NH PUC Order at 18.

> *Payment for services rendered, however, cannot be construed as an excessive regulatory burden.* Here TDS is not proposing that this Commission impose new regulations on Global NAPs that could pose a potential barrier to market entry – it *is seeking enforcement of its existing intrastate tariff.* Timely payment for services rendered under valid tariffs should be a uniform policy across all states. Non-payment *is an unjust burden for New Hampshire's local exchange carriers, and can create unfair market competition where other carriers are paying for those same services.*

NH PUC Order at 18-19 (emphasis added).[12]

The NH PUC was not persuaded by the decision of the New York Public Service Commission (NY PSC) in an intercarrier compensation dispute involving GNAPs and TVC Albany d/b/a Tech Valley Communications, an

[12] We note that the intrastate carrier access charges of Palmerton and other rural ILECs operating in Pennsylvania are currently the subject of a consolidated Commission Investigation at *Investigation regarding intrastate Access charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund*, Docket No. I-00040105, and the Formal Complaints of *AT&T Communications of Pennsylvania, LLC, et al. v. Armstrong Telephone Company-Pennsylvania, et al.* Docket Nos. C-2009-2098380, *et al.*

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ILEC,[13] where the NY PSC directed the adversary parties to enter into private contract negotiations on the rates, charges, terms and conditions for the exchange of nomadic VoIP traffic. NH PUC Order at 19 (citing NY PSC *TVC* decision at 16-17). The NH PUC points out, however, that the NY PSC *TVC* decision acknowledged that "[a]ny telecommunications carrier that delivers traffic over the public switched telephone network for another carrier can reasonably expect to be compensated irrespective of whether the traffic originates on the PSTN [public switched telephone network], on an IP network, or on a cable network." NH PUC Order at 19 (citing NY PSC *TVC* at 15).

Further, the NH PUC noted with approval that a California Public Utilities Commission decision requiring GNAPs to pay access charges "took into account the fact that the FCC expressed a general policy view that services that terminate on the PSTN, such as those offered by GNAPs, should not be exempt from access or similar charges." NH PUC Order at 19 [citing *California PUC GNAPs Decision Denying Rehearing,* slip op. 2009 WL 254838 (Cal. P.U.C.) at 10 (citing FCC Order *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges* (2004) 19 F.C.C.R. 7457, 7464-65, ¶ 15)].

The NH PUC found that:

> Global NAPs focuses on the interstate versus the intrastate issue underlying each decision to conclude more broadly that because some of its calls are an IP-enabled service, it is impossible to distinguish intrastate from interstate and, therefore, jurisdiction over all its traffic defaults to the FCC. In so doing, Global NAPs evades

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[13] *Complaint of TVC Albany, Inc. d/b/a Tech Valley Communications Against Global NAPs, Inc. for Failure to Pay Intrastate Access Charges*, Case No. 07-C-0059 (NY PSC March 20, 2008) (NY PSC *TVC v. GNAPs* decision). *See also* GNAPs MB Appendix and GNAPs Reply Exc. at 4.

the more fundamental concern that it has failed to pay anything for access to TDS facilities and services, whether the traffic at issue is interstate or intrastate.

Id. at 19-20.

The NH PUC concluded the following when dealing with the nature of the traffic at issue:

- The TDS ILECs pointed out that there is nothing in the call detail records to distinguish "regular" voice traffic from ESP or any other IP-enabled traffic. The TDS companies further argued that the data collected for the calls transmitted by Global NAPs and carried over the TDS's network bear all the hallmarks of traditional voice traffic that is subject to access charges covered by access tariffs. NH PUC Order at 21-22.

- GNAPs admitted that it does not know the original format of the calls it receives from its ESP customers for transport, nor does GNAPs distinguish the format of the traffic it receives, whether time division multiplexing (TDM), asynchronous transfer mode (ATM), or IP. Further, Global NAPs converts all traffic to ATM for transport on its network and then converts the traffic to TDM for termination on the public switched network. NH PUC Order at 22 (citations omitted). GNAPs also conceded that at least some, if not most or all, of its traffic is likely intrastate. NH PUC Order at 22 [citing *Global NAPs Brief* at 4 ("This classification of traffic as 'nomadic' is important because it indicates the extremely high probability that *not all* of the traffic terminated by Global to FairPoint is sent and received entirely within New Hampshire." (emphasis added by NH PUC))]. Despite this acknowledgment that some, if not all, traffic delivered by Global NAPs to FairPoint for termination to a TDS end-user is sent and received entirely within New Hampshire, Global NAPs has not paid any access charges, whether intrastate or interstate, to TDS. NH PUC Order at 23.

- GNAPs failed to produce any evidence to substantiate its claims that the calls carried over the TDS ILECs' networks are ESP traffic and exempt from access charges. GNAPs offered nothing beyond the generic, boilerplate language its customers adopt by signing service contracts with GNAPs. Even if, *arguendo*, all GNAPs traffic delivered to TDS facilities were determined to be interstate, GNAPs remains obligated to pay for its

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access to TDS's network under TDS's interstate tariff. However, GNAPs has paid nothing for the use of TDS's network. NH PUC Order at 23.

The NH PUC reached the following decision in the GNAPs intercarrier compensation dispute with the TDS ILECs:

> Based on our review of the record and the arguments presented by the parties, we conclude that Global NAPs has failed to prove its assertion that its traffic is exempt from access charges. In the meantime, unpaid charges for access to TDS facilities continue to accrue at the rate of nearly $25,000 per month, totaling $410,613.12 as of January 1, 2009. *TDS Letter* dated January 20, 2009. If Global NAPs does not pay for access to TDS's network – access that is essential for the provision of service to its customers communicating with customers located in TDS's service territory, those costs must be absorbed by TDS. *Such a result is untenable where the law is clear that carriers must compensate for such access*. Therefore, we find that, absent payment in full of outstanding invoices or a mutually acceptable payment arrangement between Global NAPs and TDS, TDS *is entitled to disconnect service* to Global NAPs, in accordance with the conditions set forth below.

NH PUC Order at 24-25 (emphasis added).

The Georgia Public Service Commission (GA PSC) reached a generally similar conclusion in an intercarrier compensation dispute between GNAPs and a number of ILECs in the State of Georgia:

> In concluding that the Commission would not be preempted *even if the subject traffic was ESP or ISP traffic*, the Hearing Officer relied upon the FCC's Time Warner Decision. In that case, the FCC found that the wholesale telecommunications carriers assumed the responsibility for compensating the incumbent LEC for the termination of traffic under a section 251 arrangement between the parties. (Time Warner Decision, 17). GNAPs argued that the Commission should not rely on the Time Warner Decision because it involved a section 251 agreement as opposed to the tariff arrangement in this case. (Memorandum, p. 14). However, GNAPs

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did not explain why this distinction *alters the principle that it should not have a "free ride" on the system.* The Commission concludes that, under the terms of the applicable tariff, access charges are due for termination of the subject traffic to the PSTN.

* * *

GNAPs relied on the [FCC] Vonage Decision in support of its position that the Commission is preempted from assessing access charges. However, GNAPs has not established that the service it offers is the same as the service at issue in the Vonage Decision. In addition, in the Vonage Decision, the FCC preempted state regulations that pertained to operating authority, the filing of tariffs and the provisioning and funding of 911 services. (Vonage Decision, ¶ 10). At issue in this case are regulations regarding the payment of intrastate access charges for calls that terminate on the PSTN. The FCC has not preempted states regarding this issue. Should Congress or the FCC take additional action on the extent to which states are preempted in this area, the Commission may re-examine the preemption issue at that time. The Commission's decision is based on the specific facts of this case.

Request for Expedited Declaratory Ruling as to the Applicability of the Intrastate Access Tariffs of Blue Ridge Telephone Company, Citizens Telephone Company, Plant Telephone Company, and Waverly Hall Telephone LLC to the Traffic Delivered to Them by Global NAPs, Inc., Docket No. 21905 (GA PSC July 29, 2009), Order Adopting in Part and Modifying in Part the Hearing Officer's Initial Decision, Document No. 121910, GA PSC Order at 8-9 (emphasis added). *See also* Palmerton Exc. at 29-30.

3. Commission Jurisdiction and the Interaction of Pennsylvania and Federal Law

The overwhelming weight of legal authority of Pennsylvania and federal law, as well as the relevant decisions of other state utility regulatory commissions and courts of appropriate jurisdictions that have dealt with a large number of intercarrier compensation disputes involving GNAPs, leads to the

inescapable conclusion that the FCC *Vonage* decision is not relevant or material on matters pertaining to the intercarrier compensation dispute before us. We believe that the NH PUC Order – and other similar decisions – that the FCC *Vonage* decision primarily affects the potential state role on market entry and regulation of nomadic VoIP service providers – is correct. NH PUC Order at 17-19. Here, as in many other jurisdictions, we are not dealing with the issue of market entry and regulation of nomadic VoIP service providers. Instead, we are dealing with the issue of GNAPs, a telecommunications utility carrier, which transports and terminates traffic at Palmerton's PSTN facilities. As in the case of the TDS ILECs in New Hampshire, Palmerton indirectly receives and terminates traffic that has been transported by GNAPs via the Verizon PA tandem switch on Market Street, Philadelphia, Pa. Tr. 667-668, GNAPs Exh. 6.

The FCC *Vonage* decision plainly does not, nor was it intended to, address the issue of whether intercarrier compensation applies for the use of Palmerton's PSTN facilities when terminating VoIP calls. Costs indeed attach to the termination of *any type of traffic* that Palmerton receives, and such costs do not "magically disappear" when the traffic includes VoIP calls whether those are of the nomadic or fixed type. Under the existing and so far unaltered premises of both Pennsylvania and federal law, the Commission determines that Palmerton is entitled to compensation for the traffic that it terminates at its facilities.

Furthermore, indirect transmission of such traffic by GNAPs to Palmerton constitutes a common carrier telecommunications service that falls squarely within this Commission's jurisdiction under applicable Pennsylvania and federal law. Pennsylvania's Voice-Over-Internet Protocol Freedom Act, P.L. 627 of 2008, codified at 73 P.S. § 2251.1 *et seq.*, established the Commission's jurisdictional boundaries over VoIP or IP-enabled services. 73 P.S. § 2251.4. The Act clearly provides that the Commission retains jurisdiction over "[s]witched

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network access rates or other intercarrier compensation rates for interexchange services provided by a local exchange telecommunications company." 73 P.S. § 2251.6(1)(iv). And it is the question of "switched network access" that is at issue here for the Palmerton PSTN facilities and the GNAPs traffic that these facilities terminate. *See also* 66 Pa. C.S. § 3017 ("Refusal to pay access charges prohibited. — No person or entity may refuse to pay tariffed access charges for interexchange services provided by a local exchange telecommunications company.").

This Commission has also adjudicated a number of intercarrier compensation disputes under the premises of applicable Pennsylvania and federal law whether such cases involved the interpretation and enforcement of intrastate carrier access tariffs and/or interconnection agreements. In a similar vein, we do not need and cannot afford to wait and speculate whether the FCC will reach some sort of coherent and sustainable conclusion to its IP-enabled services and intercarrier compensation reform proceedings, when this might happen, and what the FCC's conclusions might be.

This Commission is not preempted by the FCC in addressing the intercarrier compensation issues at hand. Furthermore, GNAPs' contention that the FCC somehow "has clearly and repeatedly stated its intention" to preempt state regulatory jurisdiction over intercarrier compensation matters for "all VoIP and enhanced traffic"[14] is without basis in law or fact. That assertion flies in the face

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[14] *See*, GNAPs Reply Exc. at 14 ("While the FCC has not yet specified the compensation rates for terminating VoIP traffic, it has clearly and repeatedly stated both its intention to do so and its preemption of state traffic regulation of all VoIP and enhanced traffic so that piecemeal resolution of this issue at the state level is prevented." (citing FCC *Vonage* decision)).

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of federal appellate and district court decisions that have addressed intercarrier compensation disputes involving GNAPs itself.

Both the Initial Decision and GNAPs refer to the refusal of the federal courts to permit the collection of state universal service fund (USF) intrastate assessment surcharges by a nomadic VoIP provider in accordance with pertinent directives of the Nebraska Public Service Commission (NE PSC) for the broad proposition that "nomadic interconnected VoIP service has been preempted from state regulation by the FCC."[15] The "jurisdictional mix" issue of the telecommunications traffic that is carried by GNAPs and terminated at the Palmerton PSTN facilities is addressed below.

The federal court decisions are not applicable on the issue of subject matter jurisdiction in the case before us. First, we are not dealing here with the retail services of an interconnected albeit nomadic VoIP service provider. Neither are we trying to apply regulation that would have had the potential of touching the intrastate retail operations of an interconnected nomadic VoIP provider such as Vonage, e.g., through (hypothetically) Pennsylvania USF contribution assessments on Vonage's intrastate *retail* operations under our Pa. USF regulations at 52 Pa. Code § 63.161 *et seq.* Instead, we are dealing with GNAPs' *wholesale transport (inclusive of VoIP or IP-enabled calls), access to and termination of traffic in* Palmerton's PSTN network facilities, and these are clearly telecommunications functions and services under the Commission's jurisdiction in accordance with

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[15] ID at 29 (citing *Vonage Holdings Corp. v. Nebraska Pub. Serv. Comm'n*, 564 F.3d 900 (8th Cir. 2009)). *See also* GNAPs MB at 9, GNAPs Reply Exc. at 13 (citing the underlying case, *Vonage Holdings v. Nebraska PUC [sic]*, 4:07 CV 3277 (D. Neb. 2008) at 9 ("there is no way to distinguish between interstate and intrastate Digital/Voice service; nor does the adoption of [FCC] safe-harbor rules affect the characterization of VoIP service as an information service") (*Vonage v. NE PSC* decisions)).

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applicable Pennsylvania and federal law. Second, the practical effects of the *Vonage v. NE PSC* federal court decisions still remain unsettled and are currently pending before the FCC.[16] Finally, this Commission is technically well equipped and legally entitled to address the issues of jurisdictional traffic allocation in disputes involving intercarrier compensation for the provision of wholesale telecommunications carrier access services. Such a determination is essential in determining the type and appropriate level of intercarrier compensation for the various jurisdictional classifications of traffic that terminates at Palmerton's PSTN facilities. Again, in contrast to the *Vonage v. NE PSC* federal court decisions, this Commission is not dealing here with jurisdictional traffic allocations that relate to the retail operations, services, and revenues of a nomadic VoIP provider.

GNAPs' reliance on the NY PSC *TVC v. GNAPs* decision is equally misplaced and unpersuasive for both legal and operative reasons.[17] The NY PSC *TVC v. GNAPs* decision revolves around the unfounded legal theory that the FCC's *Vonage* decision has preemptive effects over the jurisdiction of a state utility regulatory commission to reach the actual merits of an intercarrier compensation dispute between two telecommunications carriers that involves the transport and termination of traffic that includes VoIP or IP-enabled calls "irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network." NY PSC *TVC v. GNAPs* decision at 15. Not surprisingly,

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[16] *See generally, Petition of the Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of Rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenues,* FCC WC Docket No. 06-122, filed July 16, 2009; NE PSC and Kansas Corp. Comm'n *Ex Parte*, FCC WC Docket No. 06-122, filed December 30, 2009. *See also* Palmerton Exc. at 27 and n. 98.

[17] GNAPs MB Appendix, GNAPs Reply Exc. at 4.

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the NH PUC considered but declined to utilize both the rationale and the end result of the NY PSC *TVC v. GNAPs* decision.

From a legal and practical perspective, if this Commission were to follow the ruling of the NY PSC, it could not timely and conclusively resolve the present intercarrier compensation dispute in violation of applicable Pennsylvania and federal law; and such reliance would most likely prolong totally unnecessary and wasteful litigation by replacing the present Formal Complaint case with an equally contentious interconnection arbitration on exactly the same material intercarrier compensation issues.[18] The course of action taken by the NH PUC and the clear majority of state utility regulatory commissions and courts of competent jurisdiction in intercarrier compensation disputes involving GNAPs is the only clear and lawful choice for this Commission.

4. The Commission's Intrastate Jurisdiction, Access Charges, and the Presence of IP-Enabled Traffic

The majority of Pennsylvania and federal legal authority that has already been discussed points to the inescapable conclusion that the Commission has the appropriate subject matter jurisdiction over Palmerton's Formal Complaint. The next issue is whether this Commission's intrastate subject matter jurisdiction and the proper and lawful application of intrastate carrier access charges are somehow altered or nullified because of the presence of the allegedly "unique" VoIP or IP-enabled calls in the traffic that is transported by GNAPs and indirectly terminated at Palmerton's PSTN facilities.

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[18] Although reportedly TVC Albany and GNAPs appear to have agreed to the NY PSC directives, it is unclear whether the case has reached administrative finality before the NY PSC where it has been in adjudication since January 12, 2007. NY PSC *TVC v. GNAPs* decision at 1.

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The answer can be readily found in the evidentiary record that amply and credibly documents the routine application of Palmerton's intrastate carrier access tariff to intrastate interexchange traffic containing VoIP or IP-enabled calls *irrespective* of their final communication protocol conversion in their transport and final termination by Palmerton. This routine application of Palmerton's intrastate carrier access tariffs on the appropriate traffic has resulted in a corresponding absence of intercarrier compensation disputes in the ordinary and established course of intercarrier compensation business dealings.

For example, cable companies such as Adelphia, Comcast, and RCN *originate* fixed VoIP or IP-enabled wireline interexchange calls that terminate at Palmerton's PSTN's facilities. When Palmerton directly bills these companies under its intrastate carrier access tariff for the termination of these intrastate interexchange calls to its facilities, Palmerton receives the appropriate amount of intercarrier compensation irrespective of whether these fixed VoIP or IP-enabled originated wireline calls have been converted to a TDM protocol prior to their final termination at Palmerton's PSTN facilities. Tr. 519-520. *See also* Palmerton Exh. 12 at 27-28 (Comcast Deposition), and Palmerton Exc. at 30-31.[19]

The same also happens with the fixed VoIP or IP-enabled intrastate interexchange wireline calls that Palmerton terminates from its own affiliate Blue Ridge Digital Phone, a cable company, where such calls first transit through Sprint's common carrier telecommunications network prior to reaching Palmerton's PSTN. Sprint pays Palmerton the appropriate intrastate intercarrier compensation. Tr. 518-519, 536. Further, other companies, such as Service

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[19] Certain of these cable companies also have telecommunications service operations that have been certificated as competitive local exchange carriers (CLECs) by the Commission. *See* Palmerton Exh. 7.

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Electric, that also engage in the common carrier telecommunications transit transport of intrastate interexchange VoIP or IP-enabled originating wireline traffic behave in a similar and ordinary fashion. Tr. 631-633, 636.[20] (The more unique aspects of intercarrier compensation that apply on intrastate interexchange wireless calls terminating at the PSTN facilities of an ILEC such as Palmerton are addressed below.)

At first glance, this ordinary application of Palmerton's intrastate access tariffs could also have taken place with respect to the intrastate interexchange call traffic that is transported by GNAPs — VoIP or IP-enabled calls included — and indirectly terminated at Palmerton's PSTN facilities. Palmerton's special traffic study, the statistical validity of which is further discussed below, has indicated that GNAPs indirectly transports and terminates at Palmerton's PSTN facilities calls of various categories and originating protocols including ILEC, CLEC, cable company (i.e., fixed interconnected VoIP or IP-enabled), wireless, and nomadic VoIP. Palmerton Exc. at 31, *see also* Palmerton Exh. 6. And GNAPs acknowledges that it accepts traffic in a variety of communication protocols, including IP, ATM and the more conventional TDM. Tr. 849-850.

GNAPs argued and the Initial Decision found — largely on the basis of the FCC's *Vonage* decision — "that the majority of its [GNAPs'] traffic is received from three other carriers, Transcom, CommPartners and PointOne; that the vast majority of its traffic is enhanced and hence, information services rather

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[20] The evidentiary record indicates that at least four more companies, other than GNAPs, have refused to pay terminating access charges to Palmerton and other ILECs, with at least one more intercarrier compensation dispute between one or more ILECs and one of those four companies currently pending before the Commission. Tr. 532. Some of Service Electric's services operate on the basis of the session initiated protocol or SIP, an advanced form of IP. Tr. 632.

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than telecommunications services, and that a very significant amount (at least half) of its traffic is nomadic VoIP." ID at 33-34; GNAPs Reply Exc. at 2. On the basis that GNAPs handles "enhanced" or "information services" and nomadic VoIP traffic, GNAPs alleges — again largely on the basis of the FCC's *Vonage* decision — that such traffic is exempt from the application of intrastate access charges because such traffic is "jurisdictionally interstate." GNAPs MB at 8-9 (citing FCC *Vonage* decision and the initial *Vonage v. NE PSC* federal court decision).

This GNAPs argument and the associated findings in the ID are not persuasive. The NH PUC was faced with a similar GNAPs argument and rejected it for the simple reason that GNAPs had not paid any carrier access charges to the TDS ILECs in New Hampshire *"whether intrastate or interstate"* for the indirect termination of GNAPs transported traffic. NH PUC Order at 23 (emphasis added). The situation is not different in the case before us. The preceding discussion has established and GNAPs acknowledges that it is not an "enhanced service" or "information service provider" (ISP), and that it does not itself engage in any alleged "enhancement" of the traffic that it transports. Tr. 876-877. The evidentiary record is clear that GNAPs has not paid *any* access charges to Palmerton, whether interstate or intrastate, and that Palmerton's monetary claim is concentrated on the intrastate portion of the intercarrier compensation dispute at issue that is clearly within this Commission's jurisdiction. Tr. 284, 287.

The fact that GNAPs transports and indirectly terminates traffic that may have initially originated in IP, inclusive of nomadic VoIP, is largely immaterial to this analysis on whether this Commission has subject matter jurisdiction and whether the appropriate jurisdictional intercarrier compensation should apply for this common carriage function. GNAPs is unable to explain the presence of more conventional intrastate interexchange ILEC, CLEC, and wireless

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calls in the stream of traffic that it transports and indirectly terminates at Palmerton's PSTN facilities — where such calls have been detected in Palmerton's special traffic study — and GNAPs' own testimony does not totally exclude their presence. Tr. 925-928.

In a similar fashion, GNAPs propounds the argument that the traffic it transports does not leave its local calling area "as its service never touches the local calling area," and that as an "intermediary carrier" carrying IP-enabled transit traffic it should be subjected at most to cost-based reciprocal compensation rates under Section 251 of TA-96, 47 U.S.C. § 251, for terminating such traffic at Palmerton's facilities.[21] GNAPs MB at 21-22. This argument lacks substantive and legal merit and is merely designed to advocate the solution that GNAPs achieved through the NY PSC *TVC v. GNAPs* decision directing TVC Albany and GNAPs to "work out a traffic exchange agreement establishing rates, charges, terms and conditions for nomadic VoIP traffic." NY PSC *TVC v. GNAPs* decision at 17. GNAPs also points out the lower reciprocal compensation rate that exists in Commission approved interconnection agreements between Verizon PA and

[21] The clear inference here is that the GNAPs intercarrier compensation with Palmerton for IP-enabled traffic should be based on the total element long-range incremental cost (TELRIC) standard that this Commission has utilized for deriving reciprocal compensation rates for the exchange of local exchange traffic between interconnected ILECs such as Verizon PA and CLECs. The same TELRIC-based rates are also generally applicable in the intercarrier compensation arrangements between local wireline telecommunications carriers, e.g., ILECs, and wireless carriers for the exchange of intra-MTA (within the major trading area) traffic in accordance with applicable FCC rules. In terms of numerical values, reciprocal compensation rates are lower than intrastate and interstate carrier access rates.

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various CLECs for the exchange of VoIP traffic. Tr. 692, 700-704, and Verizon PA Exh. 1.[22]

This argument must fail for multiple reasons. First, GNAPs' traffic termination at Palmerton's facilities is indirect under Section 251(a)(1) of TA-96, 47 U.S.C. § 251(a)(1), and Palmerton was clearly obliged to terminate the traffic and did so until on or about May 19, 2009 when GNAPs ceased sending traffic to Palmerton. Tr. 514, 904.

Second, GNAPs does not have a local calling area presence in Palmerton's service area, nor does it have a direct interconnection agreement.

Third, assuming *arguendo* that GNAPs would seek interconnection with Palmerton and cost-based TELRIC rates for the indirect termination of its IP-enabled traffic at Palmerton's facilities — and nothing of this sort has happened here — it would have to initiate the appropriate interconnection request and

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[22] The relevant reciprocal compensation rate mentioned in the record for the exchange of VoIP traffic was $0.00045 per minute. It should be pointed out that various *voluntary* interconnection agreement arrangements have been approved by the Commission that address the exchange of VoIP traffic. *See generally Joint Petition of Verizon Pennsylvania Inc. and XO Communications Services, Inc. for Approval of Amendment No. 8 to an Interconnection Agreement Under Section 252(e) of the Telecommunications Act of 1996*, Docket No. A-2009-2085611, Order entered March 27, 2009 (use of interstate and intrastate terminating switched access rates under certain conditions for "Interexchange VOIP Traffic"); *Joint Petition of Windstream Pennsylvania, LLC and Service Electric Telephone Company, LLC for Approval of an Interconnection Agreement Under Section 252(e) of the Telecommunications Act of 1996*, Docket No. A-2009-2145812, Order to be adopted concurrently on February 11, 2010 ("all traffic, other than Local Traffic, that is terminated on the public switched network, regardless of the technology used to originate or transport such traffic, including but not limited to Voice Over Internet Protocol (VOIP) will be assessed either interstate or intrastate (depending on the end points of the call) terminating charges at the rates provided in the terminating Party's access tariff").

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Palmerton, as a rural ILEC, could invoke the relevant provisions of Section 251(f) of TA-96, 47 U.S.C. 251(f).

Finally, following the receipt of Palmerton's billing invoices, GNAPs could have approached Palmerton in order to initiate good faith negotiations for a traffic exchange agreement encompassing the subject of IP-enabled traffic. This has not happened.

In summary, we are faced with the same situation as in New Hampshire where the NH PUC found that GNAPs, despite its assertions to the contrary, was indirectly delivering intrastate interexchange traffic to the PSTN facilities of the New Hampshire TDS ILECs. NH PUC Order at 22-23.

The evidence in this proceeding fails to establish that the nomadic VoIP traffic that GNAPs receives from other entities is somehow already or becomes "'enhanced' (significantly changed in form and/or contents)." GNAPs R Exc. at 5-6. The Initial Decision provides the following federal definitions for "enhanced" and "information" services:

> The term "enhanced service" means:
>
> [S]ervices, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. 47 C.F.R. § 64.702(a) [*sic*].
>
> Information service. — The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available

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> information via telecommunications, and includes electronic publishing, *but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.* 47 U.S.C. § 153(20).

ID at 23 and n. 11 (emphasis added).

GNAPs argues that Transcom's removal of background noise, the insertion of white noise, the insertion of computer developed substitutes for missing content, and the added capacity for the use of short codes to retrieve data during a call all constitute "enhancements" to the traffic that Transcom passes on to GNAPs. GNAPs MB at 18-19, Tr. 960-962. Palmerton responds that the removal of background noise, the insertion of white noise, and the reinsertion of missing digital packets of an IP-enabled call in their correct location when all the packets of the call become assembled are essentially ordinary "call conditioning" functionalities that are "adjunct to the telecommunications provided by Transcom, not enhancements," and that similar call conditioning has been practiced for a very long time even in the more traditional circuit-switched voice telephony. *See generally* Palmerton Exc. 35-38, Tr. 1046-1047, ID at 24. The FCC has ruled that:

> Adjunct-to-basic services are services that are "incidental" to an underlying telecommunications service and do not "alter [] their fundamental character" even if they may meet the literal definition of an information service or enhanced service.... We find that the advertising message provided to the calling party in this case is incidental to the underlying [AT&T calling card] service offered to the cardholder and does not in any way alter the fundamental character of that telecommunications service. From the customer's perspective, the advertising message is merely a necessary precondition to placing a telephone call and therefore the service should be classified as a telecommunications service.

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In re AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services et al., WC Docket Nos. 03-133 and 05-68 (FCC Rel. February 23, 2005), Order and Notice of Proposed Rulemaking, FCC 05-41, *slip op.* ¶ 16 at 6 (citations omitted) (FCC AT&T Prepaid Calling Card Order rejecting AT&T declaratory ruling petition that access charges do not apply to "enhanced" calling card service with advertising message to the end-user consumer).

In the case involving AT&T's use of IP "in the middle" and its request that "its 'phone-to-phone Internet protocol (IP) telephony services are exempt from the access charges applicable to circuit-switched interexchange calls," the FCC stated the following in denying AT&T's request:

> More specifically, AT&T does not offer these customers a "capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information;" therefore, its service is not an information service under section 153(20) of the Act. End-user customers do not order a different service, pay different rates, or place and receive calls any differently than they do through AT&T's traditional circuit-switched long distance service; the decision to use its Internet backbone to route certain calls is made internally by AT&T. To the extent that protocol conversions associated with AT&T's specific service take place within its network, they appear to be "internetworking" conversions which the Commission has found to be telecommunications services. We clarify, therefore, that AT&T's specific service constitutes a telecommunications service.

In re Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges, WC Docket No. 02-361 (FCC Rel. April 21, 2004), Order, FCC 04-97, *slip op.* ¶¶ 1 and 12, at 1, 9 (citations omitted) (FCC AT&T IP in the Middle Order).

In view of the evidence presented and the FCC's rulings in the two AT&T cases referenced above, we find that Transcom does not supply GNAPs with "enhanced" traffic under applicable federal rules. Consequently, such traffic cannot be exempted from the application of appropriate jurisdictional carrier access charges. Also, the Commission is not persuaded by the decision of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, finding Transcom to be an "enhanced services provider" on the basis that Transcom indicated in that proceeding that it provided "data communications services over *private* IP networks (VoIP)." *In re Transcom Enhanced Services, LLC*, No. 05-31929-HDH-11 (Bkrptcy. N.D.Tex., April 28, 2005) at 2 (emphasis added).

B. Determination of Intercarrier Compensation

Under currently established practices and available technologies dealing with the rating and billing of interexchange calls, Palmerton largely relies on the originating number of the call and other billing and data base information (e.g., rate centers, Telcordia terminal point master data base, local exchange routing guide or LERG, billing information received from the Verizon PA tandem switch, Signaling System 7 or SS7) to determine whether the call is intrastate or interstate. Tr. 512-513, 739. The following exchange during the evidentiary hearing of July 9, 2009, provides the process that Palmerton uses to jurisdictionally classify and bill calls:

> ALJ WEISMANDEL: Yes, okay. And can you tell me then, with respect to the calls that are described on Palmerton's Exhibit 6 (Revised), what is your position as to where those calls, quote, entered a customer network?
>
> WITNESS LAGER (Palmerton): They entered the customer network at the point indicated by the originating telephone number,

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as the tariff [PA P.U.C. Tariff No. 11, Original Page 2-21, General Regulations] states.

ALJ WESMANDEL: Would that be the Verizon tandem in Philadelphia?

WITNESS LAGER (Palmerton): That would be the end office switch where that number resides. On the originating end, if that telephone number is indicated as having been residing in Pennsylvania, the telephone number, the NPA/NXX telephone number, are listed as being a Pennsylvania location, and it's on a telephone switch that's located in that same place, then it is considered as originating in Pennsylvania.

ALJ WEISMANDEL: All right. And you're saying that that's where the call entered the customer network?

WITNESS LAGER (Palmerton): Yes.

ALJ WEISMANDEL: Now let's go back to my hypothetical resident of the suburbs of Denver, Colorado [with a Vonage 717 area code number, Lancaster County, Pa.]. Where did that call enter the network?

WITNESS LAGER (Palmerton): If it has a telephone number assigned to a switch in Pennsylvania, then it entered where the telephone number is assigned.

ALJ WEISMANDEL: So it's your position, Palmerton's position, that regardless of the physical location of the person initiating the call, it's merely a matter of the physical location of the switch?

WITNESS LAGER (Palmerton): That's correct.

Tr. 563-564. *See also* Tr. 569, Palmerton Exc. at 30.

Palmerton's witness further testified that, when the indicator information on a terminated interexchange call is ambiguous or incomplete in its carrier access billing system (CABS), or the call has incomplete originating NPA/NXX telephone number information, the call is defaulted to a lower

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interstate carrier access rate rather than the highest intrastate one. Tr. 549. Although Palmerton follows standard industry practices for the jurisdictional classification, access rating, and billing of interexchange calls, it cannot identify the actual physical location of the calling party. For example, if a caller using a wireless phone with an assigned "610" area code number (Southeastern Pennsylvania) calls a Palmerton end-user customer from Manhattan, City of New York, NY, Palmerton will identify and rate this interexchange wireless call as if it originated somewhere in Southeastern Pennsylvania. Tr. 570-571.[23]

The existing state of carrier access billing system technologies and industry practices do not yet permit such a precise location identification of a calling party; neither was Palmerton aware of any network signaling system that would permit such a precise identification. Tr. 579. Furthermore, the evidentiary record indicates that since VoIP or IP-enabled calls are transformed into the TDM protocol prior to their final termination in Palmerton's PSTN facilities (Verizon PA's tandem switch on Market St., Philadelphia, Pa., will forward the traffic to Palmerton in TDM protocol), Palmerton cannot technologically determine whether such calls originated in IP format in the first place. Tr. 382, 849-850, GNAPs Exh. 6 (routing of Vonage nomadic VoIP traffic). Palmerton also testified that it relies on billing records that are generated at and received from the Verizon PA Market Street, Philadelphia, Pa., tandem switch, and that GNAPs "has not sent traffic to Palmerton with information identifying underlying carriers, so, as some other carriers do." Tr. 267.

Palmerton's use of the billing information generated and received from Verizon PA's tandem switch for the jurisdictional classification and rating of calls that terminate at Palmerton's facilities, and the relative reliability and

[23] The reference to the "610" area code may have conveyed the erroneous impression that this NPA was assigned to the City of Philadelphia, Pa.

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precision of such information or associated lack thereof (treatment of calls with missing billing information), was independently corroborated through the testimony of Verizon PA. The Verizon PA testimony established that its tandem switch identifies the traffic that it receives from GNAPs which is then passed on and terminated in Palmerton's PSTN facilities. However, the Verizon PA tandem switch does not identify whether particular GNAPs calls that eventually terminate at Palmerton's network have originally been IP-enabled. *See generally* Tr. 667-681, 685-691.

In short, Palmerton finds itself in the same situation as the TDS ILECs in New Hampshire where all interexchange IP-enabled originating traffic that came from GNAPs and terminated at their PSTN facilities appeared to be traditional voice traffic that was subject to the appropriate jurisdictional carrier access charges in accordance with their applicable intrastate and interstate carrier access tariffs. NH PUC Order at 21-22.

GNAPs focuses on the various movements of nomadic VoIP calls prior to their eventual termination at Palmerton's facilities for the proposition that all such calls should be classified as interstate and, thus, potentially accrue lower interstate access charges. Palmerton MB at 23-24. This argument must fail for the following reasons. First, as it has been stated before, GNAPs has *not paid any* access charges either interstate or intrastate. Second, here we are not dealing with individual end-user retail calls to ISPs. Instead, we are dealing with the wholesale telecommunications transport movement and termination of interexchange traffic that includes VoIP or IP-enabled calls. In these circumstances, the FCC has opined as follows:

> We agree with Bell South that AT&T's service is not analogous to ISP-bound traffic. Although a call to an ISP may include multiple

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> communications, the only relevant communication in the case presented by AT&T is from the calling card caller to the called party. Moreover, even if there are multiple communications, the Commission [FCC] has found that neither the path of the communication nor the location of any intermediate switching point is relevant to the jurisdictional analysis.

FCC AT&T Prepaid Calling Card Order, ¶ 26 at 10.

We find that prior management or movement of a call communication is not dispositive of its jurisdictional classification when, as here, the NPA/NXX origin and termination of the call are clearly intrastate on the basis of available billing information, associated technologies, and established industry practices for the purposes of establishing the appropriate level of intercarrier compensation. In the present factual situation, and in accordance with the evidentiary record, we cannot classify a call – even an interconnected nomadic VoIP call – as interstate simply because it may have moved across the Commonwealth's boundaries while the relevant call origination and termination information clearly indicates an intrastate interexchange classification. We note that even conventional circuit-switched non-VoIP interexchange calls that originate in Pennsylvania are often transported out-of-state before their subsequent in-state termination within the Commonwealth. However, such intermediate transport does not transform the jurisdictional classification of such calls to "interstate." Furthermore, the accompanying SS7 signaling for such calls can and does cross state boundaries (depending on the physical location of the utilized SS7 nodes) in order to independently establish the most optimal path for the transmission and termination of these circuit-switched interexchange calls.

Although the FCC has not yet formally proceeded with any jurisdictional classification of interconnected VoIP calls, it still expects state utility regulatory commissions to deal with and resolve intercarrier compensation

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disputes that may implicate interconnected VoIP. *See generally, In re Petition of UTEX Communications Corporation, Pursuant to Section 252(e)(5) of the Communications Act, for Preemption of the Jurisdiction of the Public Utility Commission of Texas Regarding Interconnection Disputes with AT&T Texas*, WC Docket No. 09-134 (FCC Rel. October 9, 2009), Memorandum Opinion and Order, DA 09-2205. Finally, the FCC fully expects state utility regulatory commissions to address intercarrier compensation issues that involve intrastate traffic and access matters. *See generally, North County Communications Corp. v. MetroPCS California, LLC*, File No. EB-06-MD-007 (FCC March 30, 2009), Memorandum Opinion and Order, DA 09-719.

Based on the case-specific evidentiary record, we find that Palmerton adequately relied on the NPA/NXX origination and termination of the intrastate interexchange call traffic at issue for the jurisdictional classification and billing of such traffic. Such reliance is consistent with the *Core Appeal Decision* in some other but still rather important respects. *Core Appeal Decision*, 941 A.2d 758 and n.10 (classification of NXX codes and local calling areas).

Although the special traffic study that was carried out by Palmerton may lack the appropriate degree of statistical validity to be fully representative of terminating traffic patterns at Palmerton's facilities for the full time horizon of the intercarrier compensation dispute, that traffic study should not significantly and materially affect the outcome of this proceeding with respect to the compensation amount at issue. Palmerton Revised Exh. 6 (Revised Traffic Study), ID at 31, Tr. 1035-1044. As Palmerton explained in its Exceptions:

> The study was not presented to undertake complicated statistical studies or to derive traffic billing factors. It was designed simply to determine whether the traffic delivered was exclusively nomadic VoIP, as Global NAPs claimed. Exhibit 6 focuses exclusively on

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> long distance voice calls that originated from other Pennsylvania numbers. Both Palmerton and Global NAPs used the traffic study as a base document to undertake extensive discovery (interrogatories and depositions) and present witnesses.

Palmerton Exc. at 14 (citations omitted).

Palmerton's special study provided specific information on the various types of entities (e.g., ILEC, CLEC, wireless telecommunications carriers, and cable companies) that had their intrastate interexchange calls transported by GNAPs and indirectly terminated at Palmerton's PSTN facilities. Consequently, this special traffic study is of adequate probative value to draw the appropriate inferences regarding the indirect termination of traffic by GNAPs at Palmerton's facilities and the intercarrier compensation regime that should apply.

Palmerton's special traffic study was utilized in an attempt to reconcile Palmerton's billing of interexchange intra-MTA wireless calls consistent with the directives of our May 5, 2009 Order in this proceeding.[24] It appears from the record that Palmerton made an effort to reduce the overall intercarrier compensation amount in dispute in order to account for the reciprocal compensation rate that is commonly applied for the termination of interexchange intra-MTA wireless calls. Tr. 280. This rate is usually lower than intrastate and interstate carrier access charges in accordance with applicable federal law and past Commission decisions.[25] Although Palmerton's special traffic study played a role in producing the relevant monetary adjustment, this adjustment does not materially

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[24] Docket No. C-2009-2093336, (Order entered May 5, 2009) at 9.

[25] *See generally, Petition of Cellco Partnership d/b/a Verizon Wireless, et al.*, Docket No. P-00021995 *et al.*, (Order entered January 18, 2005); *ALLTEL Pennsylvania, Inc. v. Verizon Pennsylvania Inc., et al.*, Docket No. C-20039321, (Order entered January 18, 2005).

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impact the intrastate intercarrier compensation amount that is at issue. Palmerton Revised Exh. 3.

C. Intercarrier Compensation and Regulatory Policy

Now that the legal and technical reasons for exercising subject matter jurisdiction in this intercarrier compensation dispute have been discussed and the fundamental merits of the Palmerton Complaint have been sustained, broader regulatory policy issues must also be covered. In our May 5, 2009 Order, we noted that, if "certain competing telecommunications carriers pay intercarrier compensation for VoIP traffic termination, while others take the position that they may avoid such payments for the termination of similar traffic, there can be an anticompetitive environment that artificially and inimically transmits inaccurate price signals to end-user consumers of telecommunications and communications services." Docket No. C-2009-2093336, Order entered May 5, 2009, at 8-9. One of the statutory policy directives in Chapter 30 of the Public Utility Code mandates this Commission to:

> Promote and encourage the provision of competitive services by a variety of service providers *on equal terms* throughout all geographic areas of this Commonwealth without jeopardizing the provision of universal telecommunications service at affordable rates.

66 Pa. C.S. § 3011(8) (emphasis added).

It is obvious that a telecommunications carrier that needs and obtains Palmerton's intrastate carrier access services at the prescribed jurisdictional rates that the carrier then pays to Palmerton will be competitively but artificially

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disadvantaged if another carrier obtains the same Palmerton carrier access services and pays no intercarrier compensation.

The FCC has expressed similar concerns:

> The Commission [FCC] is sensitive to the concern that *disparate treatment* of voice services that both use IP technology and interconnect with the PSTN could have *competitive implications*. We note that all telecommunications services are subject to our existing rules regarding intercarrier compensation. Consequently, when a provider of IP-enabled voice services contracts with an interexchange carrier to deliver interexchange calls that begin on the PSTN, undergo no net protocol conversion, and terminate on the PSTN, the interexchange carrier is obligated to pay terminating access charges. Our analysis in this order applies to services that meet these criteria regardless of whether only one interexchange carrier uses IP transport or instead multiple service providers are involved in providing IP transport. Thus our ruling here should not place AT&T at a competitive disadvantage. We are adopting this order to clarify the application of access charges to these specific services to remedy the current situation in which some carriers *may be paying access charges for these services while others are not.*

FCC AT&T IP in the Middle Order, ¶ 19 at 13-14 (emphasis added, citations omitted).

In view of the specific facts that have been presented, GNAPs' non-payment of intrastate carrier access charges to Palmerton cannot be condoned as a matter of law and as a matter of sound regulatory policy. This conclusion is based on existing Pennsylvania and federal law and this Commission's subject matter jurisdiction to resolve intercarrier compensation disputes.

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D. The Exceptions

We note that any issue or Exception, which we do not specifically address herein, has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the Parties. *Wheeling & Lake Erie Railway Co. v. Pa. PUC*, 778 A.2d 785, 794 (Pa. Cmwlth. 2001), *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

In addition to the foregoing, Section 332(a) of the Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is axiomatic that "[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible." *Samuel J. Lansberry, Inc. v. Pa. PUC*, 134 Pa.Cmwlth. 218; 221-222, 578 A.2d 600; 602 (1990), app. denied, 529 Pa. 654, 602 A.2d 863 (1992). The term "preponderance of the evidence" means that one party has presented evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party. *Se-ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

1. Palmerton's Exceptions

Palmerton filed both Exceptions and Reply Exceptions in this case. We will address those Exceptions and Replies, below.

Palmerton made the following Exceptions to the ID:

Exception No. 1 - The ID misapplied the burden of proof, improperly dismissed the probative value of the Palmerton Traffic Study and erred by relying on hearsay evidence and speculation to determine the nature of Global NAPs traffic.

The essence of this Exception is found in Footnote 35 of Palmerton's Exceptions:

> Clearly, Global NAPs is asserting the affirmative defenses of nomadic VoIP origination and "enhancement" and the burden is on it [Global NAPs] to present legally sufficient evidence to prove such defenses.

Palmerton Exc. at 13, n. 35.

Palmerton brought a Formal Complaint, as a result of a billing dispute, against Global NAPs. Under the Code at Section 332(a), 66 Pa. C.S. § 332(a), the proponent of a rule or order has the burden of proof. The ALJ concluded, and we agree, that Palmerton, as the proponent of a Commission Order, has the burden of proof in this case. ID at 42; Conclusion of Law No. 4. We agree with the ALJ that to prevail, Palmerton must show that Global NAPs is responsible or accountable for the problem described in the Complaint. ID at 42; Conclusion of Law No. 5; *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990), *Feinstein v. Philadelphia Suburban Water Company*,

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50 Pa. PUC 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm'n, supra.* Further, while the burden of going forward with evidence may shift back and forth between the parties, the ultimate burden of persuasion remains with Palmerton. *Milkie v. Pa. Public Utility Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001). ID at 20.

Global NAPs raised affirmative defenses in this case. While a Party raising affirmative defenses bears the burden of proof as to that affirmative defense, this does not relieve the Complainant of meeting its burden. ID at 43, Conclusion of Law No. 15.

The core of Palmerton's case is Palmerton Exhibit 6 and Exhibit 6 [Revised], referred to as "the Palmerton Traffic Study," along with supporting testimony. This is a "study" by Palmerton of approximately 2,100 allegedly "intrastate" calls received by Palmerton during one month from Global NAPs. The ALJ concluded that Palmerton failed to meet its burden because "the Palmerton Traffic Study" does not have any statistical validity. The number of calls included in Palmerton's one-month "study" amounts to only slightly more than one per cent of the 189,000 supposed "intrastate" calls received by Palmerton from Global NAPs, and the "study" did not differentiate between "telecommunications services" and "information services." ID at 16, 30, 47-48; Findings of Fact 30-38, Conclusions of Law Nos. 54-60.

We disagree with the analysis in the Initial Decision to the extent that the ALJ would require Palmerton to present an exhaustive study in order to meet its burden. The issues in this case, as demonstrated by the extensive discussion in the Initial Decision and this Opinion and Order, center on jurisdiction and Palmerton's right to compensation rather than the statistical validity of the Palmerton Traffic Study. We find that the Palmerton Traffic Study

was sufficient to allow a finding that Palmerton established the essential nature of the call traffic transported by GNAPs and terminated at the facilities of Palmerton, and therein lies its probative value.

After consideration of the record in this proceeding, Palmerton's Exception is granted, in part.

Exception No. 2 - The ID erred in concluding that IP-initiated traffic is exempt from state access charges.

In this Exception, Palmerton argues that the ALJ erred in his jurisdictional analysis. Palmerton contends that the absence of a definitive jurisdictional ruling on state intercarrier compensation allows a state public utility commission to decide this issue (Palmerton's failure to meet its burden of proof notwithstanding). Palmerton points to the decision of the FCC in *Vonage*, for the proposition that because the FCC was silent on compensation issues, state commissions are not precluded from ruling on issues of state intercarrier compensation. Palmerton Exc. at 22-23.

In its Reply Exceptions, Global NAPs counters Palmerton's contention, stating:

> While the FCC has not yet specified the compensation rates for terminating VoIP traffic, it has clearly and repeatedly stated both its intention to do so and its preemption of state traffic regulation of all VoIP and enhanced traffic so that piecemeal regulation of this issue at the state level is prevented.

Global NAPs Reply Exc. at 14.

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For the reasons discussed in the earlier part of this Opinion and Order, we conclude that Global NAPs' analysis of the *Vonage* case as potentially limiting the jurisdiction of state commissions is overreaching and an unacceptable limitation on the jurisdiction of this Commission.

Palmerton's Exception is, therefore, granted.

Exception No. 3 - The ID erred in concluding that upstream carriers from whom Global NAPs receives traffic exempted the traffic from access charges by "enhancing" it.

Palmerton's Exception is derived, in large part, from its previous Exception No. 1 that the ALJ relied on hearsay evidence in arriving at his finding that the traffic Global NAPs sends to Palmerton is "enhanced." Palmerton Exc. at 32; ID at 17; Findings of Fact Nos. 48-49. Global NAPs replies that the ALJ correctly determined that the traffic at issue has been "enhanced" by Global's customers and is, therefore, an "information service" not subject to intrastate access charges. Global NAPs' Reply Exc. at 18.

For the reasons discussed in the earlier part of this Opinion and Order, we disagree with the analysis presented in the Initial Decision, and Palmerton's Exception is granted.

Exception No. 4 - The ID erred in dismissing Complaint Counts I, II, III, IV and V.

This Exception is, essentially, a "prayer for relief," in that we are asked to conclude that the ALJ's Findings of Fact and Conclusions of Law are in error and should be reversed. It does appear that Palmerton is asking us to adopt

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the findings and conclusions that Palmerton advocated in its Main Brief. To that end, Palmerton attached to its Exceptions 175 proposed Findings of Fact and 75 proposed Conclusions of Law.[26] Palmerton Exc., Appendix A. Many of those proposed Findings of Fact and Conclusions of Law sound in the nature of argument. We agree with the ALJ that the inclusion of additional proposed Findings of Fact and of proposed Conclusions of Law in Reply Briefs is procedurally improper and will not be considered in this Opinion and Order. See, 52 Pa. Code § 5.533; ID at 11.

Palmerton's Exception is denied.

2. Global NAPs' Exception

Global NAPs filed a single Exception to the ID:

The Commission should reexamine its imposition of a civil fine upon Global in light of the ALJ's ID and the Commission's Policy Statement on Penalties.

We note that this request by Global NAPs was not addressed in the Initial Decision, which is silent on this issue save to order the payment of the civil penalty imposed by the Initial Decision Imposing Sanctions issued June 5, 2009. Through its Exception, Global NAPs effectively requests that we rescind or amend our prior Opinion and Order of June 25, 2009, in which we affirmed the ALJ's

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[26] We note that a number of Palmerton's proposed Findings of Fact and Conclusions of Law were designated "Proprietary or Highly Confidential" by Palmerton. These materials were not made the subject of a Petition for Protective Order as required by our procedural regulations at 52 Pa. Code § 5.423. *Orders to limit availability of proprietary information.* We will, however, accord these materials confidential treatment in accord with 52 Pa. Code § 5.423 though it should be noted that we do not find them persuasive in this case.

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Initial Decision Imposing Sanctions. In order to resolve this matter, we will invoke our authority at 52 Pa. Code § 1.2(a), *Liberal construction*, which states:

> This subpart shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable. The Commission or presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties.

We will also consider the request as within our authority to grant or deny under Section 703(g) of the Code, 66 Pa. C.S. § 703(g), relative to rescission and amendment of orders.

Global NAPs makes the argument that the civil penalty imposed in this case by the ALJ due to Global NAPs' failure to obtain a surety bond in favor of Palmerton should either be removed completely or reduced. Palmerton had ample opportunity, which it availed itself of in Reply Exceptions, to advance arguments to the contrary.[27]

In support of this request that the civil penalty be entirely eliminated, Global NAPs argues several points. First, Global NAPs contends that no basis exists for continuing emergency relief to Palmerton given the ALJ's Initial Decision. Global NAPs' Exception at 7-8. Second, Global NAPs argues that the Initial Decision is consistent with and should be considered in the context of the case of *Complaint of TVC Albany, Inc. d/b/a Tech Valley Communications Against Global NAPs, Inc. for failure to Pay Intrastate Access Charges*, NY PSC Case No. 07-C-0059 (Order dated March 20, 2008) (*TVC*). Global NAPs' Exc. at 8-9.

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[27] We also note that Palmerton did not file a Motion to Strike Global NAPs' Exception as beyond the scope of 52 Pa. Code § 5.533.

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Finally, Global NAPs repeats its core argument that its traffic is interstate in nature and so is not subject to Commission jurisdiction. Global NAPs' Exc. at 9-10. In this respect, Global NAPs argues that the fact that the Commission has no jurisdiction over the payment of the access charges at issue in this case provides a reason for the Commission to terminate the bond requirement and to remove or sharply reduce the civil penalty for Global NAPs' failure to file the bond. Global NAPs' Exc. at 10.

Palmerton filed Reply Exceptions in which it vigorously disagrees with Global NAPs' request to rescind or to modify the civil penalty imposed by the ALJ. In its Reply Exceptions, Palmerton alleges acts of bad faith, misfeasance and malfeasance on the part of Global NAPs in at least a dozen other jurisdictions. Palmerton Reply Exc. at 1-7. Palmerton also points out that Global NAPs "ignored the Commission's [June 25, 2009] Order and those entered by the ALJ requiring financial security." Palmerton Reply Exc. at 8. Palmerton questions Global NAPs' interpretation of the *TVC* case and challenges its applicability in this case. Palmerton Reply Exc. at 10-12.

In resolving this issue, we will deal with the facts before us within the scope of our jurisdiction and the law.

We do agree with Palmerton that a contempt sanction is not dependent upon whether a Party ultimately wins a case. Palmerton RExc. at 9. Global NAPs failed to comply with the ALJ's Decision Imposing Sanctions and with our Opinion and Order of June 25, 2009 affirming the same. Global NAPs does not dispute this. However, Global NAPs did offer to post the bond in installments. ID at 38-39.

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We also agree with Global NAPs that given the Findings of Fact and Conclusions of Law in the Initial Decision, it is not appropriate, at this time, to impose a civil penalty of the scope originally contemplated by the ALJ in the Initial Decision Imposing Sanctions and as affirmed in our Opinion and Order of June 25, 2009. That civil penalty would now be approximately $230,000, which would be at least $25,000 more than the amount of the bond originally required by the ALJ in this case. We could, of course, impose that penalty on Global NAPs, Inc., and its affiliates. However, the outcome of imposing such a penalty is problematic, at best, given that the only Global NAPs entity over which our Commission has undisputed jurisdiction, Global NAPs South, Inc., has no income or revenue. *See*, Initial Decision Imposing Sanctions at 6; Finding of Fact No. 13.

In its Exception, Global NAPs suggests that, in arriving at an appropriate civil penalty in this matter, we apply the provisions of 52 Pa. Code § 69.1201, *Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations—statement of policy*. Given the specific facts of this proceeding, we agree, though we wish to be clear that this action is not a precedent for parties to ignore sanctions.

The factors to be considered under 52 Pa. Code § 69.1201(c) are as follows:

> (1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

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(2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

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(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

Global NAPs argues that although its conduct in this case in refusing to pay billed access charges was of a serious nature, its position was taken in good faith, and Global NAPs did offer to meet the bond requirement in installments. Global NAPs' Exc. at 13. The consequences of Global NAPs' failure to post the bond were potentially very serious. Global NAPs' conduct was intentional, as Global NAPs admits in its Exception; however, Global NAPs reiterates its willingness to have provided the bond over a four month period. Global NAPs Exc. at 14. Global NAPs asserts that factors (4) and (5) of 52 Pa. Code § 69.1201(c) are not relevant in this proceeding, and we agree. Global NAPs admits that its annual reports were not timely filed but argues that it is otherwise compliant with the Code and the Commission's regulations.[28] Global NAPs Exc. at 15. Global NAPs points out that this matter derived from a Formal Complaint, not from a Commission investigation, and to the extent that this factor is relevant it does not appear that Global NAPs acted in "bad faith" in this matter or that it attempted active concealment of violations. With respect to the amount of the civil penalty or fine necessary to deter future violations and past Commission decisions in similar situations, Global NAPs reiterates that no civil penalty should be imposed. Global NAPs Exc. at 16-17. Global NAPs cites two recent cases which, though factually inapposite, are advanced to support Global NAPs'

[28] We note that Global NAPs South, Inc. has not otherwise been the subject of complaints (with the exception of the instant case) nor of Commission investigations. ID at 51, Conclusion of Law No. 87.

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contention that the current civil penalty is excessive.[29] Global NAPs Exc. at 17-18.

We find that Global NAPs' failure to comply with the Initial Decision Imposing Sanctions was both intentional and a serious matter. This is conduct that the Commission cannot accept. We do understand, however, that Global NAPs did offer to post the required bond in installments, that Global NAPs' sanctioned conduct was limited to this proceeding and involved no threat to the public health or welfare, and that Global NAPs South, Inc. has not been the subject of other Commission complaints. While failure to obey a lawful Order of the Commission must have consequences, we believe that it is appropriate to impose a civil penalty in this matter of $50,000.

Before concluding, we note that Verizon did not file Exceptions but filed Reply Exceptions in this proceeding. However, these "Reply Exceptions," refer us to Verizon's Reply Brief (attached to the Reply Exceptions) which asks that we confine our decision in this matter to the specific facts of this case and to the parties before us.

Our procedural rules with respect to Exceptions are clear:

> **§ 5.533. Procedure to except to initial, tentative and recommended decisions.**
>
> * * *
>
> (b) Each exception must be numbered and identify the finding of fact or conclusion of law to which exception

[29] Those cases are: *Re The Pennsylvania Universal Service Fund Interim Order*, Docket No. P-0098142F1000 (2008) and *Johnson, et al. v. Metropolitan Edison Company,* Docket Nos. C-20077995 and C-2008-2029081 (Order entered May 7, 2009)

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is taken and cite relevant pages of the decision. Supporting reasons for the exceptions shall follow each specific exception.

(c) The exceptions must be concise. The exceptions and supporting reasons must be limited to 40 pages in length. Statements of reasons supporting exceptions must, insofar as practicable, incorporate by reference and citation, relevant portions of the record and passages in previously filed briefs. A separate brief in support of or in reply to exceptions may not be filed with the Secretary under § 1.4 (relating to filing generally).

While we agree with the basic proposition advanced by Verizon, in this case, Verizon's Reply Exceptions are nothing more than a reiteration of Verizon's Reply Brief. This submission does not conform to even the minimal requirements of our procedural regulations and is denied.

Conclusion

Based upon the foregoing discussion, the Initial Decision of Administrative Law Judge Wayne L. Weismandel is affirmed in part and reversed in part, and the Exceptions of Palmerton Telephone Company are granted in part and denied in part, and the Exception of Global NAPs is granted in part and denied in part, as set forth in this Opinion and Order; **THEREFORE**,

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IT IS ORDERED:

1. That the Exceptions of Palmerton Telephone Company to the Initial Decision of Administrative Law Judge Wayne L. Weismandel are granted in part and denied in part, consistent with this Opinion and Order.

2. That the Exception of Global NAPs South, Inc., Global NAPs Pennsylvania, Inc., Global NAPs, Inc. and Other affiliates to the Initial Decision of Administrative Law Judge Wayne L. Weismandel is granted in part and denied in part, consistent with this Opinion and Order.

3. That the Initial Decision of Administrative Law Judge Wayne L. Weismandel is affirmed in part and reversed in part, consistent with this Opinion and Order.

4. That the Formal Complaint of Palmerton Telephone Company is sustained, consistent with this Opinion and Order.

5. That within thirty (30) days of entry of the Commission's Order in this proceeding, Palmerton Telephone Company shall issue a final bill to Global NAPs consisting of all amounts owed for intrastate interexchange call traffic transported by Global NAPs and terminated at the facilities of Palmerton Telephone Company.

6. That within thirty (30) days of the bill issuance by Palmerton Telephone Company in accordance with Paragraph No. 5 above, Global NAPs shall make full payment to Palmerton Telephone Company with appropriate notification to this Commission and the participating parties in this proceeding.

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7. That if Global NAPs shall not make the payment to Palmerton Telephone Company in accordance with Paragraph No. 6 above, this matter shall be referred to the Law Bureau of the Commission for investigation and further action as deemed necessary.

8. That, consistent with the Initial Decision, Global NAPs South, Inc. shall pay a civil penalty of $750 for three violations of the provisions of 52 Pa. Code § 63.36.

9. That, consistent with the Initial Decision and pursuant to Sections 3301 and 3315 of the Public Utility Code, 66 Pa. C.S. §§ 3301 and 3315, Global NAPs South, Inc. shall pay a civil penalty of $750 for the violations addressed in ordering Paragraph No. 8, above, within thirty (30) days of the date of entry of this Opinion and Order, by certified check or money order to:

Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

10. That the Commission's Opinion and Order of June 25, 2009, adopting the Initial Decision Imposing Sanctions of June 5, 2009, and the Initial Decision in this matter, are modified to impose a civil penalty of $50,000 on Global NAPs South, Inc., Global NAPs Pennsylvania, Inc., Global NAPs, Inc. and Other affiliates for failure to comply with the directive to obtain a surety bond.

11. That, consistent with the Initial Decision and pursuant to Sections 3301 and 3315 of the Public Utility Code, 66 Pa. C.S. §§ 3301 and 3315, Global NAPs South, Inc., Global NAPs Pennsylvania, Inc., Global NAPs, Inc. and

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Other affiliates shall pay a civil penalty of $50,000 for the violations addressed in ordering Paragraph No. 10, above, within thirty (30) days of the date of entry of this Opinion and Order, by certified check or money order to:

Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

12. That if Global NAPs shall not make payment of the civil penalties specified in Paragraphs Nos. 9 and 11, above, the matter shall be referred to the Law Bureau of the Commission for investigation and further action as deemed necessary.

13. That upon receipt of the civil penalties in this matter from Global NAPs South, Inc., Global NAPs Pennsylvania, Inc., Global NAPs, Inc. and Other affiliates, that this matter be marked closed.

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: February 11, 2010

ORDER ENTERED: March 16, 2010

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AT&T Florida's Responses to Staff's First Set of Interrogatories (Nos. 2.a and 2.c), which contains customer specific network information that my be considered confidential and proprietary to Halo. [x-ref. DN 03700-12]

(CONFIDENTIAL)

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 3
PARTY Florida Public Service Comm. Staff - Exhibits
DESCRIPTION AT&T - Discovery
DATE 07/12/12

4

AT&T Florida's Objections and Responses to Halo's First Set of Interrogatories, Requests For Admission and Requests For Production of Documents

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 4
PARTY Florida Public Service Comm. Staff - Exhibits
DESCRIPTION AT&T - Discovery
DATE 07/12/12

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of BellSouth Telecommunications, LLC d/b/a AT&T Florida Against Halo Wireless, Inc.	)	Docket No.: 110234-TP
	)	Served: June 4, 2012

AT&T FLORIDA'S OBJECTIONS AND RESPONSES TO HALO'S FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSION AND REQUESTS FOR PRODUCTION OF DOCUMENTS

BellSouth Telecommunications, LLC d/b/a AT&T Florida ("AT&T Florida"), pursuant to Florida Public Service Commission Order No. PSC-12-2020-PCO-TP (Order Establishing Procedure), hereby serves its Objections and Responses to the First Set of Interrogatories (Nos. 1-12), for Requests for Admission (Nos. 1-22) and Requests for Production of Documents (Nos. 1-9) issued by Halo Wireless, Inc., dated May 25, 2012 (collectively, the "Discovery").

GENERAL OBJECTIONS

The objections stated herein are preliminary in nature. Should additional grounds for objection be discovered, AT&T Florida reserves the right to supplement, revise, or modify its objections.

1. AT&T Florida objects to the Discovery to the extent it seeks to impose an obligation on AT&T Florida to respond on behalf of subsidiaries, affiliates, employees, or other persons that are not parties to this case on the grounds that such discovery is overly broad, unduly burdensome, oppressive, and not permitted by applicable discovery rules.

2. AT&T Florida objects to the Discovery to the extent it is intended to apply to matters other than those subject to the jurisdiction of the Commission. AT&T Florida objects to such requests as being irrelevant, overly broad, unduly burdensome, and oppressive.

3. AT&T Florida objects to the Discovery to the extent it requests information or documents not related to the issues identified in Order No. PSC-12-2020-PCO-TP. AT&T

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Florida objects to such requests as being irrelevant, overly broad, unduly burdensome, and oppressive.

4. AT&T Florida objects to Halo's unilaterally imposed time limit for AT&T Florida to respond to the Discovery as being inconsistent with Order No. PSC-12-2020-PCO-TP.

5. AT&T Florida objects to each and every Discovery request and instruction to the extent that such request or instruction calls for information that is exempt from discovery by virtue of the attorney-client privilege, work product privilege, or other applicable privilege.

6. AT&T Florida objects to each and every Discovery request insofar as the requests are vague, ambiguous, overly broad, imprecise, or utilizes terms that are subject to multiple interpretations but are not properly defined or explained for purposes of this Discovery.

7. AT&T Florida objects to each and every Discovery request to the extent that it is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the issues identified in Order No. PSC-12-2020-PCO-TP.

8. AT&T Florida objects to providing information and/or documents to the extent that such information and/or documents is already in the public record before the Commission or already in the possession of Halo.

9. AT&T Florida objects to the Discovery requests, instructions and definitions, insofar as they seek to impose obligations on AT&T Florida that exceed the requirements of the Florida Rules of Civil Procedure or Florida law.

10. AT&T Florida objects to each and every Discovery request that is unduly burdensome, expensive, oppressive, or excessively time consuming as written.

11. AT&T Florida is a large company with employees located in many different locations in Florida and in other states. In the course of its business, AT&T Florida creates countless documents that are not subject to Commission or FCC retention of records

requirements. These documents are kept in numerous locations that are frequently moved from site to site as employees change jobs or as the business is reorganized. Therefore, it is possible that not every document has been identified in response to these requests. AT&T Florida will conduct a search of those files that are reasonably expected to contain the requested information. To the extent that the requests purport to require more, AT&T Florida objects on the grounds that compliance would impose an undue burden or expense.

12. AT&T Florida objects to each and every Discovery request to the extent that the information and/or documents requested constitutes "trade secrets" pursuant to Florida law. To the extent that Halo requests proprietary or confidential business information, AT&T Florida will make such information available upon execution and in accordance with a protective agreement, subject to any other general or specific objections contained herein.

13. AT&T Florida objects to any Discovery request that seeks to obtain "all" of particular documents, items, or information to the extent that such requests are overly broad and unduly burdensome. Any answers and responses provided by AT&T Florida in response to this discovery will be provided subject to, and without waiver of, the foregoing objection.

14. AT&T Florida objects to the instruction that for each Request for Admission it cannot admit or deny that it "set forth in detail the reasons why you cannot truthfully admit or deny a matter" as purporting to impose requirements that are beyond the requirements of the Florida Rules of Civil Procedure.

15. AT&T Florida objects to the definition of the term "Document" as being beyond the scope of the Florida Rules of Civil Procedure and Florida law.

SPECIFIC OBJECTIONS AND ANSWERS TO HALO'S FIRST SET OF INTERROGATORIES

1. State the complete factual basis for your belief that Halo is in breach of the parties' wireless interconnection agreement (ICA), including identification of all Documents and communications that relate to such belief.

OBJECTION: In addition to the General Objections, AT&T Florida objects to this Interrogatory on the grounds that it is unduly burdensome and, for purposes of this proceeding, premature.

ANSWER: Subject to and without waiving its objections, and without waiving its right to identify additional bases, documents and communications, AT&T Florida states that the factual basis for its belief that Halo is in breach of the parties' wireless interconnection agreement, including identification of documents and communications that relate to such belief, are set forth in AT&T Florida's prefiled testimony in this proceeding and in the pre-filed testimony filed by AT&T incumbent local exchange carriers in proceedings that present the same issues as this one ("Parallel Proceedings") in Tennessee, Wisconsin, Georgia, South Carolina, Illinois and Missouri and in post-hearing briefs submitted in the Tennessee, Wisconsin and Georgia proceedings.

2. Identify all Documents which you reviewed prior to filing the Complaint.

OBJECTION: In addition to the General Objections, AT&T Florida objects to this interrogatory on the grounds that it is overly broad and would be unduly burdensome for AT&T Florida to research the answer to the Interrogatory and that the information it seeks is (i) protected by the work product doctrine and (ii) neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

3. Define "wireline" as used by AT&T and provide the source of the definition.

OBJECTION: In addition to the General Objections, AT&T Florida objects to this Interrogatory on the grounds that the Interrogatory is vague and ambiguous due, among other reasons, to its failure to specify any context for the use of the word "wireline." In addition, the Interrogatory is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence, because both Halo and AT&T Florida and its affiliate AT&T incumbent local exchange carriers have submitted pre-filed testimony in this proceeding and in Parallel Proceedings in Tennessee, Wisconsin, Georgia, South Carolina, Illinois and Missouri and have participated in evidentiary hearings in Tennessee, Wisconsin, Georgia and South Carolina, and there has been no disagreement concerning the meaning of "wireline."

ANSWER: Subject to and without waiving its objections, AT&T Florida states that the only traffic that the parties' ICA permits Halo to deliver to AT&T Florida is traffic that "originates through wireless transmitting and receiving facilities." Consequently, for purposes of this proceeding, "wireline" means "not wireless." AT&T Florida further states that the definition of "wireline" in Newton's Telecom Dictionary, 18th ed., states, "Wireline Communications that require a physical connection, such as wires or cables, between users." AT&T Florida's use of the word "wireline" in this proceeding is consistent with that definition.

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4. Define "wireless" as used by AT&T and provide the source of the definition.

OBJECTION: In addition to the General Objections, AT&T Florida objects to this Interrogatory on the grounds that the Interrogatory is vague and ambiguous due, among other reasons, to its failure to specify any context for the use of the word "wireless." In addition, the Interrogatory is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence, because both Halo and AT&T Florida and its affiliate AT&T incumbent local exchange carriers have submitted pre-filed testimony in this proceeding and in Parallel Proceedings in Tennessee, Wisconsin, Georgia, South Carolina, Illinois and Missouri and have participated in evidentiary hearings in Tennessee, Wisconsin, Georgia and South Carolina, and there has been no disagreement concerning the meaning of "wireless."

ANSWER: Subject to and without waiving its objections, AT&T Florida states that the only traffic that the parties' ICA permits Halo to deliver to AT&T Florida is traffic that "originates through wireless transmitting and receiving facilities." Because the ICA does not define "wireless," it is given its common and ordinary meaning in the telecommunications industry. The definition of "wireless" in Newton's Telecom Dictionary, 18th ed., states, in part "without wires." AT&T Florida's use of the word "wireless" in this proceeding is consistent with that definition.

5. Define "landline" as used by AT&T and provide the source of the definition.

OBJECTION: In addition to the General Objections, AT&T Florida objects to this Interrogatory on the grounds that the Interrogatory is vague and ambiguous due, among other reasons, to its failure to specify any context for the use of the word "landline." In addition, the Interrogatory is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence, because both Halo and AT&T Florida and its affiliate AT&T incumbent local exchange carriers have submitted pre-filed testimony in this proceeding and in Parallel Proceedings in Tennessee, Wisconsin, Georgia, South Carolina, Illinois and Missouri and have participated in evidentiary hearings in Tennessee, Wisconsin, Georgia and South Carolina, and there has been no disagreement concerning the meaning of "landline."

ANSWER: Subject to and without waiving its objections, AT&T Florida states that it uses "landline" in this proceeding, it intends the same meaning as when it uses "wireline."

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6. Define "end point" as used by AT&T and provide the source of the definition.

OBJECTION: In addition to the General Objections, AT&T Florida objects to this Interrogatory on the grounds that (i) the absence of context makes the Interrogatory vague and ambiguous; and (ii) to the best of AT&T Florida's knowledge, AT&T Florida has not used the term "end point" in this proceeding, with the exception of a reference to a use of that term by Halo.

7. Define "originate" as used by AT&T and provide the source of the definition.

OBJECTION: In addition to the General Objections, AT&T Florida objects to this Interrogatory on the grounds that the Interrogatory is vague and ambiguous due, among other reasons, to its failure to specify any context for the use of the word "originate." In addition, the Interrogatory is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence, because both Halo and AT&T Florida and its affiliate AT&T incumbent local exchange carriers have submitted pre-filed testimony in this proceeding and in Parallel Proceedings in Tennessee, Wisconsin, Georgia, South Carolina, Illinois and Missouri and have participated in evidentiary hearings in Tennessee, Wisconsin, Georgia and South Carolina, and there has been no disagreement concerning the meaning of "originate."

ANSWER: Subject to and without waiving its objections, AT&T Florida states that the only traffic that the parties' ICA permits Halo to deliver to AT&T Florida is traffic that "originates through wireless transmitting and receiving facilities." Because the ICA does not define "originates," it is given its common and ordinary meaning in the telecommunications industry. AT&T Florida further states that Webster's Encyclopedic Unabridged Dictionary of the English Language (1996 ed.) defines "originate," in part, as "to take its origin or rise; begin; start," and states that its understanding of the word "originates," as that term is used in the ICA, is consistent with that definition.

8. State the complete factual basis for your belief that Halo is sending wireline originated traffic to AT&T, including identification of all Documents and communications that relate to such belief.

OBJECTION: In addition to the General Objections, AT&T Florida objects to this Interrogatory on the grounds that it is unduly burdensome and, for purposes of this proceeding, premature.

ANSWER: Subject to and without waiving its objections, and without waiving its right to identify additional bases, documents and communications, AT&T Florida states that the factual basis for its belief that Halo is sending wireline-originated traffic to AT&T Florida, including identification of documents and communications that relate to such belief, are set forth in AT&T Florida's prefiled testimony in this proceeding and in the pre-filed testimony filed by AT&T incumbent local exchange carriers in Parallel Proceedings in Tennessee, Wisconsin, Georgia, South Carolina, Illinois and Missouri and in post-hearing briefs submitted in the Tennessee, Wisconsin and Georgia proceedings.

9. If you contend that Transcom does not provide Enhanced Services, as defined by the Federal Communications Commission (FCC), Describe in Detail the basis for your contention.

OBJECTION: In addition to the General Objections, AT&T Florida objects to this Interrogatory on the grounds that it is unduly burdensome and, for purposes of this proceeding, premature.

ANSWER: Subject to and without waiving its objections, and without waiving its right to identify additional bases for its contention, AT&T Florida states that the basis for its contention that Transcom does not provide Enhanced Services is set forth in AT&T Florida's prefiled testimony in this proceeding and in the pre-filed testimony filed by AT&T incumbent local exchange carriers in Parallel Proceedings in Tennessee, Wisconsin, Georgia, South Carolina, Illinois and Missouri and in post-hearing briefs submitted in the Tennessee, Wisconsin and Georgia proceedings.

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10. If you contend that Transcom is a Common Carrier and/or Telecommunications Carrier as defined by the Communications Act, Describe in Detail the basis for your contention.

ANSWER: Subject to and without waiving its General Objections, AT&T Florida has not contended in this proceeding that Transcom is a Common Carrier and/or Telecommunications Carrier, but reserves its right to do so.

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11. Describe in detail every step you contend Halo should have taken to avoid delivering intrastate "wireline" (as you define that term) "originated" (as you define that term) calls to AT&T.

OBJECTION: In addition to the General Objections, AT&T Florida objects to this Interrogatory on the grounds that it is unduly burdensome and the information it seeks is neither relevant to the subject matter of this proceeding nor reasonably likely to lead to the discovery of admissible evidence. Halo has breached its wireless ICA with AT&T Florida by delivering to AT&T Florida traffic that did not originate through wireless transmitting and receiving facilities. Halo took no step to avoid that breach of ICA, and has denied any obligation to do so. It is not AT&T Florida's responsibility to counsel Halo on how to abide by its contract obligations, and AT&T Florida has not undertaken to identify, and has no duty to identify, steps that Halo should have taken in order to do so.

12. If you did not unequivocally admit any request for admission, *infra*, state the complete factual basis for your belief for each request for admission that it is not true, including identification of all Documents and communications that relate to such belief.

OBJECTION: In addition to the General Objections, AT&T Florida objects to this Interrogatory as being overly broad and burdensome and beyond the scope of the requirements of the Florida Rules of Civil Procedure.

ANSWER: Subject to and without waiving its objections, see responses to Requests for Admissions.

SPECIFIC OBJECTIONS AND RESPONSES TO HALO'S REQUESTS FOR ADMISSION

1. It is possible for a single communication to involve more than one "origination" point (as you define that term).

OBJECTION: In addition to the General Objections, AT&T Florida objects to this Request for Admission on the grounds that (i) its use of the undefined term "communication" renders it is vague and ambiguous; and (ii) it seeks a legal conclusion.

2. If Transcom is an end user, the Transcom-related calls Halo delivers to AT&T in Florida fall within the definition of "Local Traffic" as defined in Section I.D. of the ICA.

OBJECTION: In addition to the General Objections, AT&T Florida objects to this Request for Admission on the ground that it seeks a legal conclusion.

3. If Transcom is an end user, the Transcom-related calls Halo delivers to AT&T in Florida are consistent with the usage contemplated by the definition of "Local Interconnection" in Section I.E. of the ICA.

OBJECTION: In addition to the General Objections, AT&T Florida objects to this Request for Admission on the ground that it seeks a legal conclusion.

4. If Transcom is an end user, Halo is in compliance with the ICA Amendment provision requiring that its traffic "originates through wireless transmission and receiving facilities before Carrier delivers traffic to AT&T for termination."

OBJECTION: In addition to the General Objections, AT&T Florida objects to this Request for Admission on the ground that it seeks a legal conclusion.

5. The first point where Halo's High Volume customer's traffic is received by Halo is over the wireless CPE-Base Station airlink at each Halo tower location?

RESPONSE: Subject to and without waiving its General Objections, AT&T Florida is without knowledge or information (other than information provided by Halo) sufficient to form a belief as to the truth of the stated proposition, because only Halo possesses the information needed to determine the truth of the proposition. To the extent a further response is required, AT&T Florida denies the proposition.

6. When a call "originates" (as defined by you) in IP format and stays in IP format until it is converted to "TDM" by Halo prior to handoff to AT&T in Florida then the call "originates" on the Public Switched Telephone Network at Halo's Base Station.

OBJECTION: In addition to the General Objections, AT&T Florida objects to this Request for Admission on the ground that it seeks a legal conclusion.

7. It is AT&T's official position that telephone numbers are an accurate and appropriate way to rate calls for billing purposes.

OBJECTION: In addition to the General Objections, AT&T Florida objects to this Request for Admission on the ground that its reference to AT&T Florida's "official position" renders it vague and ambiguous.

RESPONSE: Subject to and without waiving its objections, AT&T Florida states that its position in this proceeding with respect to the appropriateness of using telephone numbers to rate calls for billing purposes is set forth in AT&T Florida's prefiled testimony in this proceeding and in the pre-filed testimony filed by AT&T incumbent local exchange carriers in Parallel Proceedings in Tennessee, Wisconsin, Georgia, South Carolina, Illinois and Missouri and in post-hearing briefs submitted in the Tennessee, Wisconsin and Georgia proceedings. To the extent this response is inconsistent with the Request, AT&T Florida denies this Request for Admission.

8. AT&T bills Halo for all usage based on traffic factors, and not based on call-by-call rating.

RESPONSE: Denied. The proposition is false because transit usage is not billed based on traffic factors.

9. It is AT&T's official position that number porting, VoIP services, and mobile voice application services have not rendered call rating using telephone numbers obsolete, error prone, inaccurate and misleading.

OBJECTION: In addition to the General Objections, AT&T Florida objects to this Request for Admission on the ground that its reference to AT&T Florida's "official position" renders it vague and ambiguous.

RESPONSE: Subject to and without waiving its objections, AT&T Florida states that its position in this proceeding with respect to the stated proposition is set forth in AT&T Florida's prefiled testimony in this proceeding and in the pre-filed testimony filed by AT&T incumbent local exchange carriers in Parallel Proceedings in Tennessee, Wisconsin, Georgia, South Carolina, Illinois and Missouri and in post-hearing briefs submitted in the Tennessee, Wisconsin and Georgia proceedings. To the extent this response is inconsistent with the Request, AT&T Florida denies this Request for Admission.

10. AT&T contends its affiliate that provides voice over Internet Protocol (VoIP) service in association with U-Verse is not a telecommunications carrier.

OBJECTION: In addition to the General Objections, AT&T Florida objects to this Request for Admission on the grounds that (i) it is nonsensical because the referenced service is provided by AT&T Florida, not by an affiliate, (ii) it seeks a legal conclusion and (iii) the information it seeks is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

RESPONSE: Subject to and without waiving its objections, AT&T Florida states that to the best of its knowledge, AT&T Florida has made no contention that its affiliate that provides VoIP service in association with U-Verse is or is not a telecommunications carrier.

11. AT&T contends its affiliate that provides VoIP service in association with U-Verse is an Enhanced Information Service Provider, as defined by the FCC.

OBJECTION: In addition to the General Objections, AT&T Florida objects to this Request for Admission on the grounds that (i) it is nonsensical because the referenced service is provided by AT&T Florida, not by an affiliate, (ii) it seeks a legal conclusion and (iii) the information it seeks is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

RESPONSE: Subject to and without waiving its objections, AT&T Florida states that to the best of its knowledge, AT&T Florida has made no contention that its affiliate that provides VoIP service in association with U-Verse is or is not an Enhanced Service Provider, as defined by the FCC.

12. For purposes of call rating, AT&T would not rate "toll" VoIP-TDM calls at the Interstate access price.

OBJECTION: In addition to the General Objections, AT&T Florida objects to this Request for Admission on the grounds that it (i) is vague and ambiguous; (ii) calls for speculation; and (iii) seeks information that is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. AT&T Florida further objects to this Request for Admission on the ground that it would be unduly burdensome to determine the response as it would apply to the many carriers that may deliver "toll" VoIP-TDM calls to AT&T Florida.

RESPONSE: Subject to and without waiving its objections, AT&T Florida states that it rates calls, including "toll" VoIP-TDM calls, in accordance with its applicable interconnection agreements and tariffs. To the extent this response is inconsistent with the Request, AT&T Florida denies this Request for Admission.

13. For purposes of call rating, AT&T would treat a VoIP call starting on a wireless broadband connection as a "wireline" call if the calling number is designated as a wireline number in the Local Exchange Routing Guide (LERG).

OBJECTION: In addition to the General Objections, AT&T Florida objects to this Request for Admission on the grounds that it (i) is vague and ambiguous; (ii) calls for speculation; and (iii) seeks information that is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. AT&T Florida further objects to this Request for Admission on the ground that it would be unduly burdensome to determine the response as it would apply to the many carriers that may deliver VoIP calls starting on a wireless broadband connection to AT&T Florida.

RESPONSE: Subject to and without waiving its objections, AT&T Florida states that it rates calls, including VoIP calls starting on a wireless broadband connection, in accordance with its applicable interconnection agreements and tariffs. To the extent this response is inconsistent with the Request, AT&T Florida denies this Request for Admission.

14. AT&T contends that a call originated on Level 3's network based solely on the fact that Level 3 is the code holder for the calling number.

RESPONSE: Subject to and without waiving its General Objections, denied. AT&T Florida has not contended in this proceeding that a call originated on Level 3's network based solely on the fact that Level 3 is the code holder for the calling number. To the extent that this Request for Admission intends to inquire into the call studies about which AT&T Florida witness Mark Neinast has testified in this proceeding and/or Parallel Proceedings, the methodology of those call studies is described in detail in Mr. Neinast's pre-filed testimony.

15. An end user cannot be an "intermediate switching point" in a call.

OBJECTION: In addition to the General Objections, AT&T Florida objects to this Request for Admission on the grounds that it (i) seeks a legal conclusion and (ii) is vague and ambiguous because of its use of the phrase "intermediate switching point" in quotation marks without identifying the source of the quote.

16. An end user can be an "intermediate switching point" in a call.

OBJECTION: In addition to the General Objections, AT&T Florida objects to this Request for Admission on the grounds that it (i) seeks a legal conclusion and (ii) is vague and ambiguous because of its use of the phrase "intermediate switching point" in quotation marks without identifying the source of the quote.

17. If the calls in issue do not "originate" on Halo's network, then the calls in issue meet the definition of "Intermediary Traffic" in Section I.C. of the ICA.

OBJECTION: In addition to the General Objections, AT&T Florida objects to this Request for Admission on the ground that it seeks a legal conclusion.

18. For the calls that AT&T asserts constitute a breach, Halo is providing "telephone exchange service" as defined in § 153(54) of the Communications Act.

OBJECTION: In addition to the General Objections, AT&T Florida objects to this Request for Admission on the ground that it seeks a legal conclusion.

19. For the calls that AT&T asserts constitute a breach, Halo is providing "exchange access service" as defined in § 153(20) of the Communications Act.

OBJECTION: In addition to the General Objections, AT&T Florida objects to this Request for Admission on the ground that it seeks a legal conclusion.

20. For the calls that AT&T asserts constitute a breach, Halo is providing "telephone toll service" as defined in § 153(55) of the Communications Act.

OBJECTION: In addition to the General Objections, AT&T Florida objects to this Request for Admission on the ground that it seeks a legal conclusion.

21. For the calls that AT&T asserts constitute a breach, Halo is providing "Interconnected VoIP Service" as defined in § 153(25) of the Communications Act.

OBJECTION: In addition to the General Objections, AT&T Florida objects to this Request for Admission on the ground that it seeks a legal conclusion.

22. Since turning up service with AT&T in 2010, Halo has paid AT&T nearly $7.5M for termination and facility charges nationally.

RESPONSE: Subject to and without waiving its General Objections, admitted. Further responding, AT&T Florida states that Halo has failed to pay AT&T incumbent local exchange carriers more than approximately $23,000,000 that Halo owes for termination and facility charges.

SPECIFIC OBJECTIONS AND RESPONSES TO HALO'S REQUESTS FOR PRODUCTION

1. All Documents that evidence any communications between AT&T and the Commission, other than publicly filed documents listed on the docket in this proceeding.

OBJECTION: In addition to the General Objections, AT&T objects to this Request for Production to the extent it requests information or documents protected by the attorney-client privilege and/or the attorney work product doctrine. AT&T Florida further objects to this Request for Production on the grounds that it is overly broad, lacks specificity, is unduly burdensome and seeks information that is neither relevant to the subject matter of this proceeding nor reasonably likely to lead to the discovery of admissible evidence.

RESPONSE: Subject to and without waiving its objections, in addition to discovery related documents which Halo already has in its possession, see documents produced herewith.

2. All correspondence between AT&T and the Commission, including but not limited to letters and emails that mention Halo or Transcom.

OBJECTION: In addition to the General Objections, AT&T Florida objects to this Request for Production on the grounds that it is overly broad, lacks specificity, is unduly burdensome and seeks information that is neither relevant to the subject matter of this proceeding nor reasonably likely to lead to the discovery of admissible evidence.

RESPONSE: Subject to and without waiving its objections, AT&T Florida states that to the best of its knowledge, there exists no correspondence between AT&T and the Commission, including but not limited to letters or emails, that mention Halo or Transcom, other than the documents produced in response to Request for Production 1, the publicly filed documents listed on the docket in this proceeding, and discovery related documents which Halo already has in its possession.

3. All Documents AT&T provided to any third party, excluding legal counsel for AT&T, that reference Halo or Transcom.

OBJECTION: In addition to the General Objections, AT&T Florida objects to this Request for Production on the grounds that it is overly broad, lacks specificity, is unduly burdensome and seeks information that is neither relevant to the subject matter of this proceeding nor reasonably likely to lead to the discovery of admissible evidence. AT&T Florida further objects to this Request for Production to the extent that it calls for production of documents that are protected by a joint defense or common interest privilege.

RESPONSE: Subject to and without waiving its objections, AT&T Florida states that to the best of its knowledge there are no such documents, other than the documents produced in response to Request for Production 1, the publicly filed documents listed on the docket in this proceeding, and discovery related documents which Halo already has in its possession.

4. All Documents that you claim evidence any breach of the ICA.

OBJECTION: In addition to the General Objections, AT&T Florida objects to this Interrogatory on the grounds that it is unduly burdensome and, for purposes of this proceeding, premature.

RESPONSE: Subject to and without waiving its objections, see Answer to Interrogatory 1.

5. All Documents that any witness proffered by AT&T reviewed or referred to in connection with any testimony or opinions being submitted in this proceeding.

RESPONSE: Subject to and without waiving its General Objections, AT&T Florida is producing in response to this Request a DVD-R, labeled "AT&T Florida's Response to Halo RFP-5." This material has previously been provided to Halo in the Parallel Proceeding in South Carolina. In addition, photographs which AT&T previously provided to Halo in the Parallel Proceeding in South Carolina are responsive to this request. Finally, Mr. Drause's rebuttal testimony, filed on May 25, 2012, lists additional material on which Mr. Drause relied in preparing in testimony. AT&T Florida believes that Halo either has or can readily obtain from publicly available sources the items identified by Mr. Drause.

The DVD-R produced in response to this Request contains information that Halo may consider confidential and will be produced under a Notice of Intent to Request Specified Confidential Classification.

6. All Documents that support your answers to the First Set of Interrogatories.

OBJECTION: In addition to the General Objections, AT&T Florida objects to this Request for Production on the grounds that its use of the word "support" renders it vague and ambiguous and that it is overly broad and unduly burdensome.

RESPONSE: Subject to and without waiving its objections, see Answer to Interrogatory 1.

110234 Hearing Exhibits 00126

7. All Documents you rely on in prosecuting your Complaint.

OBJECTION: In addition to the General Objections, AT&T Florida objects to this Interrogatory on the grounds that it is unduly burdensome and, for purposes of this proceeding, premature.

RESPONSE: Subject to and without waiving its objections, see Answer to Interrogatory 1.

110234 Hearing Exhibits 00127

8. Any and all reports, summaries, or other Documents prepared, reviewed, relied upon, or which may be reviewed or relied upon, by any expert whom you expect to call to testify in the trial of the Complaint.

RESPONSE: Subject to and without waiving its General Objections, see Response to Request for Production 5.

110234 Hearing Exhibits 00128

9. All Documents reviewed, relied upon or used in responding to Halo's first set of interrogatories directed to AT&T, served contemporaneously herewith.

RESPONSE: Subject to and without waiving its General Objections, AT&T Florida did not review, rely upon or use any Documents in responding to Halo's first set of Interrogatories other than Documents referenced in its Responses.

110234 Hearing Exhibits 00129

Respectfully submitted this 4th day of June, 2012.

AT&T FLORIDA

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110234 Hearing Exhibits 00130

5

AT&T Florida's Responses to Halo's First Request for PODs (No. 5), containing portions of customer specific traffic and calling records and billing information that may be considered confidential to Halo. [CLK note: Document consists of (1) DVD only].

(CONFIDENTIAL)

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 5
PARTY Florida Public Service Comm. Staff - Exhibits
DESCRIPTION AT&T - Discovery
DATE 07/12/12

6

Halo Wireless, Inc.'s Response to Staff's First Set of Interrogatories to Halo Wireless, Inc. (Nos. 1-6)

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 6
PARTY Florida Public Service Comm. Staff - Exhibits
DESCRIPTION Halo - Discovery
DATE 07/12/12

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE:	{	
	{	
BELLSOUTH	{	
TELECOMMUNICATIONS,	{	
LLC d/b/a AT&T FLORIDA,	{	
Complainant,	{	DOCKET NO. 110234-TP
v.	{	
	{	
HALO WIRELESS, INC.,	{	
Respondent.	{	

HALO WIRELESS, INC.'S RESPONSE TO STAFF'S FIRST SET OF INTERROGATORIES TO HALO WIRELESS, INC. (NOS. 1-6)

COMES NOW, Respondent Halo Wireless, Inc. ("Halo"), in the above entitled and numbered matter and, pursuant to Rule 1.340 of the Florida Rules of Civil Procedure, hereby submits the following Answers and Objections to the Staff of the Florida Public Service Commission's First Set of Interrogatories to Halo Wireless, Inc. (Nos. 1-6).

RESPONSES

1. Please refer to Page 6, Lines 16-18 of AT&T witness Neinast's direct testimony. Please explain how calls are transported to Transcom.

Answer:

Although there is slightly overlapping ownership as between Transcom and Halo, Transcom itself is a separate entity, and does not have an ownership interest in Halo. Halo cannot swear under oath to information about Transcom and does not have routine access to Transcom's information.

A Transcom witness has publicly testified, however, that it has four locations in various parts of the country where Transcom's customers can establish an interface with Transcom that is used to establish enhanced sessions. This implies that Transcom's customers arrange for the means by which the communications get to one of Transcom's locations. Halo also notes that to the extent the referenced sentence implies that any "transport" used as part of the delivery mechanism is part of a telecommunications service obtained or provided by either Transcom or Transcom's customer, Halo's response shall not be taken as agreement that this is necessarily, always or ever a correct implication.

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MAY 18 2012
FLORIDA PUBLIC SERVICE COMMISSION
OFFICE OF THE GENERAL COUNSEL

Answer provided by Russ Wiseman, 2351 W. Northwest Highway, Suite 1204, Dallas, Texas 75220. Mr. Wiseman is the President and Chief Operating Officer for Halo.

2. Please refer to Page 13, Lines 7-18 and Page 14, Lines 1-4 of AT&T witness Neinast's direct testimony. Do you believe the steps undertaken by AT&T to determine whether calls were landline-originated or wireless-originated are appropriate for such a determination (irrespective of the final percentages)? Please fully explain your response.

Answer:

Halo must first note that it does not agree with AT&T's characterizations or the meaning AT&T ascribes to these terms – which are not defined. Regardless, the cited testimony is based on a mere deeming exercise and applies a host of unsupported and unsupportable assumptions.

AT&T's witnesses have admitted in other jurisdictions that they have no real way of accurately identifying whether a particular call actually "originated" from a "wireline" customer of a LEC using a traditional phone. The entirety of their case is based on a review of the calling number in the CPN parameter, identifying the rate center the number is associated with and the LERG-designated number type ("wireline" or "wireless"), and then the specific company that has the individual number. They then *assume* that the call "originated" in the rate center, from customer premises equipment ("CPE") consistent with the number "type" and on the network of the company that has the number.

None of these assumptions are valid. AT&T's claim that calling party and called numbers are reliable ways to determine where calls actually began, and are appropriate parameters to determine call jurisdiction for call rating purposes, are flatly wrong and wholly inconsistent with AT&T's expressed position on this issue in other contexts, such as "Virtual NXX" traffic.

Despite AT&T's new found enthusiasm for this method, AT&T, the FCC, and everyone else in the industry recognize the fallacy of jurisdictionalizing and rating traffic based exclusively on telephone numbers. In the face of years of industry and regulatory acceptance of the limitations of numbers for call rating, it is disingenuous for AT&T to argue that numbers should now be used for this purpose. It is equally inappropriate for AT&T to base its conclusions and arguments in favor of number-based rating on the notion that numbers are the only available tool, despite the known flaws, because the inherent errors of this approach are growing every day.

In its *Connect America* order, the FCC says in paragraphs 934, 960, and 962 that they still believe numbers are unreliable for this purpose. AT&T is attempting to turn this position on its head by arguing that the FCC did not prohibit reliance on numbers as a rating tool. Again, however, advanced communications technologies, both IP and wireless, are rendering it

impossible to rely on CPN to determine where a call began or the network owner or type of network that was used to initiate the call.

Carriers like T-Mobile offer services today that allow their wireless users to make calls using wireless base stations connected to wired broadband networks. Are calls using these devices wireless or wireline originated? Does the answer depend on which number the user chooses to employ? On which "network" does the call "originate"?

Verizon Wireless offers Home Phone Connect, a service that allows VZW customers to port their home numbers to VZW and use traditional landline phones to make calls over their wireless network. Is this a "wireless" or "wireline" call? GoogleVoice and Skype both can be used with a wireless smartphone, but they typically involve use of a "wireline" number secured from a LEC. Does that mean the call is "wireline"? When this occurs the call does not originate on the underlying LEC's network and usually not even in the rate center geographic area. Yet AT&T would deem the call to have done so.

Voice is now, and will further become, an IP "application," where telephone numbers "move" seamlessly across devices and networks, just like music content in the "cloud" can be accessed on any device, anywhere, at any time. Because of these convergence trends, the FCC has supported, and now requires, traffic factors to allocate between different traffic types precisely because of the fact that numbers have been disassociated from networks and location and thus are not reliable. *See, e.g.* FCC Order ¶¶ 934, 060, 962.

Answer provided by Russ Wiseman, 2351 W. Northwest Highway, Suite 1204, Dallas, Texas 75220. Mr. Wiseman is the President and Chief Operating Officer for Halo.

3. Please refer to Page 16, Lines 5-13 of AT&T witness Neinast's direct testimony. Do you agree with the assertion that the percentage of wireline-originated traffic delivered to AT&T is secondary, and that the issue the FPSC is being asked to address is whether landline-originated traffic was delivered to AT&T in violation of the ICA? Please fully explain your response.

Answer:

Halo does not agree with AT&T's use or the meaning they ascribe to "wireline" or "landline" and Halo also disagrees with AT&T's implied meaning for "originate."

Halo disagrees with AT&T's statement of the issue. The question is not whether "landline-originated traffic" (however that may be defined) is being delivered. The only valid question is whether this is "traffic that originates through wireless transmitting and receiving facilities before [Halo] delivers traffic to AT&T for termination by AT&T or for transit to another network." Halo is providing a wireless based telecommunications service to its end user

customer. From a Halo perspective the end user is originating traffic over wireless CPE. CPE is an end-point where calls originate and terminate, and CPE cannot be an intermediate point as a matter of law.

This is still the case even if Halo's customer is essentially using the service to "join" various legs of separate or "further communications" with the effect that a called party on the PSTN in Florida ends up conversing with some other party in some other state that is on the other side of Transcom, Transcom's customer, or even further down the chain. Halo's customer is initiating a communication using wireless CPE and that is an origination.

Answer provided by Russ Wiseman, 2351 W. Northwest Highway, Suite 1204, Dallas, Texas 75220. Mr. Wiseman is the President and Chief Operating Officer for Halo.

4. Please refer to Page 16, Lines 15-17 of AT&T witness Neinast's direct testimony. Has Halo delivered landline originated calls to AT&T? Please fully explain your response.

Answer:

See response to No. 3. Halo is delivering "traffic that originates through wireless transmitting and receiving facilities before [Halo] delivers traffic to AT&T for termination by AT&T or for transit to another network."

Answer provided by Russ Wiseman, 2351 W. Northwest Highway, Suite 1204, Dallas, Texas 75220. Mr. Wiseman is the President and Chief Operating Officer for Halo.

5. Please refer to Page 20, Lines 6-15 of AT&T witness Neinast's direct testimony.

   a. Do you agree with Witness Neinast's testimony that Halo asserts that Transcom originates calls that are destined to other carriers, such as AT&T?

   b. If the answer to Interrogatory No. 5.a. is yes, what role does Halo play in transporting that call and why?

   c. If the answer to Interrogatory No. 5.a. is yes, is Halo's participation in transporting the call necessary? Please fully explain your response.

d. If Transcom is originating calls destined to other carriers, such as AT&T, should it have an ICA or some type of commercial agreement with those carriers to address terminating charges? Please fully explain your response.

Answer:

a. No, Halo disagrees with the characterization of Witness Neinast's testimony on this issue. Halo's position is that Transcom is an end user and this is "traffic that originates through wireless transmitting and receiving facilities before [Halo] delivers traffic to AT&T for termination by AT&T or for transit to another network."

b. Halo is providing a telecommunications service to its end user customer. Part of that service is the ability to receive calls that originate on the public switched telephone network ("PSTN") and to originate calls that terminate on the PSTN. In other words, Halo provides "interconnected service" as defined in the FCC's wireless rules and § 332(c) of the Act. Halo notes that its service also meets the definition of "Interconnected VoIP service" because the connection between Halo and the customer is broadband and IP CPE is used. A necessary part of providing "interconnected" wireless service is interconnection with other networks on the PSTN that is then used to receive traffic for transport and termination or to hand off traffic that is transported and terminated by some other provider.

c. With all due respect, Halo does not understand the purpose or meaning of this question, and in particular the part where it asks if Halo's participation is "necessary." In an attempt to provide some kind of answer, Halo will respond by saying that end users cannot independently secure connectivity to the PSTN and thereby gain the ability to originate or receive calls. An exchange carrier is "necessary." Halo is an exchange carrier and provides exchange service to Transcom.

d. Transcom is not a carrier and does not have carrier rights (or carrier duties or responsibilities). Transcom is an end user. End users do not have interconnection agreements. End users do not have "commercial agreements" of the type referenced in the request. It is "necessary" that end users like Transcom buy exchange service from an interconnected exchange carrier that can, among other things, facilitate the end user's ability to establish communications with users on other networks.

Halo is an FCC licensed wireless common carrier, and is interconnected with the PSTN to allow Halo's provision of competitive telephone exchange service and exchange access service. These are the same functions LECs perform; the difference is that Halo is not a LEC under the Act. Nonetheless, Halo competes with other exchange carriers, including the ILECs. Halo also provides broadband service.

Transcom is an enhanced service provider, which is a communications-intensive business end user that wishes to purchase telephone exchange service for the completion of its calls. Halo is a wireless, commercial mobile radio service ("CMRS") carrier that is fully authorized by federal law to provide telephone exchange service. Transcom could purchase telephone exchange service from others, but by purchasing its service from Halo it receives a better level of service for similar or lower prices. At the same time, by selling telephone exchange service to Transcom, Halo receives a high-volume of traffic that serves to finance the development of its rural wireless broadband network. By asking whether Halo is "necessary," the commission assumes that Transcom is a carrier and provides telecommunications services. Not one authority has ever ruled that Transcom is a carrier or that Transcom provides telecommunications services, so such an assumption is wholly without support in fact or law. Transcom is an end user customer, and there is nothing inappropriate or unusual about it purchasing telephone exchange service from Halo.

Answer provided by Russ Wiseman, 2351 W. Northwest Highway, Suite 1204, Dallas, Texas 75220. Mr. Wiseman is the President and Chief Operating Officer for Halo.

6. Please refer to Page 23, Lines 15-18 of AT&T witness Neinast's direct testimony. Do you believe Transcom is an ESP? If so, please list all statutes, rules, orders, and court decisions, identifying the specific paragraphs or pages of each, that you believe support your position.

Answer:

Transcom's operations have been reviewed by a federal court with jurisdiction to determine if Transcom is an ESP. On several occasions it has been affirmed that Transcom is indeed an ESP. Specifically, in *In re Transcom Enhanced Services, LLC* (the "Hale Opinion"), (which is attached as Exhibit RJ-1 to the Pre-Filed Testimony of Robert Johnson in this matter), the court held that Transcom does not provide telecommunications, and is an ESP. The Hale Opinion concluded that "a service that routinely changes either the form or the content of the transmission would fall outside of the definition of 'telecommunications' and therefore would not constitute a 'telecommunications service.'" See Exhibit RJ-1, pg. 6. On the basis that Transcom's operations necessarily result in a change in content and often a net change in form, the Hale Opinion concluded that Transcom is an ESP. The Hale Opinion further posited that Transcom has never held itself out as a common carrier and there is no legal compulsion that Transcom operate or hold out as a common carrier.

In the hearings underlying the Hale Opinion, AT&T contended that Transcom's service was similar to the service addressed by the FCC in the "IP-in-the-Middle" decision. The Hale Opinion rejected that argument and held that the service provided by Transcom is

"distinguishable from AT&T's specific service in a number of material ways," and it goes on to list some of the distinctions.

The Hale Opinion went on to hold that Transcom's service "fits squarely within the definitions of 'enhanced service' and 'information service' . . . and falls outside of the definition of 'telecommunications service' because [Transcom's] system routinely makes non-trivial changes to user-supplied information (content) during the entirety of every communication." The Hale Opinion further held that Transcom's service "is not a 'telecommunications service' subject to access charges, but rather is an information service and an enhanced service that must pay end user charges."

The Hale Opinion was later vacated on grounds of mootness, but Judge Hale entered similar findings and rulings in the final Confirmation Order of Transcom's bankruptcy proceedings (which is attached as Exhibit RJ-2 to the Pre-Filed Testimony of Robert Johnson in this matter). See Exhibit RJ-2, paragraph 4. Also, Judge Hale entered summary judgment in Transcom's favor in an adversary proceeding, and that summary judgment reiterated all of the findings made in the Hale Opinion (which is attached as Exhibit 3 to the Pre-Filed Testimony of Robert Johnson in this matter). See Exhibit RJ-3, pg. 3-6. In addition, on information and belief, Transcom started its operations by purchasing the assets of a company called DataVon out of DataVon's bankruptcy, and the bankruptcy judge in that matter, Judge Felsenthal, made similar findings about the service provided by DataVon that Transcom was purchasing (which is attached as Exhibit RJ-4 to the Pre-Filed Testimony of Robert Johnson in this matter). See Exhibit RJ-4, pg. 8.

In addition, Halo also relies on any statutes or rules relied upon in the ESP Rulings, Exhibits RJ-1-4.

Answer provided by Russ Wiseman, 2351 W. Northwest Highway, Suite 1204, Dallas, Texas 75220. Mr. Wiseman is the President and Chief Operating Officer for Halo.

Respectfully submitted,

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Attorneys for Halo Wireless, Inc.

AFFIDAVIT

STATE OF TEXAS

COUNTY OF TARRANT

I hereby certify that on this 17th day of May, 2012, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Russ Wiseman, who is personally known to me, and he/she acknowledged before me that he/she provided the answers to interrogatory number(s) 1-6 from STAFF'S FIRST SET OF INTERROGATORIES TO HALO WIRELESS, INC. (NOS. 1-6) in Docket No. 110234-TP, and that the responses are true and correct based on his/her personal knowledge.

In Witness Whereof, I have hereunto set my hand and seal in the State and County aforesaid as of this 17 day of MAY, 2012.

Sheila O'Flinn

Notary Public
State of Texas, at Large

SHEILA O'FLINN
MY COMMISSION EXPIRES
February 27, 2013

My Commission Expires:
2-27-2013

7

Halo Wireless, Inc.'s Objections and/or Responses to First Set of Interrogatories and Request for Production of Documents of AT&T Florida

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 7
PARTY Bellsouth Tel., LLC d/b/a AT&T Florida (AT&T) - Direct
DESCRIPTION Halo - Discovery
DATE 07/12/12

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint and petition for relief against Halo Wireless, Inc. for breaching the terms of the wireless interconnection agreement, by BellSouth Telecommunications, LLC d/b/a AT&T Florida.	DOCKET NO. 110234-TP FILED: MAY 25, 2012

HALO WIRELESS, INC.'S OBJECTIONS AND/OR RESPONSES TO FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS OF AT&T FLORIDA

TO: BellSouth Telecommunications, LLC d/b/a AT&T Florida ("AT&T Florida"), by and through its counsel of record, Suzanne L. Montgomery c/o Gregory R. Follensbee, 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301.

COMES NOW, Halo Wireless, Inc. (Halo) hereby serves its Objections and/or Responses to First Set of Interrogatories and Request for Production of Documents of AT&T Florida as follows:

GENERAL OBJECTIONS AND CONDITIONS TO RESPONSES

1. These objections and responses are based upon Halo's present knowledge after a reasonable investigation and upon Halo's interpretation and construction of AT&T Florida's Interrogatories and Request for Production of Documents.

2. Halo makes any answer to these interrogatories and request for production of documents without waiving or intending to waive but, on the contrary, preserving and intending to preserve: (a) the right to object to, on the grounds of authenticity, admissibility, competency, privilege, relevance, or materiality, or any other proper grounds, the use of such documents or information for any purpose, in whole or in part, in any subsequent proceeding in this action or

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in any other action; (b) the right to object on any and all grounds, at any time, to other requests for production, or other discovery procedures involving or relating to the subject of the request for production to which Halo has responded herein; and (c) the right to supplement any of the responses made herein. Inadvertent production of any alleged privileged document shall not be deemed a waiver of any applicable privilege with respect to such document or any other document.

3. Halo objects to the requests for production of documents not within Halo's possession, custody or control. Any response that Halo will produce certain documents is not a representation that such documents exist and are in Halo's possession, custody or control. Halo reserves the right to amend or supplement these responses as appropriate.

4. Halo objects to these interrogatories and requests for production to the extent they seek information that is confidential to Halo. To the extent Halo is required to produce any such documents, Halo requests an appropriate protective order to preserve the confidentiality of the information in the documents.

5. All discoverable documents in response to the interrogatories and requests for production have been, or will be, produced to AT&T Florida.

6. Halo objects to these interrogatories and requests for production to the extent that they seek to impose upon Halo obligations greater than those arising under the Florida Rules of Civil Procedure.

OBJECTIONS AND/OR ANSWERS TO INTERROGATORIES

INTERROGATORY NO. 1:

Referring to page 3, lines 9-10 and 22 of the Wiseman Florida Testimony,

a. identify each "novel, but legal way" and each of the "different, but legal ways" in which Halo has interpreted and applied telecommunications laws and rules; and

b. for each way identified in response to (a), explain in what sense it is "different" or "novel."

ANSWER:

Halo objects to this interrogatory to the extent that it seeks information that is protected by the attorney-client privilege and/or work product doctrine and to the extent that it seeks information that is confidential or proprietary. Halo also objects to the foregoing Interrogatory for the reason said Interrogatory is vague and ambiguous. Halo further objects to this interrogatory on the ground that it includes separate and distinct requests that are appropriate for individual interrogatories. Halo also objects to this Interrogatory on the ground that it asks for a legal conclusion.

Subject to Halo's general and specific objections and conditions, and without waiving the same, Halo responds that its business model was novel and different, while also being legal, in that upon information and belief, Halo was the first small company market entrant to utilize the various federal and FCC rules, regulations, and precedents regarding enhanced service providers ("ESPs") and commercial mobile radio service ("CMRS) to configure its network in the specific way it does to provide wireless telephone exchange service and/or exchange access services to communications-intensive ESP business end users. Halo's model was also novel in that it used the same common infrastructure to deliver wireless broadband services and interconnected service to consumers and small businesses. In short, this business model provided Halo a significant source of revenue that could effectively subsidize the build-out, operation and delivery of rural broadband in a financially sustainable way without the need for government subsidies, without customers worrying of Halo going broke, and on a scale that could put a real dent in the nation's goal of getting broadband to rural communities. Further response to these questions can be found in previously filed testimony, transcripts, and other documents

filed in other similar proceedings in which Halo and AT&T are parties, which documents will be produced to AT&T Florida. Such documents speak for themselves.

INTERROGATORY NO. 2:

Referring to page 3, lines 12-14 of the Wiseman Florida Testimony,

a. explain how "Halo's participation in the Florida broadband communications market has . . . lower[ed] cost for a great number of consumers";

b. state whether any of the referenced consumers are Florida consumers;

c. identify the costs that have been reduced for the consumers; and

d. explain how those costs have been reduced.

ANSWER:

Halo objects to this interrogatory to the extent that it seeks information that is protected by the attorney-client privilege and/or work product doctrine and to the extent that it seeks information that is confidential or proprietary. Halo also objects to the foregoing Interrogatory for the reason said Interrogatory is vague and ambiguous. Halo further objects to this interrogatory on the ground that it includes separate and distinct requests that are appropriate for individual interrogatories. Halo also objects to this Interrogatory on the ground that it asks for a legal conclusion.

Subject to Halo's general and specific objections and conditions, and without waiving the same, Halo responds that Halo's participation in the market has lowered cost for a great number of consumers because Halo's business model utilizes the various federal and FCC rules, regulations, and precedents regarding ESPs and CMRS to provide wireless services directly to its customers at a legally lower rate. Major providers of communications services voluntarily choose to purchase services from Halo's customer Transcom, and incorporate them into the delivery of services to their own consumer customers, including presumably Florida consumers. As a result, Halo's participation has at least indirectly resulted in cost saving to all parties involved. Further response to these questions can be found in previously filed testimony, transcripts, and other documents filed in other similar proceedings in which Halo and AT&T are parties, which documents will be produced to AT&T Florida. Such documents speak for themselves.

INTERROGATORY NO. 3:

Referring to Halo's insertion of Transcom's Charge Number into call records as summarized at p. 10, lines 7-11, of the Wiseman Florida Testimony,

a. explain the purpose of Halo's insertion of Transcom's Charge Number into call records;

b. explain how the insertion of Transcom's Charge Number into call records accomplishes or helps accomplish (or could accomplish or help accomplish) that purpose; and

c. state whether the identification of the financially responsible party by means of the Charge Number was intended to facilitate Halo's billing of the financially responsible party; or the terminating carriers' billing of the financially responsible party; or both or neither, and explain how the insertion of Charge Numbers would facilitate that billing.

ANSWER:

Halo objects to this interrogatory to the extent that it seeks information that is protected by the attorney-client privilege and/or work product doctrine and to the extent that it seeks information that is confidential or proprietary. Halo also objects to the foregoing Interrogatory for the reason said Interrogatory is vague and ambiguous. Halo further objects to this interrogatory on the ground that it includes separate and distinct requests that are appropriate for individual interrogatories. Halo also objects to this Interrogatory on the ground that it asks for a legal conclusion.

Subject to Halo's general and specific objections and conditions, and without waiving the same, Halo responds that until December 2011, it populated the charge number parameter with the billing telephone number of the financially responsible party, consistent with industry practices. The purpose of Halo's practice (and the industry practice) was to ensure that Halo's billing records and the records of any other carriers to whom Halo was obligated to pass records established the proper financially responsible party. In the case of any records up to December 2011, in which Transcom was designated as the financially

responsible party, Transcom was so designated because consistent with industry practice, Transcom originated the call at issue (as an end user) and was therefore the financially responsible party even if (contrary to Halo's contentions) Transcom was not the originating party. Further response to these questions can be found in previously filed testimony, transcripts, and other documents filed in other similar proceedings in which Halo and AT&T are parties, which documents will be produced to AT&T Florida. Such documents speak for themselves.

INTERROGATORY NO. 4:

Referring to page 31, lines 4-6, of the Wiseman Florida Testimony,

a. identify all persons who participated in or advised on the design of "our business plan," including attorneys; and

b. for each person identified, describe his/her participation.

ANSWER:

Halo objects to this interrogatory to the extent that it seeks information that is protected by the attorney-client privilege and/or work product doctrine and to the extent that it seeks information that is confidential or proprietary. Halo also objects to the foregoing Interrogatory for the reason said Interrogatory is vague and ambiguous. Halo further objects to this interrogatory on the ground that it includes separate and distinct requests that are appropriate for individual interrogatories.

Subject to Halo's general and specific objections and conditions, and without waiving the same, Halo responds that Jody Craft, Scott Birdwell, Nate Nelson and Halo's attorneys, W. Scott McCollough and Steve Thomas, each participated in the discussion and design of Halo's business plan. The participation of Jody Craft, Scott Birdwell, Nate Nelson involved the review of applicable federal and FCC rules, regulations, and precedents regarding ESPs and CMRS and planning of Halo's business and network configuration to comply with same. W. Scott McCollough and Steve Thomas each participated as attorneys to Halo and advised Halo with respect to the applicable federal and FCC rules, regulations, and precedents regarding ESPs and CMRS and the manner in which Halo could comply with same. Further response to these questions can be found in previously filed testimony, transcripts, and other documents filed in other similar proceedings in which Halo and AT&T are parties, which documents will be produced to AT&T Florida. Such documents speak for themselves.

INTERROGATORY NO. 5:

Referring to page 42, lines 6-8 of the Wiseman Florida Testimony, identify all agents, representatives, employees, officers, counsel or other persons acting on behalf of Halo who "relied on all of this precedent."

ANSWER:

Halo objects to this interrogatory to the extent that it seeks information that is protected by the attorney-client privilege and/or work product doctrine and to the extent that it seeks information that is confidential or proprietary. Halo also objects to the foregoing Interrogatory for the reason said Interrogatory is vague and ambiguous. Halo also objects to this Interrogatory on the ground that it asks for a legal conclusion.

Subject to Halo's general and specific objections and conditions, and without waiving the same, Halo responds that in addition to the persons identified in Halo's response to Interrogatory No. 4 above, all of the officers of Halo as well as those performing work on behalf of Halo relied on the referenced precedent. Further response to these questions can be found in previously filed testimony, transcripts, and other documents filed in other similar proceedings in which Halo and AT&T are parties, which documents will be produced to AT&T Florida. Such documents speak for themselves.

INTERROGATORY NO. 6:

Referring to page 37, lines 15-17 of the Wiseman Florida Testimony,

a. does Halo deny that some calls ultimately sent by Halo to AT&T Florida for termination started on landline equipment? and

b. if so, state the basis for Halo's denial.

ANSWER:

Halo also objects to the foregoing Interrogatory for the reason said Interrogatory is vague and ambiguous. The term "landline" is not defined in the Requests, applicable tariffs, or the applicable FCC rules. Halo also does not have an independent understanding of the

meaning of that term and therefore cannot respond until the term is defined. Because additional clarification is required to further object or respond to Request No. 6, Halo reserves the right to supplement its objections herein and respond subject to and without waiver of such further objections. Halo further objects to this interrogatory on the ground that it includes separate and distinct requests that are appropriate for individual interrogatories. Halo also objects to this Interrogatory on the ground that it asks for a legal conclusion.

INTERROGATORY NO. 7:

Referring to page 37, lines 15-17 of the Wiseman Florida Testimony,

a. has Halo taken any measures to avoid sending to AT&T Florida calls that started on landline equipment? and

b. if so, please describe each such measure and state when Halo employed that measure.

ANSWER:

Halo also objects to the foregoing Interrogatory for the reason said Interrogatory is vague and ambiguous. The term "landline" is not defined in the Requests, applicable tariffs, or the applicable FCC rules. Halo also does not have an independent understanding of the meaning of that term and therefore cannot respond until the term is defined. Because additional clarification is required to further object or respond to Request No. 7, Halo reserves the right to supplement its objections herein and respond subject to and without waiver of such further objections. Halo further objects to this interrogatory on the ground that it includes separate and distinct requests that are appropriate for individual interrogatories. Halo also objects to this Interrogatory on the ground that it asks for a legal conclusion.

INTERROGATORY NO. 8:

Of all calls that Halo delivers to AT&T Florida for termination to AT&T Florida's end user customers or for delivery to other carriers, what is Halo's best estimate of the percentage that started on landline equipment?

a. State the basis for that estimate.

ANSWER:

Halo also objects to the foregoing Interrogatory for the reason said Interrogatory is vague and ambiguous. The term "landline" is not defined in the Requests, applicable tariffs, or the applicable FCC rules. Halo also does not have an independent understanding of the meaning of that term and therefore cannot respond until the term is defined. Because additional clarification is required to further object or respond to Request No. 8, Halo reserves the right to supplement its objections herein and respond subject to and without waiver of such further objections. Halo further objects to this interrogatory on the ground that it includes separate and distinct requests that are appropriate for individual interrogatories. Halo also objects to this Interrogatory on the ground that it asks for a legal conclusion.

INTERROGATORY NO. 9:

Describe the "alternate arrangements for the termination of InterMTA traffic" referenced in the September 30, 2010, letter from Carolyn Malone to Randy Ham that is Exhibit RW-2 to the Wiseman Florida Testimony.

ANSWER:

Halo objects to this interrogatory to the extent that it seeks information that is confidential or proprietary. Halo also objects to the foregoing Interrogatory for the reason said Interrogatory is vague and ambiguous.

Subject to Halo's general and specific objections and conditions, and without waiving the same, Halo responds that if a call from a low volume customer would be deemed to be between two MTAs, Halo sends it to other vendors for completion at the appropriate rate. If a call from a high volume customer is addressed to a telephone number associated with a rate center in an MTA other than the tower where the high volume customer originates the further communications, Halo rejects the call and it is not completed.

INTERROGATORY NO. 10:

Referring to page 7, lines 13-14 of the Johnson Florida Rebuttal,

a. has there ever been an instance in which a Transcom customer has sent traffic to an "enhanced service session" other than traffic that was to be

transported by Halo to a carrier for eventual termination to a called party? and

b. if not

(i) could a Transcom customer send traffic to an "enhanced service session" other than traffic that was to be transported by Halo to a carrier for eventual termination to a called party? and

(ii) if a Transcom customer could do so, how could the Transcom customer do so?

ANSWER:

Halo objects to this interrogatory to the extent that it seeks information that is confidential or proprietary and seeks information from Halo about a third party's business operations. Halo also objects to the foregoing Interrogatory for the reason said Interrogatory is vague and ambiguous. Halo further objects to this interrogatory on the ground that it includes separate and distinct requests that are appropriate for individual interrogatories. Halo also objects to this Interrogatory on the ground that it asks for a legal conclusion.

Subject to Halo's general and specific objections and conditions, and without waiving the same, and responding using the characterizations in the Request without agreeing to those characterizations, Halo responds that upon information and belief there are instances in which a Transcom customer has sent traffic to an "enhanced service session" other than traffic that was to be sent by Halo to a carrier for eventual termination to a called party. For example, upon information and belief, there are instances in which a Transcom customer has sent traffic to an "enhanced service session" and Transcom has selected another vendor to arrange for completion of that traffic. Accordingly, subpart 10(b) of this interrogatory is inapplicable.

INTERROGATORY NO. 11:

Referring to page 19, lines 4-13 of the Johnson Florida Rebuttal, if a Transcom customer's traffic is IP-originated, identify all the benefits, if any, that the customer can obtain by certifying to Transcom that the traffic is IP-originated.

ANSWER:

Halo objects to this interrogatory to the extent that it seeks information that is confidential or proprietary and seeks information from Halo regarding a third party's operations. Halo also objects to the foregoing Interrogatory for the reason said Interrogatory is vague and ambiguous. Halo also objects to this Interrogatory on the ground that it asks for a legal conclusion.

Subject to Halo's general and specific objections and conditions, and without waiving the same, Halo responds that upon information and belief, if a Transcom customer's traffic is certified as IP-originated it may have access to a larger termination footprint for the enhanced sessions it receives from Transcom and in some case lower prices.

INTERROGATORY NO. 12:

If Transcom's customer certifies that its traffic is IP-originated,

a. does Transcom do anything to confirm that the certification is true? and

b. if so, identify all measures that Transcom has taken to confirm a customer certification that its traffic is IP-originated.

ANSWER:

Halo objects to this interrogatory to the extent that it seeks information that is protected by the attorney-client privilege and/or work product doctrine and to the extent that it seeks information that is confidential or proprietary. Halo also objects to the foregoing Interrogatory for the reason said Interrogatory is vague and ambiguous. Halo further objects to this interrogatory on the ground that it includes separate and distinct requests that are appropriate for individual interrogatories. Halo also objects to this Interrogatory on the ground that it asks for a legal conclusion and seeks information from Halo regarding a third party's operations.

Subject to Halo's general and specific objections and conditions, and without waiving the same, Halo responds that upon information and belief, there are no technical means by which a provider who receives traffic from another provider can definitively determine if that traffic was IP-originated or not other than to rely on the certification of the sending provider. Accordingly, Interrogatory subpart 12(b) is not applicable.

INTERROGATORY NO. 13:

If a Transcom customer falsely certifies that its traffic is IP-originated, identify all the undesired or adverse consequences, if any, that customer might experience as a result of the false certification.

ANSWER:

Halo objects to this interrogatory to the extent that it seeks information that is protected by the attorney-client privilege and/or work product doctrine and to the extent that it seeks information that is confidential or proprietary. Halo also objects to the foregoing Interrogatory for the reason said Interrogatory is vague and ambiguous. Halo also objects to this Interrogatory on the ground that it asks for a legal conclusion and seeks information from Halo regarding a third party's operations.

Subject to Halo's general and specific objections and conditions, and without waiving the same, Halo responds that upon information and belief, any false certification of traffic would constitute a breach of the customer's contract with Transcom and trigger potential penalty provisions or other legal action.

INTERROGATORY NO. 14:

Referring to page 7, lines 16-17 of the Johnson Florida Rebuttal, of the "host of different kinds of companies" that Transcom serves, please identify all kinds in addition to the kinds identified in those two lines of testimony.

ANSWER:

Halo objects to this interrogatory to the extent that it seeks information that is confidential or proprietary and seeks information from Halo regarding a third party's customers and operations. Halo also objects to the foregoing Interrogatory for the reason said Interrogatory is vague and ambiguous. Halo also objects to this Interrogatory on the ground that it asks for a legal conclusion.

Subject to Halo's general and specific objections and conditions, and without waiving the same, Halo responds that upon information and belief, there are very few, if any, providers that would fit neatly and exactly into one and only one category, but upon information and

belief virtually all of the providers who are customers of Transcom fit into at least one of the 3 categories provided.

OBJECTIONS AND/OR RESPONSES TO REQUESTS FOR PRODUCTION

REQUEST NO. 1:

Please produce the presentations referred to on page 5, line 22, of the Wiseman Florida Testimony.

RESPONSE:

Halo objects to this request as being vague, overly broad and failing to describe the documents requested with reasonable particularity. Halo further objects to this request to the extent that it seeks documents that are confidential or proprietary.

Subject to Halo's general and specific objections and conditions, and without waiving same, responsive, non-privileged, documents relating to this request Halo will produce documents to Plaintiff upon execution of a confidentiality agreement.

REQUEST NO. 2:

Referring to page 31, lines 4-6, of the Wiseman Florida Testimony, produce all documents setting forth or memorializing the business plan, and all documents relating to the establishment or design of the business plan, including, without limitation, all documents reflecting or relating to the perceptions of regulatory counsel described in the Wiseman Florida testimony at p. 7, line 12, to p. 8, line 2.

RESPONSE:

Halo objects to this request as being vague, overly broad and failing to describe the documents requested with reasonable particularity. Halo further objects to this request to the extent that it seeks documents that are protected by the attorney-client privilege and/or work product doctrine and to the extent that it seeks documents that are confidential or proprietary.

Subject to Halo's general and specific objections and conditions, and without waiving same, responsive, non-privileged, documents relating to this request Halo will produce documents to Plaintiff upon execution of a confidentiality agreement.

REQUEST NO. 3:

Referring to page 42, lines 6-8 of the Wiseman Florida Testimony, please produce all documents evidencing, reflecting or otherwise relating to the stated reliance "on all of this precedent."

RESPONSE:

Halo objects to this request as being vague, overly broad and failing to describe the documents requested with reasonable particularity. Halo further objects to this request to the extent that it seeks documents that are protected by the attorney-client privilege and/or work product doctrine and to the extent that it seeks documents that are confidential or proprietary.

Subject to Halo's general and specific objections and conditions, and without waiving same, responsive, non-privileged, documents relating to this request Halo will produce documents to Plaintiff upon execution of a confidentiality agreement.

REQUEST NO. 4:

Please produce all documents that support or otherwise relate to the statement at p. 37, lines 10-12 of the Wiseman Florida Testimony that "We relied on the D.C. Circuit's holding in Bell Atlantic that ESP's originate traffic when this clause was being negotiated."

RESPONSE:

Halo objects to this request as being vague, overly broad and failing to describe the documents requested with reasonable particularity. Halo further objects to this request to the extent that it seeks documents that are protected by the attorney-client privilege and/or work product doctrine and to the extent that it seeks documents that are confidential or proprietary.

Subject to Halo's general and specific objections and conditions, and without waiving same, responsive, non-privileged, documents relating to this request Halo will produce documents to Plaintiff upon execution of a confidentiality agreement.

REQUEST NO. 5:

Please produce all documents that support or otherwise relate to the statements at p. 63, lines 2-4 of the Wiseman Florida Testimony concerning what Halo told AT&T or information that Halo provided to AT&T.

RESPONSE:

Halo objects to this request as being vague, overly broad and failing to describe the documents requested with reasonable particularity. Halo further objects to this request to the extent that it seeks documents that are confidential or proprietary.

Subject to Halo's general and specific objections and conditions, and without waiving same, responsive, non-privileged, documents relating to this request Halo will produce documents to Plaintiff upon execution of a confidentiality agreement.

DATED: May 25, 2012

Respectfully submitted,

s/ *Troy P. Majoue* 05/25/2012
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Attorneys for Halo Wireless, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Halo Wireless, Inc.'s Objections and/or Responses to First Set of Interrogatories and Request for Production of AT&T Florida has been served on the following by electronic mail and/or by directing same to the following business addresses through first-class, United States mail, postage prepaid, on this the 25th day of May, 2012:

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s/ *Troy P. Majoue*
TROY P. MAJOUE

VERIFICATION

STATE OF TEXAS §
§
COUNTY OF Dallas §

BEFORE ME, the undersigned authority, personally appeared Russ Wiseman, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that he is the President and Chief Operating Office of Halo Wireless, Inc., that he is authorized to execute this verification, that he has read the foregoing answers to interrogatories and that the statements therein contained are within his personal knowledge and are true and correct to the best of his information and belief, and that he has executed the same for the purposes and consideration therein expressed on behalf of Halo Wireless, Inc..

Russ Wiseman

RUSS WISEMAN

SUBSCRIBED and SWORN TO before me, on this the 25 day of May, 2012.

CATHY D. POHORESKE NOTARY PUBLIC STATE OF TEXAS EXPIRES NOV. 19, 2012

Cathy D. Pohoreske

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

Commission Expires: 11-19-2012

VERIFICATION

STATE OF TEXAS §
§
COUNTY OF Denton §

BEFORE ME, the undersigned authority, personally appeared Robert Johnson, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that he is the President of Ameliowave, Inc., who is the consulting and software development practice that is under contract with Transcom Enhanced Services, Inc. ("Transcom") to provide support for managing existing products, developing new products, and architecting the platform and systems that support all products, that he is authorized to execute this verification, that he has read the foregoing answers to interrogatories 10-14 and that the statements therein contained are within his personal knowledge and are true and correct to the best of his information and belief, and that he has executed the same for the purposes and consideration therein expressed.

ROBERT JOHNSON

SUBSCRIBED and SWORN TO before me, on this the 25 day of May, 2012.

LESLEY RADICKE
NOTARY PUBLIC
State of Texas
Comm. Exp. 06-27-2015

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

Commission Expires: 06-27-2015

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 8
PARTY Bellsouth Tel., LLC d/b/a AT&T Florida (AT&T) - Direct
DESCRIPTION J. Scott McPhee (JSM-1)
DATE 07/12/12

PSC REF#:196596

Public Service Commission of Wisconsin
RECEIVED: 12/02/11, 11:50:30 AM

PUBLIC SERVICE COMMISSION OF WISCONSIN

Investigation into Practices of Halo Wireless, Inc. and Transcom Enhanced Services, Inc. 9594-TI-100

HALO WIRELESS, INC. AND TRANSCOM ENHANCED SERVICES, INC.'S ANSWERS ON ISSUES 1-8 IN THE NOTICE OF PROCEEDING

I. Introduction.

During the November 23, 2011 prehearing conference, Halo Wireless, Inc. ("Halo") and Transcom Enhanced Services, Inc. ("Transcom") agreed that for so long as doing so would not constitute a waiver of their pending motions to dismiss, or any positions they have taken or will take in this matter, they would provide a position statement and supporting factual information under oath on Issues 1-8 as identified in the Notice of Proceeding. Administrative Law Judge Newmark also made clear that, by providing such a position statement, neither Halo nor Transcom would be precluded from providing additional information or arguments later in this proceeding. Before we proceed to a specific answer to the individual issues, however, Halo and Transcom will provide an explanation of their overall approach and positions.

Halo's position is that it is providing commercial mobile radio service ("CMRS")-based telephone exchange service (as defined in the Communications Act of 1934, as amended by the Communications Act of 1996 (the "Act"), 47 U.S.C. § 153(47)) to end user customers, and all of the communications at issue originate from end user wireless customer premises equipment ("CPE") (as defined in the Act, 47 U.S.C. § 153(14))[1] that is located in the same MTA as the terminating location. In other words, Halo contends that all of the traffic at issue is CMRS intraMTA traffic that is subject to section 251(b)(5) of the Act. None of the traffic is associated

[1] Stated another way, the mobile stations (*see* 47 U.S.C. § 153(28)) used by Halo's end user customers – including Transcom – are not "telecommunications equipment" as defined in section 153(45) of the Act because the customers are not carriers. Halo has and uses telecommunications equipment, but its customers do not. They have CPE.

with a telephone toll service provided by or to Halo or Transcom, so "exchange access" charges cannot apply.

Section 153(48) defines "telephone toll service" as "telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service." For CMRS purposes, the "exchange" is the "Major Trading Areas" ("MTA").[2] Halo is not providing service between stations in different exchange areas. Halo does not collect any additional or separate charge other than the charges for exchange service. Thus, Halo's service is not telephone toll service. Instead, it is telephone exchange service. Exchange access charges cannot apply because only telephone toll is subject to exchange access. *See* 47 U.S.C. § 153(16); *see also* 47 C.F.R. § 69.5(b). The "intercarrier compensation" that applies is and must therefore be reciprocal compensation under section 251(b)(5), particularly since it has not been "carved out" by section 251(g). *See Core Mandamus Order*[3]; *see also Bell Atlantic*[4] and *Worldcom.*[5]

Transcom's position is that it is an enhanced/information service provider ("ESP"). Transcom provides "enhanced service" as that term is defined in 47 C.F.R. § 64.702(a). Transcom's services also meet the definition of "information service" as defined in the Act, 47 U.S.C. § 153(20). Transcom does not provide telecommunications (§ 153(43)), or any

[2] *See* 47 C.F.R. §§ 51.701(b)(2) and § 24.202(a).

[3] Order on Remand and R&O and Order and FNPRM, *High Cost Universal Service Reform, Federal-State Joint Board on Universal Service, Lifeline and Link Up, Universal Service Contribution Methodology, Numbering. Resource Optimization, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Developing a Unified Intercarrier Compensation Regime, Intercarrier Compensation for ISP-Bound Traffic, IP-Enabled Services*, 24 FCC Rcd 6475 (2008) ("*Core Mandamus Order*") (subsequent history omitted).

[4] *Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000).

[5] *Worldcom v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

telecommunications service (§ 153(46)), and in particular, does not provide "telephone toll service" (§ 153(48)).

Four federal court decisions (the "ESP rulings") directly construed and then decided Transcom's regulatory classification and specifically held that Transcom (1) is not a carrier; (2) does not provide telephone toll service or any telecommunications service; (3) is an end user; (4) is not required to procure exchange access in order to obtain connectivity to the public switched telephone network ("PSTN"); and (5) may instead purchase telephone exchange service just like any other end user. True and correct copies of the ESP rulings are attached as **Exhibits 1-4**. Three of these decisions were reached after the so-called "IP-in-the-Middle" and "AT&T Calling Card" orders[6] and expressly took them into account.

While those federal court positions do not of course bind the non-AT&T incumbent local exchange carriers ("ILECs")[7] or this Commission, Halo and Transcom submit that it was and is eminently reasonable for Halo and Transcom to rely on these decisions as the basis for their positions. No law has changed since they were issued. No court has held to the contrary. The Federal Communications Commission ("FCC") has not held to the contrary. The Commission might choose to reach a different result (although Halo and Transcom firmly believe it should not, and in fact, cannot reach the issue), but any such decision could have only prospective effect.

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[6] *See* Order, *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, FCC 04-97, 19 FCC Rcd 7457 (rel. April 21, 2004) ("*AT&T Declaratory Ruling*" also known as "*IP-in-the-Middle*"); Order and Notice of Proposed Rulemaking, *In the Matter of AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services Regulation of Prepaid Calling Card Services*, WC Docket Nos. 03-133, 05-68, FCC 05-41, 20 FCC Rcd 4826 (rel. Feb. 2005) ("*AT&T Calling Card Order*").

[7] AT&T was a party to both of the federal court cases and is therefore bound by them. Halo and Transcom assert that AT&T is collaterally estopped from taking any position that is inconsistent with the result of those cases.

Halo and Transcom further assert that once one begins to look at Halo's services from the lens of a CMRS provider, supplying telephone exchange service to an end user via wireless CPE located in the same MTA as the terminating location, all of the arguments and accusations of the local exchange carrier ("LEC") antagonists are simply misplaced.

II. Halo's Business Model.

Halo's business model contemplates service to two classes of customers: (1) individual and enterprise end users in unserved or underserved rural locations ("consumer end users") and (2) high-volume end users ("High Volume end users"). Everyone in the telecommunications industry recognizes the financial challenges of delivering broadband to rural areas—the entire current discourse relating to universal service relates in substantial part to this issue. Major wireless carriers have substantial funds for investment and marketing, but absorption rates and rates of return in rural areas make such investments unattractive without subsidies. Halo's business model is designed to deliver 4G WiMAX broadband voice and data services to unserved and underserved rural areas without taxpayer dollars or subsidies. Halo's consumer offering is being marketed on an Internet model by which users are provided with "beta" products and services to instill trust and brand loyalty, and then charges will be applied as customers become entrenched. Currently, Halo has approximately fifty consumer customers, around the nation, none of which have yet been converted to a payment relationship because Halo has been overwhelmed with litigation and unable to devote sufficient time and resources to further develop this product. Meanwhile, the costs of operating, network development and marketing are supported by High-Volume traffic.

As a commercial mobile radio service, Halo lawfully can provide telephone exchange service to high-volume end users such as ESPs and enterprise customers. Currently, the only

such customer is Transcom, and traffic from Transcom provides 100 percent of Halo's current revenues because, again, Halo has been engulfed with litigation and has been unable to market and sign up additional customers in the High Volume market.

The primary concern mentioned by the Commission when initiating this current action was the reports from ILECs that some of the calls handled by Halo began on the PSTN elsewhere in the nation. There should be no surprise in this. The ESP rulings establish that Transcom is an ESP *even for calls that begin and end on the PSTN* because Transcom changes the content of every call that passes through its system, and Transcom offers enhanced capabilities.[8] The ESP rulings expressly make these facts clear. Clearly, the ILECs disagree with the ESP rulings, but the ESP rulings are very clear on these issues and Transcom and Halo

[8] As noted, three of the four ESP rulings were decided after the "IP-in-the-Middle" order and the first AT&T Calling Card order. The court recognized that some of Transcom's traffic does start on the PSTN and also ends on the PSTN. The court, however, found that the FCC's test expressly requires more: there must also not be a change in content and no offer of enhanced service *and the provider must be a common carrier* in order for the service to be telephone toll and subject to access. *IP-in-the-Middle*, at 7547-7548 ("We emphasize that our decision is limited to the type of service described by AT&T in this proceeding, i.e., an interexchange service that: (1) uses ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originates and terminates on the public switched telephone network (PSTN); and (3) undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider's use of IP technology. Our analysis in this order applies to services that meet these three criteria regardless of whether only one interexchange carrier uses IP transport or instead multiple service providers are involved in providing IP transport."); 7465 ("AT&T offers 'telecommunications' because it provides 'transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.' And its offering constitutes a 'telecommunications service' because it offers 'telecommunications for a fee directly to the public.' Users of AT&T's specific service obtain only voice transmission with no net protocol conversion, rather than information services such as access to stored files. More specifically, AT&T does not offer these customers a 'capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information;' therefore, its service is not an information service under section 153(20) of the Act. End-user customers do not order a different service, pay different rates, or place and receive calls any differently than they do through AT&T's traditional circuit-switched long distance service; the decision to use its Internet backbone to route certain calls is made internally by AT&T. To the extent that protocol conversions associated with AT&T's specific service take place within its network, they appear to be 'internetworking' conversions, which the Commission has found to be telecommunications services. We clarify, therefore, that AT&T's specific service constitutes a telecommunications service." (notes omitted) TDS *et al.* conveniently ignore the additional required elements they do not like, particularly the fact that Transcom's service changes content and therefore cannot be "telecommunications" under the federal definition, and equally importantly that Transcom has never held out as a common carrier.

have a right to rely on the ESP rulings. Transcom therefore receives some[9] calls from its customers that began elsewhere on the PSTN. But it *does not matter.* Under *Bell Atlantic*, *Worldcom*, and a host of other precedent reaching back to Value Added Networks and Leaky PBXs, the ESP is an end user and thus is deemed to be a call "originator" for intercarrier compensation purposes.

TDS, *et al.*, deny Transcom's status as an ESP and falsely accuse it of providing "IP-in-the-Middle" – even though the ESP Orders directly rejected AT&T's similar argument – as a pretext for imposing exchange access charges on the subject traffic. This is how they can claim that Transcom is merely "re-originating" traffic and that the "true" end points for its calls are elsewhere on the PSTN. In making this argument, however, TDS, *et al.*, are advancing the exact position that the D.C. Circuit rejected in *Bell Atl. Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000). In that case, the D.C. Circuit held it did not matter that a call received by an ISP is instantaneously followed by the origination of a "further communication" that will then "continue to the ultimate destination" elsewhere. The Court held that "the mere fact that the ISP originates further telecommunications does not imply that the original telecommunication does not 'terminate' at the ISP." In other words, the D.C. Circuit clearly recognizes – and functionally held – that ESPs are an "origination" and "termination" endpoint for intercarrier compensation purposes (as opposed to *jurisdictional* purposes, which does use the "end-to-end" test).

The traffic here "terminates" with Transcom, and then Transcom "originates" a "further communication" in the MTA. In the same way that ISP-bound traffic *from* the PSTN is immune from access charges (because it is not "carved out by § 251(g) and is covered by § 251(b)(5)),

[9] Transcom also has a very significant and growing amount of calls that originate from IP endpoints. Those are obviously not "IP-in-the-Middle" under even the test advanced by TDS *et al.*

the call *to* the PSTN is also immune.[10] Enhanced services were defined long before there was a public Internet. ESPs do far more than just hook up "modems" and receive calls. They provide a wide set of services and many of them involve calls *to* the PSTN.[11] The FCC observed in the first decision that created what is now known as the "ESP Exemption" that ESP use of the PSTN resembles that of the "leaky PBXs" that existed then and continue to exist today, albeit using much different technology. Even though the call started somewhere else, as a matter of law a Leaky PBX is still deemed to "*originate*" the call that then *terminates* on the PSTN.[12] As noted, the FCC has expressly recognized the bidirectional nature of ESP traffic, when it observed that ESPs "may use incumbent LEC facilities to *originate and terminate* interstate calls" (emphasis added). Halo's and Transcom's position is simply the direct product of Congress' choice to codify the ESP Exemption, and neither the FCC nor state commissions may overrule the statute.

In other proceedings, the ILECs have pointed to certain language in ¶ 1066 of the FCC's recent rulemaking that was directed at Halo, and the FCC's discussion of "re-origination." That language, however, necessarily assumes that Halo is serving a carrier, not an ESP. TDS told the

[10] The incumbents incessantly assert that the ESP Exemption applies "only" for calls "from" an ESP customer "to" the ESP. This is flatly untrue. ESPs "may use incumbent LEC facilities to originate and terminate interstate calls[.]" *See* NPRM, *In the Matter of Access Charge Reform*, 11 FCC Rcd 21354, 21478 (FCC 1996). The FCC itself has consistently recognized that ESPs – as end users – "originate" traffic even when they received the call from some other end-point. That is the purpose of the FCC's finding that ESPs' systems operate much like traditional "leaky PBXs."

[11] *See*, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, *In the Matter of Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing Usage of the Public Switched Network by Information Service and Internet Access Providers*, CC Docket Nos. 96-262, 96-263, 94-1, 91-213, FCC 96-488, 11 FCC Rcd 21354, 21478, ¶ 284, n. 378 (rel. Dec. 24, 1996); Order, *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, CC Docket No. 87-215, FCC 88-151, 3 FCC Rcd 2631, 2632-2633. ¶13 (rel. April 27 1988); Memorandum Opinion and Order, *MTS and WATS Market Structure*, Docket No. 78-72, FCC 83-356, ¶¶ 78, 83, 97 FCC 2d 682, 711-22 (rel. Aug. 22, 1983).

[12] *See*, Memorandum Opinion and Order, *MTS and WATS Market Structure*, Docket No. 78-72, FCC 83-356, ¶¶ 78, 83, 97 FCC 2d 682, 711-22 (rel. Aug. 22, 1983) [discussing "leaky PBX and ESP resemblance]; Second Supplemental NOI and PRM, *In the Matter of MTS and WATS Market Structure*, FCC 80-198, CC Docket No. 78-72, ¶ 63, 77 F.C.C.2d 224; 1980 FCC LEXIS 181 (rel. Apr. 1980) [discussing "leaky PBX"].

FCC that Transcom was a carrier, and the FCC obviously assumed – while expressly not ruling – that the situation was as TDS asserted. This is clear from the FCC's characterization in the same paragraph of the Halo's activities as a form of "transit." "Transit" occurs when one carrier switches traffic *between two other carriers*. Indeed, that is precisely the definition the FCC provided in ¶ 1311 of the recent rulemaking.[13] Halo simply cannot be said to be providing "transit" when it has an *end user* as the customer on side and a carrier on the other side.

Halo agrees that a call handed off from a Halo *carrier customer* would not be deemed to originate on Halo's network.[14] But Transcom is not a carrier, it is an ESP. The ESPs always have "originated further communications" but for compensation purposes (as opposed to jurisdictional purposes) the ESP is still an end-point and a call originator. Again, once one looks at this from an "end user" customer perspective the call classification result is obvious. The FCC and judicial case law is clear that an end user PBX "originates" a call even if the communication initially came in to the PBX from another location on the PSTN and then goes back out and terminates on the PSTN.[15]

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[13] "1311. Transit. Currently, transiting occurs when two carriers that are not directly interconnected exchange non-access traffic by routing the traffic through an intermediary carrier's network. Thus, although transit is the functional equivalent of tandem switching and transport, today transit refers to non-access traffic, whereas tandem switching and transport apply to access traffic. As all traffic is unified under section 251(b)(5), the tandem switching and transport components of switched access charges will come to resemble transit services in the reciprocal compensation context where the terminating carrier does not own the tandem switch. In the Order, we adopt a bill-and-keep methodology for tandem switched transport in the access context and for transport in the reciprocal compensation context. The Commission has not addressed whether transit services must be provided pursuant to section 251 of the Act; however, some state commissions and courts have addressed this issue." (emphasis added)

[14] *See* § 252(d)(2)(A)(i), which imposes the "additional cost" mandate on "calls that originate on the network facilities of the other carrier."

[15] *See, e.g., Chartways Technologies, Inc. v. AT&T, 8 FCC Rcd 5601, 5604 (1993); Directel Inc. v. American Tel. & Tel. Co.*, 11 F.C.C.R. 7554 (June 26, 1996); *Gerri Murphy Realty, Inc. v. AT&T*, 16 FCC Rcd 19134 (2001); *AT&T v. Intrend Ropes and Twines, Inc.*, 944 F.Supp. 701, 710 (C.D. Ill. 1996; *American Tel. & Tel. Co. v. Jiffy Lube Int'l., Inc.*, 813 F. Supp. 1164, 1165-1170 (D. Maryland 1993); *AT&T v. New York Human Resources Administration*, 833 F. Supp. 962 (S.D.N.Y. 1993); *AT&T, v. Community Health Group*, 931 F. Supp. 719, 723

So Halo has an end-user customer—Transcom. Although this end user customer receives calls from other places, for intercarrier compensation purposes the calls still originate on Halo's network. That customer connects wirelessly to Halo. Transcom "originates" communications "wirelessly" to Halo, and all such calls are terminated within the same MTA where Transcom originated them (the system is set up to make sure that all calls are "intraMTA").

Halo's High Volume service is based on a solid legal foundation. But the ILECs have asked the Commission to rule that Halo and Transcom are operating unlawfully in the State of Wisconsin. In other words, the ILECs are not merely asking the Commission to overrule the federal bankruptcy courts that issued Transcom's ESP rulings. The ILECs are asking the Commission to hold that Transcom and Halo have no right to rely on the ESP rulings, never had the right to rely on the ESP rulings, and are operating unlawfully in the state of Wisconsin because they are relying on the ESP rulings.

If Halo and Transcom have the right to rely on Transcom's ESP rulings, however, then there is nothing for the Commission to *investigate*. It may be that the ILECs want to *re-litigate* the ESP issue, but there is no reason for the taxpayers of Wisconsin to incur the cost of re-litigating those issues for the benefit of the ILECs. This is purely a private, commercial dispute. If Transcom is an ESP and an end user, then the traffic is subject to section 251(b)(5). ILECs are only entitled to reciprocal compensation (and then only after a proper request under 47 C.F.R. 20.11(e)).[16] The ILECs want to change the status quo such that Transcom will be considered a carrier (and therefore they can collect more money). More than that, they want this Commission

(S.D. Cal. 1995); *AT&T Corp. v. Fleming & Berkley*, 1997 U.S. App. LEXIS 33674 *6-*16 (9th Cir. Cal. Nov. 25, 1997).

[16] If and when the new rules go into effect then the traffic will still be subject to § 251(b)(5). The only question will be whether it will be "bill and keep" under new § 51.713 or the kind of "non-access" defined by new § 51.701(b)(3) that requires "an arrangement in which each carrier receives intercarrier compensation for the transport and termination of Non-Access Telecommunications Traffic." *See* new § 51.701(e).

to rule that Transcom and Halo have been operating unlawfully from the beginning of Halo's operations—that Transcom and Halo never had the right to rely on Transcom's ESP rulings—so that the ILECs can recover access charges for all of Halo's past traffic.

Consider the ramifications of that request. National companies in regulated industries relying on federal rulings as to their classifications would be extending their operations into Wisconsin at their own peril if good faith reliance on such rulings would not immunize them from claims or charges that they are operating unlawfully. To rule as the ILECs wish would be a great disservice to the people of Wisconsin, not to mention a derogation of the rule of law.

III. Specific Responses to Issues.

1. What is the relationship of Halo Wireless, Inc. (Halo) and Transcom Enhanced Services, Inc. (Transcom)?

A. Corporate information for Halo Wireless, Inc.

Halo Wireless, Inc. is a Texas corporation. The company was formed on February 7, 2005. The chart provided below lists Halo's officers, directors and shareholders.

Halo Wireless, Inc. Officers, Directors and Stockholders

Name	Title	Percentage of Stock Ownership
Timothy Terrell	Equity Interest holder	40%
Gary Shapiro	Equity Interest holder	10%
Scott Birdwell	Equity Interest holder	50%
Carolyn Malone	Secretary / Treasurer	0%
Jeff Miller	Chief Financial Officer	0%
Russell Wiseman	President	0%

Halo was authorized to do business in Wisconsin on February 22, 2010. A copy of the Authorization is attached as **Exhibit 5**. Halo is also registered with the Commission and current on all obligations as of October 26, 2011, according to Gary Evenson of the Telecommunications Division.

B. Corporate information for Transcom Enhanced Services, Inc.

Transcom Enhanced Services, Inc. is a Texas corporation. The company was formed in 1999. The chart provided below lists Transcom's officers, directors and shareholders.

Transcom Enhanced Services, Inc. Officers, Directors and Stockholders

Name	Title	Percentage of Stock Ownership
RWH Group II, Ltd.	Equity Interest holder	12.8%
James O'Donnell	Equity Interest holder and Director	14.1%
Brooks Reed	Equity Interest holder	0.4%
Transcom Investors, LLC	Equity Interest holder	1.7%
First Capital Group of Texas III, LP	Equity Interest holder	35.1%
Rick Waghorne	Equity Interest holder	16.7%
Scott Birdwell	Chief Executive Officer and Chairman of Board of Directors	19.2%
Britt Birdwell	President and Chief Operating Officer	0%
Carolyn Malone	Secretary/Treasurer	0%
Jeff Miller	Chief Financial Officer	0%
Ben Hinterlong	Director	0%

Transcom's only activity in Wisconsin is that it operates wireless end user CPE proximate to the two base stations that support service delivery to an MTA with Wisconsin territory. There is at present only one base station that is physically located within Wisconsin. Transcom has no other physical presence in the state, does not market within the state, has no customers in the state and has no employees in the state.

C. Services provided by Halo to Transcom and Consumers.

Halo's web site, www.halowireless.com, provides an overview of Halo's offerings. Halo has two base stations that serve MTAs that include Wisconsin. These base stations support the basis for service delivery to Halo's customers. The chart on the next page provides the information for the two base stations.

Base Station Location	Associated MTA	State(s) served
Danville, IL	MTA 3 – Chicago	IL, IN, MI, WI
New Glarus, WI	MTA 20 – Milwaukee	WI

Halo's base stations are the wireless access points where it collects and delivers voice and data traffic from end-user customers who purchase wireless services from Halo. These wireless customers also purchase or lease wireless CPE (customer-owned or leased "stations") that when sufficiently proximate to a base station allow them to communicate wirelessly with that base station. The end user customer can then enjoy broadband Internet service. The consumer offering includes a Voice over Internet Protocol ("VoIP") client that allows the user to originate telecommunications within the MTA and to receive calls from the rest of the PSTN.

Under the Halo configuration, and with respect to voice services, only calls originated by Halo customers that are connected to a base station in an MTA and where the called numbers are also associated with a "rate center" within the same MTA, will be routed over AT&T interconnection trunks for transport and termination in the same MTA.[17] The Service Plan and underlying service architecture supporting the "High Volume" service provided to Transcom, for example, is designed so that any communication addressed to a different MTA would fail, *e.g.*, not complete.

Halo's consumer product supports broadband Internet access. There is a "voice" component that allows calls originated by Halo customers connecting to a base station within an MTA and destined to a called party in a different MTA to be completed. The consumer product also allows calls to and from Halo customers not accessing the Halo network at a base station access point (*e.g.*, customers accessing their voice services over another broadband Internet

[17] The "High Volume" MSA with Transcom is explicit that the "service" purchased by Transcom is expressly designed so that it is wholly "intraMTA" in nature. This is how the "MTA Connect" and "LATA Connect" products are designed.

connection, much like other "over the top" VoIP products). These calls, however, *are not* routed over the AT&T interconnection trunks. Rather, those calls are handled by an interexchange carrier ("IXC") that provides telephone toll service to Halo. That IXC provider pays all access charges that are due. In other words, when a LEC receives a Halo call for termination in an MTA that has traversed an interconnection arrangement, the call (a) will have been originated by an end user customer's wireless equipment communicating with the base station in that same MTA, and (b) will, by design and default, be intraMTA as defined by the FCC's rules and its decision that the originating point for CMRS traffic is the base station serving the CMRS customer.

Halo's High Volume service offering has allowed for deployment of base stations in cities located in MTAs. Halo consciously chose to go to small towns underserved by incumbent operators for the deployment of these base stations. As a result, Halo can leverage common infrastructure to provide wireless broadband voice and data services on a scale and at a price other operators simply cannot because they must derive a return on investment from only one market, whereas Halo will be active in two markets. Halo's detractors have claimed that Halo does not serve, and has no intention of serving, "retail" wireless customers. If this were true, it would make no sense to deploy base stations in rural locations. These sites are generally remote, hard to get to, and backhaul services are limited and expensive, to name just a few challenges.[18] If Halo had no intention of serving the people in these communities, Halo undoubtedly increased operational complexity and increased operating costs in a material way by deploying in rural, rather than more urban, locations.

[18] New Glaurus, for example, has a population of about 2,500. The incumbent is Mount Vernon Telephone Company, a TDS subsidiary. The fact that Halo has entered TDS' market and is attempting to compete not only for telephone exchange and exchange access service, but also to provide broadband, likely explains some of the animosity exhibited by TDS, in particular, in this matter.

2. **Are Halo and/or Transcom terminating traffic in Wisconsin that they are not paying compensation for? How many minutes per month is each terminating in Wisconsin?**

   See response under Issue 3 below.

3. **Are there legal and legitimate reasons for Halo or Transcom to not pay compensation for terminating traffic in Wisconsin?**

   A. Clarification as to "Terminating."

Issues 2 and 3 refer to Halo and/or Transcom "terminating" traffic. Thus, they technically refer to calls that originate on other carriers' networks in the MTA and are addressed to Halo for delivery to Halo's end user Transcom (or other end users such as those using Halo's consumer product). Halo has been assigned the following numbering resources with rate centers in Wisconsin.[19]

Thousands Block	Rate Center	MTA	LATA	Date Assigned
920-903-1	Appleton	20	350	2010-08-06
608-535-1	Madison	20	354	2010-08-06

Neither Halo nor Transcom are compensating any party for any call terminations performed by Halo in the past twelve months. Transcom is an end user, and thus does not "terminate" traffic. Under the FCC's rules and definitions, Halo is the terminating carrier because Halo's "end office switch, or equivalent facility" performs the class 5 switching function and then delivers the traffic to Halo's end user customer. Regardless, neither Halo nor Transcom are presently seeking compensation for any termination function related to calls inbound to Halo's network.

[19] Halo also has numbering resources for MTA 3, which has some Wisconsin territory in it, but all of those resources are associated with rate centers in other states.

B. Response to actual concern.

Despite the reference to Halo and/or Transcom "terminating" traffic, it appears the concern actually pertains to traffic originated by Transcom on Halo's network that is addressed to end users served by other Wisconsin LECs. At the prehearing conference conducted on November 23, 2011, Halo and Transcom were requested to provide data relating to the number of minutes that were sent to Wisconsin LECs for termination to their end users by month, by carrier for the last 12 months. AT&T requested that Transcom separately provide the number of minutes originated through other providers that were terminated in Wisconsin. The requested information is confidential, and is being provided under separate cover, in accordance with page 7, paragraph 7 of the Prehearing Conference Memorandum. Halo and Transcom note that they were able to gather the required information in time to do only one report (rather than initially producing aggregate information and then supplementing to show calls by terminating carrier), and are producing the call data by month by OCN, for the 12 months of November, 2010 through the end of October, 2011.

Issues 2 and 3 assume that no compensation was paid by either Halo or Transcom to any entity. This is not correct. First, Transcom does compensate the vendors that provide telephone exchange service and telephone toll service to Transcom.[20] Halo provides telephone exchange service to Transcom and has been compensated by Transcom. Part of the contract (whether explicit or implicit) between Transcom and each of its vendors is that the vendor is responsible for any applicable intercarrier compensation – whether in the form of reciprocal compensation or exchange access.

[20] Transcom is an end user and is thus able to purchase telephone exchange service from LECs and CMRS providers as an end user. Nonetheless, Transcom does also purchase telephone toll service from IXCs as well.

The question is particularly incorrect with regard to AT&T. Halo has paid AT&T reciprocal compensation for all traffic that AT&T has terminated in Wisconsin. Halo has also paid AT&T for the transit function it provides for calls that go to other Wisconsin LECs.

As to whether LECs other than AT&T have been paid for terminating Halo's originating traffic, the answer is no. The legal and legitimate reason is that the other ILECs have not properly invoked the federal mechanism that is a legal prerequisite to any compensation obligation. If there is no interconnection agreement or request for an agreement, then "no compensation is owed for termination" until such proper request is made. In other words, every single one of the relevant rural local exchange carriers ("RLECs") could have begun receiving compensation at any time, and could begin receiving compensation tomorrow, if they would simply follow the required federal procedure.

As noted previously, under the current rules traffic that originates from a wireless end user's station in the same MTA as the terminating location is "non-access" traffic"[21] and is subject to section 251(b)(5). Rule 20.11(d) prohibits LECs from imposing any tariff charges on non-access traffic. CMRS providers do not have any obligation to seek or obtain section 252

[21] The FCC defined "non-access traffic" in *T-Mobile* note 6 as "traffic not subject to the interstate or intrastate access charge regimes, including traffic subject to section 251(b)(5) of the Act and ISP-bound traffic." Declaratory Ruling and Report and Order, *In the Matter of Developing a Unified Intercarrier Compensation Regime, T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, CC Docket 01-92, FCC 05-42, 20 FCC Rcd 4855 (2005) ("*T-Mobile*"). FCC rule 47 C.F.R. § 51.701(b)(2) provides that for CMRS-LEC purposes § 251(b)(5) applies to "Telecommunications traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in [47 C.F.R.] § 24.202(a) ...." The wireless CPE being used by both High Volume and consumer end users is IP-based. Thus it could also be characterized as "telecommunications traffic exchanged between a LEC and another telecommunications carrier in Time Division Multiplexing (TDM) format that originates and/or terminates in IP format and that otherwise meets the definitions in paragraphs (b)(1) or (b)(2) of this section. Telecommunications traffic originates and/or terminates in IP format if it originates from and/or terminates to an end-user customer of a service that requires Internet protocolcompatible customer premises equipment." The traffic originates and/or terminates in IP format because it originates from and/or terminates to an end-user customer of a service that requires Internet protocol-compatible customer premises equipment. Therefore, the traffic will still be "non-access" when and if the FCC's new rules go into effect under new 51.701(b)(3). Further, despite all the protestations of the ILECs, the traffic does still meet the requirements in new 20.11(b), since – as shown above – it is "Non-Access Telecommunications Traffic, as defined in § 51.701 of this chapter."

agreements prior to initiating service. Further, the binding federal rule – as set out in *T-Mobile*[22] – is that in the absence of an interconnection agreement, "no compensation is owed for termination." If an ILEC wants to be paid for terminating traffic on a prospective basis, the ILEC has the right to send a letter to the CMRS provider and "request interconnection." The letter must also "invoke the negotiation and arbitration procedures contained in section 252 of the Act." *See* 47 C.F.R. § 20.11(e). From and after the date of a proper request, the CMRS provider must pay reciprocal compensation to the ILEC using "the interim transport and termination pricing described in § 51.715." Halo not only recognizes that it has this obligation, it has repeatedly corresponded with RLECs around the country specifically informing them of the simple request they need to make in order to receive compensation. RLECs in Wisconsin and elsewhere have refused to make the required request because they refuse to acknowledge that Transcom is an ESP and an end user. They want to assume that Transcom is a carrier and that access charges are owed. Transcom and Halo have the right to rely on Transcom's ESP rulings, but the RLECs refuse to acknowledge that right.

4. Is the traffic terminated by Halo or Transcom actually wireless traffic? If not, what type of traffic is it? What type of compensation should apply to this traffic?

The traffic at issue all originates from a Halo end user via wireless CPE that is physically located in the same MTA as the terminating location. Thus, it is all subject to section 251(b)(5). As noted above, "[u]nder the amended rules, however, in the absence of a request for an interconnection agreement, no compensation is owed for termination." *T-Mobile*, note 57.

Halo and Transcom believe that this responds to the Commission's inquiry. The traffic is indeed "wireless," and the compensation scheme has been described above. To the extent that

[22] *T-Mobile* at Note 57 expressly provides that "Under the amended rules, however, in the absence of a request for an interconnection agreement, no compensation is owed for termination."

the Commission was looking for any other information, Halo and Transcom stand ready to respond.

5. Are Halo and Transcom taking actions to disguise the origin and type of traffic?

Halo and Transcom assume that this issue is directed at signaling, since some of the LECs have incorrectly, and without basis, asserted that Halo and/or Transcom are engaging in some kind of impropriety with regard to SS7 signaling.

The short answer is no. Neither Transcom nor Halo change the content or in any way "manipulate" the address signal information that is ultimately populated in the SS7 ISUP IAM Called Party Number ("CPN") parameter. Halo populates the Charge Number ("CN") parameter with the Billing Telephone Number of its end user customer Transcom. The LECs allege improper modification of signaling information related to the CN parameter, but the basis of this claim once again results from their assertion that Transcom is a carrier rather than an end user. Again, they are arguing that Transcom and Halo do not have the right to rely on Transcom's ESP rulings.

Halo's network is IP-based, and the network communicates internally and with customers using a combination of WiMAX and SIP. To interoperate with the SS7 world, Halo must conduct a protocol conversion from IP to SS7 and then transmit call control information using SS7 methods. The ILECs' allegations fail to appreciate this fact, and are otherwise technically incoherent. They reflect a distinct misunderstanding of technology, SS7, the current market, and most important, a purposeful refusal to consider this issue through the lens of CMRS telephone exchange service provided to an end user.

From a technical perspective, "industry standard" in the United States is American National Standards Institute ("ANSI") T1.113, which sets out the semantics and syntax for SS7-

based CPN and CN parameters. The "global" standard is contained in ITU-T series Q.760-Q.769. ANSI T1.113 describes the CPN and CN parameters:

> Calling Party Number. Information sent in the forward direction to identify the calling party and consisting of the odd/even indicator, nature of address indicator, numbering plan indicator, address presentation restriction indicator, screening indicator, and address signals.
>
> Charge Number. Information sent in either direction indicating the chargeable number for the call and consisting of the odd/even indicator, nature of address indicator, numbering plan indicator, and address signals.

The various indicators and the address signals have one or more character positions within the parameter and the standards prescribe specific syntax and semantics guidelines. The situation is essentially the same for both parameters, although CN can be passed in either direction, whereas CPN is passed only in the forward direction. The CPN and CN parameters were created to serve discrete purposes and they convey different meanings consistent with the design purpose. For example, CPN was created largely to make "Caller ID" and other CLASS-based services work. Automatic Number Identification ("ANI") and CN, on the other hand, are pertinent to billing and routing.

A. SS7 ISUP IAM Calling Party Number Parameter Content.

Halo's signaling practices on the SS7 network comply with the ANSI standard with regard to the address signal content. Halo's practices are also consistent with the Internet Engineering Task Force ("IETF") "standards" for Session Initiated Protocol ("SIP") and SIP to Integrated Services Digital Network ("ISDN") User Part ("ISUP") mapping. Halo populates the SS7 ISUP IAM CPN parameter with the address signal information that Halo has received from its High Volume customer (Transcom). Specifically, Halo's practices are consistent with the IETF Request for Comments ("RFCs") relating to mapping of SIP headers to ISUP parameters. *See, e.g.*, G. Camarillo, A. B. Roach, J. Peterson, L. Ong, RFC 3398, *Integrated Services Digital*

Network (ISDN) User Part (ISUP) to Session Initiation Protocol (SIP) Mapping, © The Internet Society (2002), available at http://tools.ietf.org/html/rfc3398.

> When a SIP INVITE arrives at a PSTN gateway, the gateway SHOULD attempt to make use of encapsulated ISUP (see [3]), if any, within the INVITE to assist in the formulation of outbound PSTN signaling, but SHOULD also heed the security considerations in Section 15. If possible, the gateway SHOULD reuse the values of each of the ISUP parameters of the encapsulated IAM as it formulates an IAM that it will send across its PSTN interface. In some cases, the gateway will be unable to make use of that ISUP - for example, if the gateway cannot understand the ISUP variant and must therefore ignore the encapsulated body. Even when there is comprehensible encapsulated ISUP, the relevant values of SIP header fields MUST 'overwrite' through the process of translation the parameter values that would have been set based on encapsulated ISUP. In other words, the updates to the critical session context parameters that are created in the SIP network take precedence, in ISUP-SIP-ISUP bridging cases, over the encapsulated ISUP. This allows many basic services, including various sorts of call forwarding and redirection, to be implemented in the SIP network.
>
> For example, if an INVITE arrives at a gateway with an encapsulated IAM with a CPN field indicating the telephone number +12025332699, but the Request-URI of the INVITE indicates 'tel:+15105550110', the gateway MUST use the telephone number in the Request-URI, rather than the one in the encapsulated IAM, when creating the IAM that the gateway will send to the PSTN. Further details of how SIP header fields are translated into ISUP parameters follow.

B. SS7 ISUP IAM Charge Number Parameter Content.

Halo's high volume customer will sometimes pass information that belongs in the CPN parameter that does not correctly convey that the Halo end user customer is originating a call in the MTA. When this is the case, Halo still populates the CPN, including the address signal field with the original information supplied by the end user customer. Halo, however, also populates the CN parameter. The number appearing in the CN address signal field will usually be one assigned to Halo's customer and is the Billing Account Number, or its equivalent, for the service provided in the MTA where the call is processed. In ANSI terms, that is the "chargeable number." This practice is also consistent with the developing IETF consensus and practices and

capabilities that have been independently implemented by many equipment vendors in advance of actual IETF "standards."

SIP "standards" do not actually contain a formal header for "Charge Number." Vendors and providers began to include an "unregistered" "private" header around 2005. The IETF has been working on a "registered" header for this information since 2008. *See* D. York and T. Asveren, SIPPING Internet-Draft, *P-Charge-Info - A Private Header (P-Header) Extension to the Session Initiation Protocol (SIP)* (draft-york-sipping-p-charge-info-01) © The IETF Trust (2008), available at http://tools.ietf.org/html/draft-york-sipping-p-charge-info-01 (describing "'P-Charge-Info', a private Session Initiation Protocol (SIP) header (P-header) used by a number of equipment vendors and carriers to convey simple billing information."). The most recent draft was released in September, 2011. *See* D. York, T. Asveren, SIPPING Internet-Draft, *P-Charge-Info - A Private Header (P-Header) Extension to the Session Initiation Protocol (SIP)* (draft-york-sipping-p-charge-info-12), © 2011 IETF Trust, available at http://www.ietf.org/id/draft-york-sipping-p-charge-info-12.txt. Halo's practices related to populating the Halo-supplied BTN for Transcom in the SS7 ISUP IAM CN parameter are quite consistent with the purposes for and results intended by each of the "Use Cases" described in the most recent document.

Halo notes that, with regard to its consumer product, Halo will signal the Halo number that has been assigned to the end user customer's wireless CPE in the CPN parameter. There is no need to populate the CN parameter, unless and to the extent the Halo end user has turned on call forwarding functionality. In that situation, the Halo end user's number will appear in the CN parameter and the E.164 address of the party that called the Halo customer and whose call has been forwarded to a different end-point will appear in the CPN parameter. Once again, this is

perfectly consistent with both ANSI and IETF practices for SIP and SS7 call control signaling and mapping.

Halo is not taking any action to "disguise" anything. Instead, Halo is exactly following industry practice applicable to an exchange carrier providing telephone exchange service to an end user, and in particular a communications-intensive business end user with sophisticated CPE.

Transcom, as noted, also has an IP-based system. Nonetheless, Transcom has had a firm policy since at least 2003 that it will not in any way change or manipulate the information that belongs in the SS7 ISUP IAM CPN parameter address signal. Transcom has always and will always maintain the address signal content and pass it on unchanged, albeit after the protocol conversion from IP to SS7 where necessary, which would be the case when Transcom and its PSTN vendor connect via "TDM" instead of on an IP basis. As noted, however, Transcom and Halo communicate via IP.

6. Do Halo's actions conflict with the terms of its ICA with Wisconsin Bell, Inc., d/b/a AT&T Wisconsin?

A. Jurisdiction.

Halo has an interconnection agreement ("ICA") with Wisconsin Bell, Inc. d/b/a AT&T Wisconsin ("AT&T Wisconsin"). *If* there is a dispute between Halo and AT&T and *if* one or the other files a "post-ICA" dispute case and *if* the Commission has jurisdiction to resolve the dispute, then presumably it will do so. But, the Commission lacks any authority to take up the question of a breach and make a "determination" on that issue as part of a Commission-initiated inquiry, such as this case. The Commission most certainly cannot look at the ICA and "find" some duty to other LECs that runs to their benefit, since the ICA has an express provision (GTC § 28) stating that "[t]his Agreement shall not provide any person not a Party to this Agreement

with any remedy, claim, liability, reimbursement, claim of action, or other right in excess of those existing without reference to this Agreement."

Post-ICA disputes are handled under section 252 of the Act. Traditionally, these are bi-lateral cases, and only the parties to the contract (here AT&T Wisconsin and Halo) are permitted to participate. The Commission did not specifically list section 252 as one of the bases for its jurisdiction in this matter, and Halo submits that was correct since neither Halo nor AT&T has invoked dispute resolution under section 252, which is a necessary prerequisite. And, the legislature has expressly stated that the Commission's authority to resolve ICA disputes does not extend to ICAs to which a CMRS provider is a party. Wis. Stat. sec. 196.199 (1). Regardless, and without any waiver of the foregoing, Halo submits that there has been no breach and Halo's "actions" are fully consistent with the ICA terms.

B. Substance.

Any allegation of breach is purely based upon the LECs' desire to disregard Transcom's ESP rulings. AT&T has alleged in other jurisdictions that Halo has breached the relevant ICA because the traffic Halo is sending "is not wireless." This allegation is based wholly on the assertion that the traffic in question began elsewhere on the PSTN. In other words, the allegation of breach assumes that Transcom is a carrier, not an end user. If Transcom is an end user (as its ESP rulings establish), then the traffic is wireless and there has been no breach.

7. Is Halo or Transcom operating or providing services in Wisconsin without proper certification from the Commission? Are Halo and Transcom operating or providing services, jointly or in concert, in Wisconsin without proper certification from the Commission?

Transcom is not a carrier and does not provide any telecommunications service in Wisconsin. Instead, Transcom is an ESP. The FCC preempted states from imposing common

carrier regulation on non-common carrier ESPs long ago and the 1996 amendments extended this preemption to all enhanced/information services.[23]

Section 332(c)(3) of the Act expressly preempts state regulation of CMRS entry or rates. Equally important, Wisconsin law does not support the proposition that a CMRS provider or an ESP must secure a state certification, in any event. CMRS is specifically exempted from certification. Wis. Stat. § 196.202 (2). ESPs do not provide telecommunications, and only telecommunications providers are potentially subject to certification requirements under state law. Finally, and with specific regard to Transcom (as opposed to Halo), Transcom is not providing any service to any Wisconsin customers. While it is true that Transcom originates calls that terminate in Wisconsin, Transcom does not have a customer in Wisconsin. Thus, it simply cannot be said that Transcom provides service "in" Wisconsin, or provides any intrastate service. The answer is therefore no. No certificate is required under Wisconsin law, and even if Wisconsin law purported to require such a certification (which it does not), any state requirement has been preempted by federal law under the doctrines of express, field and conflict preemption.

Halo is operating as a CMRS carrier in Wisconsin. Pursuant to Wis. Stat. § 196.01(5)(b)(4), a CMRS carrier is not a "public utility" in Wisconsin and no certification is required.

The only way that certification could be required of either Transcom or Halo is if the Commission were to rule that neither Transcom nor Halo has the right to rely on Transcom's

[23] *See California v. FCC*, 905 F.2d 1217, 1240 (9th Cir. 1990) [rejecting FCC's initial attempt to preempt state regulation of common carrier provided intrastate enhanced services but affirming preemption as to "non-common carriers such as IBM"]; Memorandum Opinion and Order, *In the Matter of Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45, FCC 04-27, ¶ 13, 19 FCC Rcd 3307 (rel. Feb. 2004); *Vonage Holdings Corp. v. Minnesota Public Utilities Commission*, 290 F. Supp. 2d 993 (D. Minn. 2003).

ESP rulings. That is what the LECs are asking the Commission to do. Halo and Transcom respectfully suggest the Commission should decline their invitation.

8. **What remedial actions, if any, should be ordered by the Commission in light of its findings or determinations with respect to Issue Nos. 1-7 above? Possible actions may include, but are not limited to, the following:**

   - **Rescission or enforcement of the Commission's approval of the AT&T-Halo interconnection agreement under Wis. Stat. § 196.04 and 47 U.S.C. §§ 251 and 252.**
   - **Injunction against Halo and/or Transcom operations that violate state provider certification requirements.**
   - **Order under Wis. Stat. § 196.219(3)(m) to incumbent providers to terminate services or connections that facilitate the unauthorized provisioning of services.**
   - **Any other injunctive order respecting the propriety of the services provided by Halo and/or Transcom.**

Based on the analysis set forth above, both Halo and Transcom respectfully argue that any remedial actions ordered by the Commission would be improper and unlawful. Halo and Transcom also reserve the right to further respond on this issue after any LEC proposes or seeks any specific relief.

Respectfully submitted,

/s/ Steven H. Thomas (12/02/11)

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Attorneys for Halo Wireless, Inc. and Transcom Enhanced Services, Inc.

VERIFICATION OF HALO WIRELESS, INC.

My name is Russell Wiseman. I am President of Halo Wireless, Inc. ("Halo"). My business address is 2351 West Northwest Highway, Suite 1204, Dallas, Texas 75220. I am familiar with the business records of Halo. Further, to the best of the company's knowledge, the information provided herein is true and correct.

Russell Wiseman
President, Halo Wireless, Inc.

SUBSCRIBED and SWORN to before me by Russell Wiseman, this 2 day of December, 2011.

NOTARY PUBLIC, STATE OF TEXAS

JOHN L LAJOIE NOTARY PUBLIC STATE OF TEXAS EXPIRES 2-19-2012

VERIFICATION OF TRANSCOM ENHANCED SERVICES, INC.

My name is Jeff Miller. I am Chief Financial Officer of Transcom Enhanced Services, Inc. ("Transcom"). My business address is 307 West 7th Street, Suite 1600, Fort Worth, Texas 76102. I am familiar with the business records of Transcom. Further, to the best of the company's knowledge, the information provided herein is true and correct.

Jeff Miller
Chief Financial Officer, Transcom Enhanced Services, Inc.

SUBSCRIBED and SWORN to before me by Jeff Miller, this 2 day of December, 2011.

SHEILA O'FLINN
MY COMMISSION EXPIRES
February 27, 2013

NOTARY PUBLIC, STATE OF TEXAS

EXHIBIT 1

TO
HALO WIRELESS, INC. AND TRANSCOM ENHANCED SERVICES, INC.'S ANSWERS ON ISSUES 1-8 IN THE NOTICE OF PROCEEDING

NORTHERN DISTRICT OF TEXAS
ENTERED
TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

The following constitutes the order of the Court.

Signed May 16, 2006

Harlin DeWayne Hale
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	**CASE NO. 05-31929-HDH-11**
	§	
TRANSCOM ENHANCED	§	**CHAPTER 11**
SERVICES, LLC,	§	
	§	**CONFIRMATION HEARING:**
DEBTOR.	§	**MAY 16, 2006 @ 10:00 a.m.**

ORDER CONFIRMING DEBTOR'S AND FIRST CAPITAL'S
ORIGINAL JOINT PLAN OF REORGANIZATION AS MODIFIED

Came on for consideration on May 16, 2006 the Original Joint Plan of Reorganization Proposed by Transcom Enhanced Services, LLC (the "Debtor") and First Capital Group of Texas III, L.P. ("First Capital") filed on March 31, 2006 (the "Plan"). The Debtor and First Capital are collectively referred to herein as the "Proponents." All capitalized terms not defined herein have the meanings ascribed to them in the Plan. Just prior to the confirmation hearing, the Proponents filed their Modifications to Plan which relate to the Objections to Confirmation filed by Carrollton-Farmers Branch, Dallas County, Tarrant County and Arlington ISD, as well as the

comments of the United States Trustee and the Objection to Cure Amount in Plan filed by Riverrock Systems, Ltd. ("Riverrock"). The modifications comport with Bankruptcy Code 1127. In addition to the above objections, Broadwing Communications LLC ("Broadwing") and Broadwing Communications Corporation ("BCC") (collectively "Broadwing") filed its Objection to Final Approval of Disclosure Statement and Confirmation of Plan on May 11, 2006. Similar to the objections of Riverrock and the taxing authorities, and based upon an agreement reached between the Debtor and Broadwing, Broadwing withdrew its objection and amended its ballots to accept the Plan at the confirmation hearing. The Bankruptcy Court, having considered the Disclosure Statement, the Plan, the statements of counsel, the evidence presented or proffered, the pleadings, the record in this case, and being otherwise fully advised, makes the following findings of fact and conclusions of law:

Findings of Fact

1. On February 18, 2005 (the "Petition Date"), the Debtor filed its voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court"). Pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor is operating its business and managing its property as debtor in possession.

2. The Debtor was formed in or around May of 2003 for the purpose of purchasing the assets of DataVon, Inc. Since then, the Debtor has continued to provide enhanced information services, including toll quality voice and data communications utilizing converged, Internet Protocol (IP) services over privately managed private IP networks. The Debtor's information services include voice processing and arranged termination utilizing voice over IP technology.

3. The Debtor's network is comprised of Veraz I-gate and Pro media gateways, a Veraz control switch, miscellaneous servers, routers and equipment, and leased bandwidth. The network, which is completely scalable, is currently capable of processing approximately 600 million minutes of uncompressed, wholesale IP phone calls per month. However, the number of minutes processed may be increased significantly with more efficient use of IP endpoints. The architecture of the network also provides a service creation environment for rapid deployment of new services via XML scripting capabilities and SIP interoperability.

4. Currently, the Debtor is a wholesaler of VoIP processing and termination services to domestic long distance providers. (The Debtor is in the process of expanding its service offerings to include retail services and additional IP applications). The primary asset of the Debtor is a private, nationwide VoIP network utilizing state-of-the-art media gateway and soft switch technology, connected by leased lines. Utilization of this network enables the Debtor to provide toll-quality voice services to its customers at significantly lower rates than comparable services provided by traditional carriers. In contested hearings held on or about April 14, 2005, the Debtor established that its business activities meet the definitions of "enhanced service" (47 C.F.R. § 67.702(a)) and "information service" (47 U.S.C. § 153(20)), and that the services it provides fall outside of the definitions of "telecommunications" and "telecommunications service" (47 U.S.C. § 153(43) and (46), respectively), and therefore, as this Court has previously determined, Debtor's services are not subject to access charges, but rather qualify as information services and enhanced services that must pay end user charges.

5. On March 31, 2006, the Proponents filed their Original Plan of Reorganization (the "Plan") and Disclosure Statement for Plan (the "Disclosure Statement"). On April 3, 2006, the Proponents filed their Joint Motion for Conditional Approval of Disclosure Statement (the

"Motion for Conditional Approval"). On April 12, 2006, and over the objections of Broadwing and EDS Information Services, L.L.C. ("EDIS"), the Court entered its order granting the Motion for Conditional Approval and conditionally approving the Disclosure Statement (the "Conditional Approval Order"). Under the Conditional Approval Order, a final hearing to consider approval of the Disclosure Statement was combined with the confirmation hearing of the Plan, which hearings were set for May 16, 2006 at 10:00 a.m. (the "Combined Hearing"). Thereafter, and in accordance with the Conditional Approval Order, the Disclosure Statement was supplemented to address the concerns raised in the objections of both Broadwing and EDIS, the Plan and Disclosure Statement was distributed to creditors, interest-holders, and other parties-in-interest.

6. On or about April 10, 2006 and May 15, 2006, the Proponents filed non-material Modifications to the Plan pursuant to Bankruptcy Code § 1127 ("Plan Modifications").

7. The objections filed by Dallas County, Tarrant County, Carrollton-Farmers Branch ISD, Arlington ISD, Riverrock and Broadwing have been withdrawn.

8. The Proponents have provided appropriate, due and adequate notice of the Combined Hearing, the Disclosure Statement and Plan Supplements and the Plan Modifications, and such notice is in compliance with Bankruptcy Code § 1127 and Bankruptcy Rules 2002, 3019, 6006 and 9014. Without limiting the foregoing, as evidenced by certificates of service related thereto on file with the Court, and based upon statements of counsel, the Proponents have complied with the notice and solicitation procedures set forth in the April 12, 2006 Conditional Approval Order. No further notice of the May 16, 2006 Combined Hearing, the Plan, the Disclosure Statement or the Plan Modifications is necessary or required.

9. Class 1, consisting of the Pre-Petition Secured Claim on First Capital, is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

10. Class 2, consisting of the Post-Petition Secured Claim on First Capital, is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

11. Class 3, consisting of the Secured Claim on Redwing Equipment Partners Limited as successor-in-interest to Veraz Networks, Inc. ("Redwing"), is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

12. Class 4, consisting of the Secured Tax Claims, is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

13. Class 5, consisting of General Unsecured Claims, is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

14. Classes 6 and 7 of the Plan shall receive nothing under the Plan, and are deemed to reject the Plan.

15. Confirmation of the Plan is in the best interest of the Debtor, the Debtor's Estate, the Creditors of the Estate and other parties in interest.

16. The Court finds that the Debtor has articulated good and sufficient business reasons justifying the assumption of the executory contracts and unexpired leases specifically identified in Article X of the Plan, including the Debtor's Customer Contracts under Plan Section 10.01 and Vendor Agreements under Plan Section 10.02 and specifically listed on Exhibit 1-B of the Plan. No cure payments are owed with respect to the Debtor's Customer Contracts; and the only cure payments owed with respect to the Vendor Agreements are specifically identified in

Exhibit 1-B of the Plan. No other arrearages are owed with respect to the Vendor Agreements. Unless otherwise provided in the Plan Modifications, the proposed cure amounts set forth in Section 10.02 satisfies, in all respects, Bankruptcy Code § 365. Furthermore, the Court finds that the Debtor has articulated good and sufficient business reasons justifying the rejection of all other executory contracts and unexpired leases of the Debtor.

17. The Proponents have solicited the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code.

Conclusions of Law

18. The Court has jurisdiction over this Chapter 11 Case and of the property of the Debtor and its Estate under 28 U.S.C. §§ 157 and 1334.

19. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L).

20. Good and sufficient notice of the Disclosure Statement, the Plan, solicitation thereof, the May 16, 2006 Combined Hearing and the Plan Modifications have been given in accordance with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules for the Northern District of Texas and the April 12, 2006 Conditional Approval Order. The Plan Modifications that were filed with the Bankruptcy Court are non-material and do not require additional disclosure or re-solicitation of Plan acceptances and/or rejections.

21. Adequate and sufficient notice of the Plan Modifications has been provided to the appropriate parties which have agreed to the modifications. Pursuant to Bankruptcy Rule 3019, the Bankruptcy Court finds that the Plan Modifications do not adversely change the treatment of the holder of any Claim under the Plan, who has not accepted in writing the Plan Modifications.

All Creditors who have accepted the Plan without the Plan Modifications, are deemed to accept the Plan with the Plan Modifications.

22. The Plan complies with all applicable requirements of Bankruptcy Code §§ 1122 and 1123. Furthermore, the Plan complies with the applicable requirements of Bankruptcy Code §§ 1129(a) and (b), including, but not limited to the following:

a. the Plan complies with all applicable provisions of the Bankruptcy Code;

b. the Debtor and First Capital, as Proponents of the Plan, have complied with the applicable provisions of the Bankruptcy Code;

c. the Plan has been proposed in good faith and not by any means forbidden by law;

d. any payment made or to be made by the Debtor for services or for costs and expenses in or in connection with the case, has been approved by, or will be subject to the approval of, this Court as reasonable;

e. the Plan does not contain any rate change by the Debtor which requires approval of a governmental or regulatory entity;

f. each holder of a Claim or Equity Security Interest in an Impaired Class has accepted the Plan or will receive or retain under the Plan on account of such Claim or Equity Security Interest property of a value as of the Effective Date that is no less than the amount that such holder would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code as of the Effective Date;

g. Classes 1, 2, 3, 4 and 5 are Impaired under the Plan, and have accepted the Plan;

h. the Plan does not unfairly discriminate against dissenting classes;

i. the Plan is fair and equitable with respect to each class of claims or interests that is impaired, and has not accepted, the Plan;

j. the Plan provides that holders of Claims specified in Bankruptcy Code §§ 507(a)(1)-(6) receive Cash payments of value as of the Effective Date of the Plan equal to the Allowed Amount of such Claims;

k. at least one Class of Creditors that is Impaired under the Plan, not including acceptances by Insiders, has accepted the Plan;

l. confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization by the Debtor;

m. all fees payable under 28 U.S.C. § 1930, have been timely paid or the Plan provides for payment of all such fees;

n. the Debtor is not obligated for the payment of retiree benefits as defined in Bankruptcy Code § 1114.

23. All requirements of Bankruptcy Code § 365 relating to the assumption, rejection, and/or assumption and assignment of executory contracts and unexpired leases of the Debtor have been satisfied. The Debtor has demonstrated adequate assurance of future performance with regard to the assumed executory contracts and unexpired leases of the Debtor.

24. The Redwing Settlement Agreement attached as Exhibit 1-A to the Plan is fair and equitable, and approval of the Redwing Settlement Agreement is in the best interests of the Debtor and its Estate.

25. All releases of claims and causes of action against non-debtor persons or entities that are embodied within Section 15.04 of the Plan are fair, equitable, and in the best interest of the Debtor and its Estate.

26. The Proponents and their members, officers, directors, employees, agents and professionals who participated in the formulation, negotiation, solicitation, approval, and confirmation of the Plan shall be deemed to have acted in good faith and in compliance with the applicable provisions of the Bankruptcy Code with respect thereto and are entitled to the rights, benefits and protections of Bankruptcy Code §§ 1125(d) and (e).

27. The Disclosure Statement contains "adequate information" as defined in 11 U.S.C. § 1125. All creditors, equity interest holders and other parties in interest have received appropriate notice and an opportunity for a hearing of the Plan and the Disclosure Statement.

28. The Plan and Disclosure Statement have been transmitted to all creditors, equity interest holders and parties in interest. Notice and opportunity for hearing have been given.

29. The requirements of §1129 (a) and (b) have been met.

30. The Plan as proposed is feasible.

31. All conclusions of law made or announced by the Court on the record in connection with the May 16, 2006 Combined Hearing are incorporated herein.

32. All conclusions of law which are findings of fact shall be deemed to be findings of fact and vice versa.

It is therefore,

ORDERED that the Disclosure Statement for Original Joint Plan of Reorganization filed by the Debtor and First Capital on March 31, 2006, is hereby APPROVED; it is further

ORDERED that the Original Joint Plan of Reorganization filed by the Debtor and First Capital on March 31, 2006, as modified, is hereby CONFIRMED; it is further

ORDERED that the Debtor and First Capital are authorized to execute any and all documents necessary to effect and consummate the Plan; it is further

ORDERED that pursuant to section 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006, the assumption of the Customer Contracts, as specifically defined in Section 10.01 of the Plan, is hereby approved; it is further

ORDERED that pursuant to section 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006, the assumption of the Vendor Agreements, as specifically defined in Section 10.02 of the Plan, is hereby approved; it is further

ORDERED that unless otherwise agreed to in writing by the Reorganized Debtor and the counter-party to the Vendor Agreement, the Reorganized Debtor shall cure the arrears

specifically listed in Exhibit 1-B of the Plan by tendering six (6) equal consecutive monthly payments to the Vendor Agreement counter-party until the arrears are paid in full; it is further

ORDERED that, except for the Customer Contracts, Vendor Agreements, and executory contracts or leases that were expressly assumed by a separate order, all pre-petition executory contracts and unexpired leases to which the Debtor was a party are hereby REJECTED effective as of the Petition Date; it is further

ORDERED that pursuant to Bankruptcy Rule 9019, the Redwing Settlement Agreement is hereby APPROVED, and the Debtor may execute any and all documents required to carry out the Redwing Settlement, including, but not limited to the Redwing Settlement Agreement, and such agreement shall be in full force and effect; it is further

ORDERED that nothing contained in this Order or the Plan shall effect or control or be deemed to prejudice or impair the rights of the Debtor, the Reorganized Debtor, Veraz Networks, Inc. or Redwing with respect to the dispute over the validity or extent of any license claimed by the Debtor in 15,000 ICE or logical ports currently utilized by the Debtor in connection with the operation of its network and each of the Debtor, the Reorganized Debtor, Veraz Networks, Inc. and Redwing reserve all of their rights with respect to such issue; it is further

ORDERED that except as otherwise provided in Plan Section 15.03, First Capital, the Debtor, the Reorganized Debtor, and the Reorganized Debtor's present or former managers, directors, officers, employees, predecessors, successors, members, agents and representatives (collectively referred to herein as the "Released Party"), shall not have or incur any liability to any person for any claim, obligation, right, cause of action or liability (including, but not limited to, any claims arising out of any alleged fiduciary or other duty) whether known or unknown, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or

omission, transaction or occurrence from the beginning of time through the Effective Date in any way relating to the Debtor's Chapter 11 Case or the Plan; and all claims based upon or arising out of such actions or omissions shall be forever waived and released (other than the right to enforce the Reorganized Debtor's obligations under the Plan).

*** END OF ORDER ***

PREPARED BY:

By /s/ David L. Woods (5.16.06)
J. Mark Chevallier
State Bar No. 04189170
David L. Woods
State Bar No. 24004167
MCGUIRE, CRADDOCK & STROTHER, P.C.
ATTORNEYS FOR DEBTOR and
DEBTOR-IN-POSSESSION

EXHIBIT 2

TO

HALO WIRELESS, INC. AND TRANSCOM ENHANCED SERVICES, INC.'S ANSWERS ON ISSUES 1-8 IN THE NOTICE OF PROCEEDING

NORTHERN DISTRICT OF TEXAS
ENTERED
TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Harlin DeWayne Hale

Signed September 20, 2007

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
TRANSCOM ENHANCED SERVICES, LLC,	§	**CASE NO. 05-31929-HDH-11**
	§	
DEBTOR.	§	
	§	
TRANSCOM ENHANCED SERVICES, INC.,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	
	§	
GLOBAL CROSSING BANDWIDTH, INC. and GLOBAL CROSSING TELECOMMUNICATIONS, INC.,	§	**ADVERSARY NO. 06-03477-HDH**
	§	
Defendants.	§	
	§	

GLOBAL CROSSING BANDWIDTH, INC. and GLOBAL CROSSING TELECOMMUNICATIONS, INC.,	§
Third Party Plaintiffs,	§
v.	§
TRANSCOM ENHANCED SERVICES, LLC and TRANSCOM COMMUNICATIONS, INC.,	§
Third Party Defendants.	§

ORDER GRANTING TRANSCOM'S MOTION FOR PARTIAL SUMMARY JUDGMENT BASED ON THE AFFIRMATIVE DEFENSE THAT TRANSCOM QUALIFIES AS AN ENHANCED SERVICE PROVIDER

On this date, came on for consideration the Motion For Partial Summary Judgment On Counterplaintiffs' Sole Remaining Counterclaim Based On The Affirmative Defense That Transcom Qualifies As An Enhanced Service Provider (the "Motion") filed by Transcom Enhanced Services, Inc. ("Transcom" or "Counterdefendant"), in which Transcom seeks summary judgment on the sole remaining counterclaim (the "Counterclaim") asserted by Counterplaintiffs' Global Crossing Bandwidth, Inc. ("GX Bandwidth") and Global Crossing Telecommunications, Inc. ("GX Telecommunications") (collectively, "GX Entities" or "Counterplaintiffs") based on the affirmative defense that Transcom qualifies as an enhanced service provider.

Twice previously, this Court has ruled that Transcom qualifies as an enhanced service provider, and therefore is not obligated to pay access charges, but rather must pay end user charges. In filing the motion, Transcom relied heavily on the evidence previously presented to this Court in contested hearings (the "ESP Hearings") involving the SBC Telcos (collectively, "SBC") and AT&T

Corp. ("AT&T") along with Affidavits from a principal of Transcom and one of Transcom's expert witnesses establishing that Transcom's system has not changed since the time of the ESP Hearings, that the services provided to the GX Entities by Transcom are the same as the services provided to all other Transcom customers, and that Transcom's expert witness is still of the opinion that Transcom's business operations fall within the definitions of "enhanced service provider" and "information service."

In response to the Motion, Counterplaintiffs have asserted that they neither oppose nor consent to the relief sought in the Motion. In their responses to Transcom's interrogatories, however, Counterplaintiffs asserted that Transcom did not qualify as an enhanced service provider because its service is merely an "IP-in-the-middle" service, which Transcom asserts is a reference to the FCC's Order, *In The Matter Of Petition For Declaratory Ruling That AT&T's Phone-to-Phone IP Telephony Services Are Exempt From Access Charges,* 19 FCC Rcd 7457, Release Number FCC 04-97, released April 21, 2004 (the "AT&T Order").

During the ESP Hearings, a number of witnesses testified on the issue of whether Transcom is an enhanced service provider and therefore exempt from payment of access charges. The transcripts and exhibits from those hearings have been introduced as summary judgment evidence in support of the Motion. That record establishes by a preponderance of the evidence that the service provided by Transcom is distinguishable from AT&T's specific service (as described in the AT&T Order) in a number of material ways, including, but not limited to, the following:

(a) Transcom is not an interexchange (long distance) carrier.

(b) Transcom does not hold itself out as a long distance carrier.

(c) Transcom has no retail long distance customers.

(d) The efficiencies of Transcom's network result in reduced rates for its customers.

(e) Transcom's system provides its customers with enhanced capabilities.

(f) Transcom's system changes the content of every call that passes through it.

On its face, the AT&T Order is limited to AT&T and its specific services. This Court therefore holds again, as it did at the conclusion of the ESP hearings, that the AT&T Order does not control the determination of whether Transcom qualifies as an enhanced service provider.

The term "enhanced service" is defined at 47 C.F.R. § 67.702(a) as follows:

> For the purpose of this subpart, the term enhanced service shall refer to services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. Enhanced services are not regulated under title II of the Act.

The term "information service" is defined at 47 USC § 153(20) as follows:

> The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

The definitions of "enhanced service" and "information service" differ slightly, to the point that all enhanced services are information services, but not all information services are also enhanced services. See First Report And Order, *In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934*, as amended, 11 FCC Rcd 21905 (1996) at ¶ 103.

The Telecom Act defines the terms "telecommunications" and "telecommunications service" in 47 USC § 153(43) and (46), respectively, as follows:

> The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, *without change in the form or content* of the information as sent and received. (emphasis added).
>
> The term "telecommunications service" means the offering of *telecommunications* for a fee directly to the public, or to such class of users as to be effectively available directly to the public, regardless of the facilities used. (emphasis added).

These definitions make clear that a service that routinely changes either the form or the content of the transmission would fall outside of the definition of "telecommunications" and therefore would not constitute a "telecommunications service."

Whether a service pays access charges or end user charges is determined by 47 C.F.R. § 69.5, which states in relevant part as follows:

> (a) End user charges shall be computed and assessed upon end users ... as defined in this subpart, and as provided in subpart B of this part. (b) Carrier's carrier charges [i.e., access charges] shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities *for the provision of interstate or foreign telecommunications services.* (emphasis added).

As such, only telecommunications services pay access charges. The clear reading of the above provisions leads to the conclusion that a service that routinely changes either the form or the content of the telephone call is an enhanced service and an information service, not a telecommunications service, and therefore is required to pay end user charges, not access charges.

Based on the summary judgment evidence, the Court finds that Transcom's system fits squarely within the definitions of "enhanced service" and "information service," as defined above. Moreover, the Court finds that Transcom's system falls outside of the definition of "telecommunications service" because Transcom's system routinely makes non-trivial changes to user-supplied information (content) during the entirety of every communication. Such changes fall outside the scope of the operations of traditional telecommunications networks, and are not

necessary for the ordinary management, control or operation of a telecommunications system or the management of a telecommunications service. As such, Transcom's service is not a "telecommunications service" subject to access charges, but rather is an information service and an enhanced service that must pay end user charges. Judge Felsenthal made a similar finding in his order approving the sale of the assets of DataVoN to Transcom, that DataVoN provided "enhanced information services." *See* Order Granting Motion to Sell, 02-38600-SAF-11, no. 465, entered May 29, 2003. Transcom now uses DataVoN's assets in its business.

In the Counterclaim, paragraph 94 makes the following assertion:

> Under the Communications Agreement, the Debtor asserted that it was an enhanced service provider. Not only did the Debtor make this assertion, it agreed to indemnify GX Telecommunications in the event that assertion proved untrue.

The Counterclaim goes on to allege that Transcom failed to pay access charges, and that Transcom is therefore liable under the indemnification provision in the governing agreement to the extent that it does not qualify as an enhanced service provider. In response to the Counterclaim, Transcom asserted the affirmative defense that it does indeed qualify as an enhanced service provider, and therefore has no liability under the indemnification provision. The Motion seeks summary judgment on that specific affirmative defense.

The Court has previously ruled, and rules again today, that Transcom qualifies as an enhanced service provider. As such, it is the opinion of the Court that the Motion should be granted.

It is therefore ORDERED that the Motion is GRANTED, and Transcom is awarded summary judgment that the GX Entities take nothing by their Counterclaim.

###END OF ORDER###

G:\ORD-Server\activePDF\Sign\Temp\23834_411975.wpd

EXHIBIT 3

TO
HALO WIRELESS, INC. AND TRANSCOM ENHANCED SERVICES, INC.'S ANSWERS ON ISSUES 1-8 IN THE NOTICE OF PROCEEDING

Westlaw.

427 B.R. 585
(Cite as: 427 B.R. 585)

C

United States Bankruptcy Court,
N.D. Texas,
Dallas Division.
In re TRANSCOM ENHANCED SERVICES, LLC,
Debtor.

No. 05–31929–HDH–11.
April 29, 2005.

Background: Bankrupt telecommunications provider that had filed for Chapter 11 relief moved for leave to assume master agreement between itself and telephone company.

Holdings: The Bankruptcy Court, Harlin D. Hale, J., held that:
(1) bankruptcy court had jurisdiction, in connection with motion by bankrupt telecommunications provider to assume master agreement between itself and telephone company, to decide whether Chapter 11 debtor qualified as enhanced service provider (ESP), so as to be exempt from payment of certain access charges, and
(2) debtor fit squarely within definition of "enhanced service provider" and was exempt from payment of access charges, as required for it to comply with terms of master agreement that it was moving to assume, and as required for court to approve this motion as proper exercise of business judgment.

So ordered.

West Headnotes

[1] Bankruptcy 51 ⇐2048.2

51 Bankruptcy
51I In General
51I(C) Jurisdiction
51k2048 Actions or Proceedings by Trustee or Debtor
51k2048.2 k. Core or related proceedings. Most Cited Cases

Bankruptcy court had jurisdiction, in connection with motion by bankrupt telecommunications provider to assume master agreement between itself and telephone company, to decide whether Chapter 11 debtor qualified as enhanced service provider (ESP), so as to be exempt from payment of certain access charges, where debtor's status as ESP bore directly upon whether it could satisfy terms of master agreement and whether its decision to assume this agreement was proper exercise of its business judgment; forum selection clause in master agreement, while it might have validity in other contexts and require that any litigation over debtor's status as ESP take place in New York, did not deprive court of jurisdiction to decide issue bearing directly on propriety of allowing debtor to assume master agreement. 11 U.S.C.A. § 365.

[2] Bankruptcy 51 ⇐3111

51 Bankruptcy
51IX Administration
51IX(C) Debtor's Contracts and Leases
51k3110 Grounds for and Objections to Assumption, Rejection, or Assignment
51k3111 k. "Business judgment" test in general. Most Cited Cases

In deciding whether to grant debtor's motion to assume executory contract, bankruptcy court must ascertain whether or not debtor is exercising proper business judgment. 11 U.S.C.A. § 365.

[3] Bankruptcy 51 ⇐3111

51 Bankruptcy
51IX Administration
51IX(C) Debtor's Contracts and Leases
51k3110 Grounds for and Objections to Assumption, Rejection, or Assignment
51k3111 k. "Business judgment" test in general. Most Cited Cases

Telecommunications 372 ⇐866

372 Telecommunications

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372III Telephones
372III(F) Telephone Service
372k854 Competition, Agreements and Connections Between Companies
372k866 k. Pricing, rates and access charges. Most Cited Cases

Bankrupt telecommunications provider whose communications system resulted in non-trivial changes to user-supplied information for every communication processed fit squarely within definition of "enhanced service provider" and was exempt from payment of access charges, as required for it to comply with terms of master agreement that it was moving to assume, and as required for court to approve this motion as proper exercise of business judgment. 11 U.S.C.A. § 365; Communications Act of 1934, § 3 (43, 46), 47 U.S.C.A. § 153(43, 46); 47 C.F.R. § 64.702(a), 69.5.

585 *MEMORANDUM OPINION

HARLIN D. HALE, Bankruptcy Judge.

On April 14, 2005, this Court considered Transcom Enhanced Services, LLC's (the "Debtor's") Motion To Assume AT & T ***586** Master Agreement MA Reference No. 120783 Pursuant To 11 U.S.C. § 365 ("Motion").[FN1] At the hearing, the Debtor, AT & T, and Southwestern Bell Telephone, L.P., et al ("SBC Telcos") appeared, offered evidence, and argued. These parties also submitted post-hearing briefs and proposed findings of fact and conclusions of law supporting their positions. This memorandum opinion constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rules of Bankruptcy Procedure 7052 and 9014. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 151, and the standing order of reference in this district. This matter is a core proceeding, pursuant to 28 U.S.C. § 157(b)(2)(A) & (O).

FN1. Debtor's Exhibit 1, admitted during the hearing, is a true, correct and complete copy of the Master Agreement between Debtor and AT & T.

I. Background Facts

This case was commenced by the filing of a voluntary Bankruptcy Petition for relief under Chapter 11 of the Bankruptcy Code on February 18, 2005. The Debtor is a wholesale provider of transmission services providing its customers an Internet Protocol ("IP") based network to transmit long-distance calls for its customers, most of which are long-distance carriers of voice and data.

In 2002, a company called DataVoN, Inc. invested in technology from Veraz Networks designed to modify the aural signal of telephone calls and thereby make available a wide variety of potential new services to consumers in the area of VoIP. The FCC had long supported such new technologies, and the opportunity to change the form and content of the telephone calls made it possible for DataVoN to take advantage of the FCC's exemption provided for Enhanced Service Providers ("ESP's"), significantly reducing DataVoN's cost of telecommunications service.

On September 20, 2002, DataVoN and its affiliated companies filed for protection under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas, before Judge Steven A. Felsenthal. Southwestern Bell was a claimant in the DataVoN bankruptcy case. On May 19, 2003, the Debtor was formed for purposes of acquiring the operating assets of DataVoN. The Debtor was the winning bidder for the assets of DataVoN and on May 28, 2003, the bankruptcy court approved the sale of substantially all of the assets of DataVoN to the Debtor. Included in the order approving the sale, were findings by Judge Felsenthal that DataVoN provided "enhanced information services".

On July 11, 2003, AT & T and the Debtor entered into the AT & T Master Agreement MA Reference No. 120783 (the "Master Agreement"). In an addendum to the Master Agreement, executed on the same date, the Debtor states that it is an "enhanced information services" provider, providing data communications services over private IP networks (VoIP), such VoIP services are exempt from the access charges applicable to circuit switched interexchange calls, and such services would be provided over end user local services (such as the SBC Telcos).

AT & T is both a local-exchange carrier and a long-distance carrier of voice and data. The SBC Telcos are local exchange carriers that both originate and terminate long distance voice calls for carriers that do not have their own direct, "last mile" connections to end users. For this service, SBC Telcos charge an access charge. Enhanced service providers ("ESP's")

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are exempt from paying these access charges, and the SBC Telcos had been in litigation *587 with DataVoN during its bankruptcy, and has recently been in litigation with the Debtor, AT & T and others over whether certain services they provide are entitled to this exemption to access charges.

On April 21, 2004, the FCC released an order in a declaratory proceeding between AT & T and SBC (the "AT & T Order") that found that a certain type of telephone service provided by AT & T using IP technology was not an enhanced service and was therefore not exempt from the payment of access charges. Based on the AT & T Order, before the instant bankruptcy case was filed, AT & T suspended Debtor's services under the Master Agreement on the grounds that the Debtor was in default under the Master Agreement. Importantly, the alleged default of the Debtor is not a payment default, but rather pursuant to Section 3.2 of the Master Agreement, which, according to AT & T, gives AT & T the right to immediately terminate any service that AT & T has reason to believe is being used in violation of laws or regulations.

AT & T asserts that the services that the Debtor provides over its IP network are substantially the same as were being provided by AT & T, and therefore, the Debtor is also not exempt from paying these access charges. At the point that the bankruptcy case was filed, service had been suspended by AT & T pending a determination that the Debtor is an ESP, but AT & T had not yet assessed the access charges that it asserts are owed by the Debtor.

II. Issues

The issues before the Court are:

(1) Whether the Debtor has met the requirements of § 365 in order to assume the Master Agreement; and

(2) Whether the Debtor is an enhanced service provider ("ESP"), and is thus exempt from the payment of certain access charges in compliance with the Master Agreement.[FN2]

FN2. AT & T has stated in its Objection to the Motion that since it does not object to the Debtor's assumption of the Master Agreement provided the amount of the cure payment can be worked out, the Court need not reach the issue of whether the Debtor is an ESP. However, this argument appears disingenuous to the Court. AT & T argues that the entire argument over cure amounts is a difference of about $28,000.00 that AT & T is willing to forgo for now. However, AT & T later states in its objection (and argued at the hearing):

> "To be sure, this is not the total which ultimately Transcom may owe. It is also possible that ... Transcom will owe additional amounts if it is determined that it should have been paying access charges. But at this point, AT & T has not billed for the access charges, so under the terms of the Addendum, they are not currently due.... AT & T is not requiring Transcom to provide adequate assurance of its ability to pay those charges should they be assessed, but will rely on the fact that post-assumption, these charges will be administrative claims.... Although Transcom's failure to pay access charges with respect to prepetition traffic was a breach, the Addendum requires, as a matter of contract, that those pre-petition charges be paid when billed. This contractual provision will be binding on Transcom post-assumption, and accordingly, is not the subject of a damage award now."

AT & T Objection p. 3–4. As will be discussed below, in evaluating the Debtor's business judgment in approving its assumption Motion, the Court must determine whether or not its approval of the Motion will result in a potentially large administrative expense to be borne by the estate.

AT & T argues against the Court's jurisdiction to determine this question as part of an assumption motion. However, the Court wonders if AT & T will make the same argument with regard to its post-assumption administrative claims it plans on asserting for past and future access charges that it states it will rely on for payment instead of asking for them to be included as cure payments under the pre-

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sent Motion.

***588 III. Analysis**

Under § 365(b)(1), a debtor-in-possession that has previously defaulted on an executory contract [FN3] may not assume that contract unless it: (A) cures, or provides adequate assurance that it will promptly cure, the default; (B) compensates the non-debtor party for any actual pecuniary loss resulting from the default; and (C) provides adequate assurance of future performance under such contract. *See* 11 U.S.C. § 365(b)(1).

FN3. The parties agree that the Master Agreement is an executory contract.

In its objection, briefing and arguments made at the hearing, AT & T does not object to the Debtor's assumption of the Master Agreement, provided the Debtor pays the cure amount, as determined by the Court. It does not expect the Debtor to cure any non-monetary defaults, including payment or proof of the ability to pay the access charges that have been incurred, as alleged by the SBC Telcos, as a prerequisite to assumption. *See In re BankVest Capital Corp.*, 360 F.3d 291, 300–301 (1st Cir.2004), *cert. denied*, 542 U.S. 919, 124 S.Ct. 2874, 159 L.Ed.2d 776 (2004) ("Congress meant § 365(b)(2)(D) to excuse debtors from the obligation to cure nonmonetary defaults as a condition of assumption.").

Only the Debtor offered evidence of the cure amounts due at the hearing totaling $103,262.55. Therefore, based on this record, the current outstanding balance due from Debtor to AT & T is $103,262.55 (the "Cure Amount"). Thus, upon payment of the Cure Amount Debtor's Motion should be approved by the Court, provided the Debtor can show adequate assurance of future performance.

[1][2] AT & T argues that this is where the Court's inquiry should cease. Since AT & T has suspended service under the Master Agreement, whether or not the Debtor is an ESP, and thus exempt from payment of the disputed access charges is irrelevant, because no future charges will be incurred, access or otherwise. This is because no service will be given by AT & T until the proper court makes a determination as to the Debtor's ESP status. However, in its argument, AT & T ignores the fact that part of the Court's necessary determination in approving the Debtor's motion to assume the Master Agreement is to ascertain whether or not the Debtor is exercising proper business judgment. *See In re Lifjeberg Enter., Inc.*, 304 F.3d 410, 438 (5th Cir.2002); *In re Richmond Leasing Co.*, 762 F.2d 1303, 1309 (5th Cir.1985).

If by assuming the Master Agreement the Debtor would be liable for the large potential administrative claim, to which AT & T argues that it will be entitled,[FN4] or if the Debtor cannot show that it can perform under the Master Agreement, which states that the Debtor is an enhanced information services provider exempt from the access charges applicable to circuit switched interexchange calls, and the Debtor would loose money going forward under the Master Agreement should it be determined that the Debtor is not an ESP, then the Court should deny the Motion. On this record, the Debtor has established that it cannot perform under the Master Agreement, and indeed cannot continue its day-to-day operations or successfully reorganize, unless it qualifies as an Enhanced Service Provider.

FN4. See n.2 above.

AT & T and SBC Telcos argue that a forum selection clause in the Master Agreement should be enforced and that any determination as to whether the Debtor***589** is an ESP, and thus exempt from access charges, must be tried in New York. While this argument may have validity in other contexts, the Court concludes that it has jurisdiction to decide this issue as it arises in the context of a motion to assume under § 365. *See In re Mirant Corp.*, 378 F.3d 511, 518 (5th Cir.2004) (finding that district court may authorize the rejection of an executory contract for the purchase of electricity as part of a bankruptcy reorganization and that the Federal Energy Regulatory Commission did not have exclusive jurisdiction in this context); *see also, Ins. Co. of N. Am. v. NGC Settlement Trust & Asbestos Claims Mgmt. Corp. (In re Nat'l Gypsum Co.)*, 118 F.3d 1056 (5th Cir.1997) (Bankruptcy Court possessed discretion to refuse to enforce an otherwise applicable arbitration provision where enforcement would conflict with the purpose or provisions of the Bankruptcy Code).

In re Orion, which is heavily relied upon by AT & T, is inapplicable in this proceeding. *See In re Orion Pictures Corp.*, 4 F.3d 1095 (2d Cir.1993). On its face, *Orion* is distinguishable from this case in that in

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Orion, the debtor sought damages in an adversary proceeding at the same time it was seeking to assume the contract in question under Section 365. The bankruptcy court decided the Debtor's request for damages as a part of the assumption proceedings awarding the Debtor substantial damages. Here, the Debtor is not seeking a recovery from AT & T under the contract which would augment the estate. Rather the Debtor is only seeking to assume the contract within the parameters of Section 365. Similar issues to the one before this Court have been advanced by another bankruptcy court in this district.

The court in *In re Lorax Corp.*, 307 B.R. 560 (Bankr.N.D.Tex.2004), succinctly pointed out that a broad reading of the Orion opinion runs counter to the statutory scheme designed by Congress. *Lorax*, 307 B.R. at 566 n. 13. The *Lorax* court noted that *Orion* should not be read to limit a bankruptcy court's authority to decide a disputed contract issue as part of hearing an assumption motion. *Id.* To hold otherwise would severely limit a bankruptcy court's inherent equitable power to oversee the debtor's attempt at reorganization and would diffuse the bankruptcy court's power among a number of courts. The *Lorax* court found such a result to be at odds with the Supreme Court's command that reorganization proceed efficiently and expeditiously. *Id.* at 567 (citing *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 376, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988)). This Court agrees. The determination of the Debtors status as an ESP is an important part of the assumption motion.

Since the Second Circuit's 1993 *Orion* opinion, the Second Circuit has further distinguished non-core and core jurisdiction proceedings involving contract disputes. In particular, if a contract dispute would have a "much more direct impact on the core administrative functions of the bankruptcy court" versus a dispute that would merely involve "augmentation of the estate," it is a core proceeding. *In re United States Lines, Inc.*, 197 F.3d 631, 638 (2d Cir.1999) (allowing the bankruptcy court to resolve disputes over major insurance policies, and recognizing that the debtor's indemnity contracts could be the most important asset of the estate). Accordingly, the Second Circuit would reach the same conclusion of core jurisdiction here since the dispute addressed by the Motion "directly affect[s]" the bankruptcy court's "core administrative function." *United States Lines*, at 639 (citations omitted).

Determination, for purposes of the motion to assume, of whether the Debtor ***590** qualifies as an ESP and is exempt from paying access charges (the "ESP Issue") requires the Court to examine and take into account certain definitions under the Telecommunications Act of 1996 (the "Telecom Act"), and certain regulations and rulings of the Federal Communications Commission ("FCC"). None of the parties have demonstrated, however, that this is a matter of first impression or that any conflict exists between the Bankruptcy Code and non-Code cases. Thus, the Court may decide the ESP issues for purposes of the motion to assume.

[3] Several witnesses testified on the issues before the Court. Mr. Birdwell and the other representatives of the Debtor were credible in their testimony about the Debtor's business operations and services. **The record establishes by a preponderance of the evidence that the service provided by Debtor is distinguishable from AT & T's specific service in a number of material ways, including, but not limited to, the following:**

(a) Debtor is not an interexchange (long-distance) carrier.

(b) Debtor does not hold itself out as a long-distance carrier.

(c) Debtor has no retail long-distance customers.

(d) The efficiencies of Debtor's network result in reduced rates for its customers.

(e) Debtor's system provides its customers with enhanced capabilities.

(f) Debtor's system changes the content of every call that passes through it.

On its face, the AT & T Order is limited to AT & T and its specific services. This Court holds, therefore, that the AT & T Order does not control the determination of the ESP Issue in this case.

The term "enhanced service" is defined at 47 CFR § 67.702(a) as follows:

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> For the purpose of this subpart, the term enhanced service shall refer to services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. Enhanced services are not regulated under title II of the Act.

The term "information service" is defined at 47 USC § 153(20) as follows:

> The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

Dr. Bernard Ku, who testified for SBC was a knowledgeable and impressive witness. However, during cross examination, he agreed that he was not familiar with the legal definition for enhanced service.

The definitions of "enhanced service" and "information service" differ slightly, to the point that all enhanced services are information services, but not all information services are also enhanced services. See First Report And Order, *In the Matter of Implementation of the Non–Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, 11 FCC Rcd 21905 (1996) at ¶ 103.

The Telecom Act defines the terms "telecommunications" and "telecommunications*591 service" in 47 USC § 153(43) and (46), respectively, as follows:

> The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, *without change in the form or content* of the information as sent and received. (emphasis added).
>
> The term "telecommunications service" means the offering of *telecommunications* for a fee directly to the public, or to such class of users as to be effectively available directly to the public, regardless of the facilities used. (emphasis added).

These definitions make clear that a service that routinely changes either the form or the content of the transmission would fall outside of the definition of "telecommunications" and therefore would not constitute a "telecommunications service."

Whether a service pays access charges or end user charges is determined by 47 C.F.R. § 69.5, which states in relevant part as follows:

> (a) End user charges shall be computed and assessed upon end users ... as defined in this subpart, and as provided in subpart B of this part. (b) Carrier's carrier charges [i.e., access charges] shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities *for the provision of interstate or foreign telecommunications services*, (emphasis added).

As such, only telecommunications services pay access charges. The clear reading of the above provisions leads to the conclusion that a service that routinely changes either the form or the content of the telephone call is an enhanced service and an information service, not a telecommunications service, and therefore is required to pay end user charges, not access charges.

Based on the evidence and testimony presented at the hearing, the Court finds, for purposes of the § 365 motion before it, that the Debtor's system fits squarely within the definitions of "enhanced service" and "information service," as defined above. Moreover, the Court finds that Debtor's system falls outside of the definition of "telecommunications service" because Debtor's system routinely makes non-trivial changes to user-supplied information (content) during the entirety of every communication. Such changes fall outside the scope of the operations of traditional telecommunications networks, and are not necessary for the ordinary management, control or operation of a telecommunications system or the management of a telecommunications service. As such, Debtor's service is not a "telecommunications service" subject to access charges, but rather

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is an information service and an enhanced service that must pay end user charges. Judge Felsenthal made a similar finding in his order approving the sale of the assets of DataVoN to the Debtor, that DataVoN provided "enhanced information services", *See* Order Granting Motion to Sell, 02–38600–SAF–11, no. 465, entered May 29, 2003. The Debtor now uses DataVoN's assets in its business.

Because the Court has determined that the Debtor's service is an "enhanced service" not subject to the payment of access charges, the Debtor has met its burden of demonstrating adequate assurance of future performance under the Master Agreement. The Debtor has demonstrated that it is within Debtor's reasonable business judgment to assume the Master Agreement.

Regardless of the ability of the Debtor to assume this agreement, the Court cannot go further in its ruling, as the Debtor has requested to order AT & T to resume *592 providing service to the Debtor under the Master Agreement. The Court has reached the conclusions stated herein in the context of the § 365 motion before it and on the record made at the hearing. An injunction against AT & T would require an adversary proceeding, a lawsuit. Both the Debtor and AT & T are still bound by the exclusive jurisdiction provision in § 13.6 of the Master Agreement, as found by the United States District Court for the Northern District of Texas, Hon. Terry R. Means. As Judge Means ruled, any suit brought to enforce the provisions of the Master Agreement must be brought in New York.

IV. Conclusion

In conclusion, the Court finds that the provisions of 11 U.S.C. § 365 have been met in this case. Because the Court finds that the Debtor's service is an enhanced service, not subject to payment of access charges, it is therefore within Debtor's reasonable business judgment to assume the Master Agreement with AT & T.

Only the Debtor offered evidence of the cure amounts at the hearing. Based on the record at the hearing, the current outstanding balance due from Debtor to AT & T is $103,262.55. To assume the Master Agreement, the Debtor must pay this Cure Amount to AT & T within ten (10) days of the entry of the Court's order on this opinion.

A separate order will be entered consistent with this memorandum opinion.

Bkrtcy.N.D.Tex.,2005.
In re Transcom Enhanced Services, LLC
427 B.R. 585

END OF DOCUMENT

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EXHIBIT 4

TO
HALO WIRELESS, INC. AND TRANSCOM ENHANCED SERVICES, INC.'S ANSWERS ON ISSUES 1-8 IN THE NOTICE OF PROCEEDING

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
TAWANA C. MARSHAL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

The following constitutes the order of the Court.

Signed May 28, 2003.

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	**CASE NO. 02-38600-SAF-11**
	§	**(Jointly Administered)**
DATAVON, INC., et al.,	§	**CHAPTER 11**
	§	
DEBTORS.	§	
	§	

ORDER GRANTING MOTION FOR ENTRY OF ORDERS (i) AUTHORIZING AND APPROVING SALE OF SUBSTANTIALLY ALL ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, INTERESTS AND EXEMPT FROM ANY STAMP, TRANSFER, RECORDING OR SIMILAR TAX; (ii) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (iii) ESTABLISHING AUCTION DATE, RELATED DEADLINES AND BID PROCEDURES; (iv) APPROVING THE FORM AND MANNER OF SALE NOTICES; AND (v) APPROVING BREAK-UP FEES IN CONNECTION WITH THE SOLICITATION OF HIGHER OR BETTER OFFERS

Upon the motion of DataVoN, Inc. ("DataVoN"), DTVN Holdings, Inc. ("DTVN"), Zydeco Exploration, Inc. ("Zydeco"), and Video Intelligence, Inc. ("VI") (collectively, the "Debtors") dated December 31, 2002, for, among other things, entry of an order under 11 U.S.C. §§ 105(a), 363, 365 and 1146(c), and Fed.R.Bankr.P. 2002, 6004, 6006 and 9014 (i) authorizing

and approving the sale of substantially all of the assets of the estate free and clear of liens, claims, encumbrances, interests and exempt from any stamp, transfer, recording or similar tax; (ii) authorizing the assumption and assignment of various executory contracts and unexpired leases; (iii) establishing an auction date, related deadlines and bid procedures in connection with the asset sale; (iv) approving the form and manner of sale notices to be sent to potential bidders, creditors and parties-in-interest; and (v) approving certain break-up fees in connection with the solicitation of higher or better offers for the assets (the "Sales Motion");[1] and the Court having entered on February 20, 2003 an order with respect to the Sale (i) Establishing Auction Date, Related Deadlines and Bid Procedures; (ii) Approving the Form and Manner of Sales Notices; and (iii) Approving Break-up Fees in Connection with the Solicitation of Higher or Better Offers (the "Bid Procedures Order"), that scheduled a hearing on the Sale Motion (the "Sale Hearing") and set an objection deadline with respect to the Sale; and the Sale Hearing having been commenced on April 1, 2003; and the Court having reviewed and considered the Sales Motion, the objections thereto, if any, and the arguments of counsel made and the evidence proffered or adduced at the Sale Hearing; and it appearing that the relief requested in the Sales Motion is in the best interests of the Debtors, their estates, creditors and other parties in interest; and upon the record of the Sale Hearing and in this case; and after due deliberation thereon; and good cause appearing therefore; it is hereby

FOUND AND DETERMINED THAT:[2]

1. The Court has jurisdiction over the Sales Motion pursuant to 28 U.S.C. § 1334.

---

[1] Unless otherwise defined, capitalized terms used herein shall have the meanings ascribed to them in the Sales Motion.

[2] Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought in the Sales Motion are §§ 105(a), 363(b), (f), (m), and (n), 365, and 1146(c) of the United States Bankruptcy Code (11 U.S.C. §§ 101-1330, as amended (the "Bankruptcy Code")) and Fed.R.Bankr.P. 2002, 6004, 6006 and 9014.

3. As evidenced by the certificates of service and publication previously filed with the Court, and based on the representations of counsel at the Sale Hearing, (i) proper, timely, adequate and sufficient notice of the Sales Motion, the Sale Hearing, and the Sale has been provided in accordance with Bankruptcy Code §§ 105(a), 363, 365 and 1146(c), and Fed.R.Bankr.P. 2002, 6004, 6006 and 9014 and in compliance with the Bidding Procedures Order; (ii) such notice was good and sufficient, and appropriate under the particular circumstances; and (iii) no other or further notice of the Sales Motion, the Sale Hearing, or the Sale is or shall be required.

4. As evidenced by the certificates of service and publication previously filed with the Court, and based on the representations of counsel at the Sale Hearing, (i) proper, timely, adequate and sufficient notice of the assumption and assignment of the Assumed Contracts and the cure payments to be made therefore has been provided in accordance with Bankruptcy Code §§ 105(a) and 365 and Fed.R.Bankr.P. 9014; (ii) such notice was good and sufficient; and (iii) no other or further notice of the assumption and assignment of the Assumed Contracts is or shall be required.

5. As demonstrated by: (i) the testimony and other evidence proffered or adduced at

the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing, the Debtors and the Bid Selection Committee marketed the Assets and conducted the Sale process in compliance with the Bidding Procedures Order.

6. The Debtors: (i) have full corporate power and authority to execute the Agreement and all other documents contemplated thereby, and the sale of the Assets by the Debtors has been duly and validly authorized by all necessary corporate action of the Debtors; (ii) have all of the corporate power and authority necessary to consummate the transactions contemplated by the Agreement; and (iii) have taken all corporate action necessary to authorize and approve the Agreement and the consummation by the Debtors of the transactions contemplated thereby. No consents or approvals other than those expressly provided for in the Agreement are required for the Debtors to consummate such transactions.

7. Approval of the Agreement and consummation of the Sale at this time are in the best interests of the Debtors, their estates, their creditors, and other parties in interest.

8. The Debtors have demonstrated both (i) good, sufficient, and sound business purpose and justification and (ii) compelling circumstances for the Sale pursuant to Bankruptcy Code § 363(b) prior to, and outside of, a plan of reorganization in that, among other things:

a. The Debtors and the Bid Selection Committee diligently and in good faith marketed the Assets to secure the highest and best offer therefore. Further, the Debtors and the Bid Selection Committee published a notice substantially in the form of the Sale Notice in *The Wall Street Journal.* The terms and conditions set forth in the Agreement, and the transfer to Purchaser of the Assets pursuant thereto, represent a fair and reasonable purchase price and constitute the highest and best offer obtainable for the Assets.

b. A sale of the Assets at this time to Purchaser pursuant to Bankruptcy Code § 363(b) is the only viable alternative to preserve the value of the Assets and to maximize the Debtors' estates for the benefit of all constituencies. Delaying approval of the Sale may result in Purchaser's termination of the Agreement and result in an alternative

outcome that will achieve far less value for creditors.

c. Except as otherwise provided in this Sale Order, the cash proceeds of the Sale will be distributed to the Debtors' administrative and pre-petition creditors under the terms of a confirmed liquidating Chapter 11 plan.

d. The highest and best offer received for the purchase of the Assets came from Transcom Communications, Inc. ("Transcom" or "Purchaser").

9. On March 3, 2003, the Debtors filed their Notice of Cure Amounts Under Contracts and Leases that may be Assumed and Assigned to Purchaser of Substantially All of Debtors' Assets, detailing the executory contracts that may be assumed and assigned to the successful purchaser of the Debtors' assets (the "Assumed Contracts"). The Cure Notice not only fixed the Cure Amount for each contract for any non-objecting party, but also constituted a waiver by any non-objecting party to the assumption and assignment of the various contracts to the Purchaser. The Assumed Contracts are unexpired and executory contracts within the meaning of the Bankruptcy Code. Pursuant to the Agreement, the Purchaser shall cure all monetary defaults under the Assumed Contracts as provided for in the Notice or as agreed between the parties to any Assumed Contract. There are no non-monetary defaults requiring cure. The Sale satisfies the requirements of Bankruptcy Code § 365(b). The Debtors are not required to cure any defaults of the kind described in Bankruptcy Code § 365(b)(2). The Purchaser's excellent financial health and own expertise in the telecommunications industry provide adequate assurance of future performance to all non-debtor parties to Assumed Contracts. Pursuant to Bankruptcy Code § 365(f), all restrictions on assignment in any of the Assumed Contracts are unenforceable against the Debtors and all Assumed Contracts may lawfully be assigned to the Purchaser.

10. A reasonable opportunity to object or be heard with respect to the Sale Motion

and the relief requested therein has been afforded to all interested persons and entities, including: (i) each and every holder of a "claim" (as defined in Bankruptcy Code § 101(5)) against the Debtors; (ii) each and every holder of an equity or other interest in the Debtors; (iii) each and every contractor and subcontractor that has performed any services or otherwise dealt with any of the Assets; (iv) each and every Governmental Entity with jurisdiction over the Debtors or any of the Assets; (v) each and every holder of an Encumbrance on any of the Assets; (vi) the Office of the United States Trustee for the Northern District of Texas; (vii) the Official Committee of Unsecured Creditors appointed in the Debtors' cases under the Bankruptcy Code, if any; (viii) any and all other persons and entities upon whom the Debtors are required (pursuant to the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure or any order of the Court) to serve notice; (ix) any and all other persons and entities upon whom Purchaser instructed Seller to serve notice; and (x) any parties who are on the list of prospective purchasers maintained by CRP.

11. The Agreement was negotiated, proposed, and entered into by the Debtors, CRP, members of the Bid Selection Committee, and Purchaser without collusion, in good faith, and from arm's-length bargaining positions. None of the Debtors, CRP, members of the Bid Selection Committee, and the Purchaser has engaged in any conduct that would cause or permit the Agreement to be avoided under Bankruptcy Code § 363(n).

12. Purchaser is a good faith purchaser under Bankruptcy Code § 363(m) and, as such, is entitled to all of the protections afforded thereby. Purchaser will be acting in good faith within the meaning of Bankruptcy Code § 363(m) in closing the transactions contemplated by the Agreement at all times after the entry of this Sale Order.

13. The consideration provided by Purchaser for the Assets pursuant to the

Agreement: (i) is fair and reasonable, (ii) is the highest and best offer for the Assets, (iii) will provide a greater recovery for the Debtors' creditors than would be provided by any other practical, available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code.

14. The Sale must be approved promptly in order to preserve the value of the Assets.

15. The transfer of the Assets to Purchaser will be a legal, valid, and effective transfer of such Assets, and will vest Purchaser with all right, title, and interest of the Debtors to such Assets free and clear of all Interests, including those: (i) that purport to give any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of the Debtors' or Purchaser's interest in such Assets, or any similar rights, or (ii) relating to taxes arising under, out of, in connection with, or in any way relating to the operation of the Debtors' business prior to the date (the "Closing Date") of the consummation of the Agreement (the "Closing").

16. Purchaser would not have entered into the Agreement, and would not have been willing to consummate the transactions contemplated thereby, if the sale of the Assets to Purchaser were not free and clear of all Interests, or if Purchaser would, or in the future could, be liable for any of the Interests. Thus, any ruling that the sale of Assets was not free and clear of all Interests, or that Purchaser would, or in the future could, be liable for any Interests would adversely affect the Debtors, their estates, and their creditors.

17. The Debtors may sell the Assets free and clear of all Interests because, in each case, one or more of the standards set forth in Bankruptcy Code §§ 363(f)(1)-(5) has been satisfied. Those holders of Interests who did not object, or who withdrew their objections, to the Sale or the Sales Motion are deemed to have consented pursuant to Bankruptcy Code § 363(f)(2).

Those holders of Interests who did object fall within one or more of the other subsections of Bankruptcy Code § 363(f) and are adequately protected by having their Interests, if any, attach to the cash proceeds of the Sale.

18. Except with respect to the payment of the Cure Amounts and the Assumed Liabilities, the transfer of the Assets to Purchaser will not subject Purchaser, prior to the Closing Date, to any liability whatsoever with respect to the operation of the Debtors' business or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of law or equity, including, without limitation, any theory of equitable subordination or successor or transferee liability.

19. The valuations placed by the Bid Selection Committee on the Purchaser's bid are fair and reasonable and reflect fair and reasonable consideration for the sale of the Assets.

20. Through DataVoN, the primary operating subsidiary, the Debtors provide enhanced information services, including toll-quality voice and data services utilizing converged, Internet protocol (IP) transmitted over private IP networks. DataVoN, Inc., the primary operating subsidiary of the Debtors is a provider of wholesale enhanced information services. DataVoN provides toll quality voice and data communications services over private IP networks (VoIP) to carrier and enterprise customers. Companies who deploy soft switch equipment on an IP network can provide high quality video, voice, and data services while retaining flexibility, scalability, and cost efficiencies. DTVN is a holding company with no operations of its own. DataVoN's information services include voice origination, voice termination, 8xx origination and termination, utilizing voice over IP technology. VI formerly provided video services. That

line of business has been withdrawn. Zydeco, once the manager of DTVN's corporate oil and gas holdings, sold most of its assets in the third quarter of 2001 and retains only nominal activity.

21. Objections to the Sales Motion were filed by Cisco Systems, Inc. and Unipoint Holdings, Inc. with respect to certain aspects of the Sales Motion. Those objections were resolved by settlement terms announced on the record as follows: (1) the "Transcom Note" as set forth in section 9.32(g) of the Agreement shall be modified to provide that the original principal amount of the note may not be less than $1,282,539 and that such principal and accrued interest, if any, may be offset only by an allowed secured claim of Transcom as set forth in a final order; (2) the interest accuring on any allowed secured claim of Transcom, if any, will be equal to and shall not exceed an offsetting interest under the Transcom Note; (3) on the Closing Date of the Sale, Transcom shall wire transfer the sum of $100,000 to Unipoint, per Unipoint's instructions, in connection with that certain Reimbursement Agreement executed by and between Unipoint and Transcom; (4) Transcom will, at Closing, pay $440,000.00, to Hughes & Luce, LLC, to be held in Hughes & Luce, L.L.P.'s IOLTA Trust Account, in trust for the payment of Cisco's administrative claim in this case in accordance with the Term Sheet by and between Cisco and the Debtors as approved by the Court in its Order dated March 26, 2003, with such funds to be wire transferred by Hughes & Luce, L.L.P., pursuant to written instructions of Cisco, no later than 72 hours after the date of Closing of the Sale; and (5) Transcom shall amend the Agreement to reflect that Transcom is not acquiring net operating losses of the Debtors. Each of the foregoing terms shall be collectively referred to hereafter as the "Settlement Terms."

22. All cash consideration paid on the date of Closing of the Sale ("Sale Proceeds") shall be delivered to Hughes & Luce, L.L.P. ("H&L") and shall be placed in H&L's IOLTA

Trust Account. In addition to the Sale Proceeds, pursuant to the Settlement Terms, $440,000.00 shall be delivered to H&L, to be disbursed to Cisco pursuant to written instructions of Cisco, no later than 72 hours after the date of Closing of the Sale. Pursuant to the terms of that certain Order approving employee stay put bonuses, $344,860.54 of the Sale Proceeds, if delivered to H&L, shall be disbursed to the DataVoN, Inc. payroll account pursuant to written instructions from DataVoN, Inc., for the purpose of funding the employee stay put bonuses. After the aforesaid disbursements to Cisco and for the employee stay put bonuses, all remaining Sale Proceeds delivered to H&L shall be held in H&L's IOLTA Trust Account until the earlier to occur of (i) Confirmation of the Plan and creation of the Liquidating Trust, at which time H&L shall transfer such remaining Sale Proceeds to the Liquidating Trust by wire transfer, pursuant to the written instructions of the Liquidating Trustee, (ii) receipt by H&L of written Order of the Court ordering disbursement of the Sale Proceeds if the Plan is not Confirmed, or (iii) June 30, 2003, and petition by H&L to the Court requesting further direction of the Court regarding disbursement of remaining Sale Proceeds.

NOW THEREFORE, IT IS HEREBY:

General Provisions

ORDERED that the Sales Motion is granted, as further described herein; it is further

ORDERED that all objections to the Sales Motion or to the relief requested therein that have not been withdrawn, waived, or settled and all reservations of rights included in any objection to the Sales Motion are hereby overruled on the merits; it is further

ORDERED that the Court's findings and conclusions stated at the Sale Hearing are incorporated herein; it is further

Approval of the Agreement

ORDERED that the Agreement as modified by the Settlement Terms, and all of the terms and conditions thereof, are hereby approved; it is further

ORDERED that pursuant to Bankruptcy Code § 363(b), the Debtors are authorized and directed to consummate the Sale as modified by the Settlement Terms, pursuant to and in accordance with the terms and conditions of the Agreement as modified by the Settlement Terms; it is further

ORDERED that the Debtors are authorized and directed to execute and deliver, and empowered to perform under, consummate and implement, the Agreement as modified by the Settlement Terms, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Agreement as modified by the Settlement Terms, and to take all further actions as may be requested by Purchaser for the purpose of assigning, transferring, granting, conveying and conferring the Assets to Purchaser or as may be necessary or appropriate to the performance of the obligations as contemplated by the Agreement as modified by the Settlement Terms; it is further

ORDERED that on the Closing Date of the Sale, the Debtors and Hughes & Luce, L.L.P. ("H&L") shall (i) refund the $50,000 deposit paid by Unipoint Holdings, Inc. ("Unipoint") and held by H&L in its IOLTA trust account by wire transfer per written instructions from Unipoint, (ii) refund the $50,000 deposit paid by CNM Network Inc. ("CNM") and held by H&L in its IOLTA trust account by wire transfer per written instructions from CNM, and (iii) provided Transcom substitutes the equivalent sum on the Closing Date of the Sale, refund the $50,000

deposit paid by Transcom and Sowell and held by H&L in its IOLTA trust account by wire transfer per written instructions from Transcom; it is further

Assignment and Assumption of Assumed Contracts

ORDERED that the Debtors are hereby authorized and directed, in accordance with § 365(b) of the Bankruptcy Code: (i) to assume and assign to the Purchaser the Assumed Contracts, with the Purchaser being responsible for the cure amounts specified in Exhibit "A" attached hereto (the "Cure Amounts") and (ii) to execute and deliver to the Purchaser such assignment documents as may be necessary to sell, assign, and transfer the Assumed Contracts. The Purchaser shall provide no adequate assurance of future performance under the Assumed Contracts, other than its promise to perform pursuant to the terms and conditions of the Assumed Contracts. Pursuant to Bankruptcy Code §§ 365(a), (b), (c) and (f), the Purchaser is directed to pay the Cure Amounts on the Closing Date, within a reasonable period of time thereafter, or as agreed by the Purchaser with the non-debtor party or parties to any Assumed Contract; it is further

ORDERED that upon the closing of the Agreement in accordance with this Order, any and all defaults under the Assumed Contracts shall be deemed cured in all respects; it is further

ORDERED that all provisions limiting the assumption and/or assignment of any of the Assumed Contracts are invalid and unenforceable pursuant to Bankruptcy Code § 365(f); it is further

Transfer of Assets

ORDERED that pursuant to Bankruptcy Code §§ 105(a) and 363(f), all Assets shall be transferred to Purchaser as of the Closing Date, and all Assets shall be free and clear of all

Interests, with all such Interests to attach to the net proceeds of the Sale in the order of their priority, with the same validity, force, and effect which they now have as against the Assets, subject to any claims and defenses the Debtors may possess with respect thereto; it is further

ORDERED that except as expressly permitted or otherwise specifically provided by the Agreement as modified by the Settlement Terms or this Sale Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade and other creditors holding Interests against or in the Debtors or the Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under, out of, in connection with, or in any way relating to the Debtors, the Assets, the operation of the Debtors' businesses prior to the Closing Date, or the transfer of the Assets to Purchaser, are hereby forever barred, estopped, and permanently enjoined from asserting against Purchaser or its successors or assigns, their property, or the Assets, such persons' or entities' Interests; it is further

ORDERED that the transfer of the Assets to Purchaser pursuant to the Agreement as modified by the Settlement Terms constitutes a legal, valid, and effective transfer of the Assets and shall vest Purchaser with all right, title, and interest of the Debtors in and to all Assets free and clear of all Interests; it is further

Additional Provisions

ORDERED that the consideration provided by Purchaser for the Assets under the Agreement as modified by the Settlement Terms shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession thereof, or the District of Columbia; it is further

ORDERED that the consideration provided by Purchaser for the Assets under the Agreement as modified by the Settlement Terms is fair and reasonable and may not be avoided under Bankruptcy Code § 363(n); it is further

ORDERED that on the Closing Date of the Sale, each of the Debtors' creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release its Interests in the Assets, if any, as such Interests may have been recorded or may otherwise exist; it is further

ORDERED that this Sale Order (a) shall be effective as a determination that, on the Closing Date, all Interests existing as to the Debtors or the Assets prior to the Closing have been unconditionally released, discharged, and terminated, and that the conveyances described herein have been effected, and (b) shall be binding upon and shall govern the acts of all entities including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Assets; it is further

ORDERED that each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agreement; it is further

ORDERED that if any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens*, or other documents or agreements evidencing Interests in the Debtors or the Assets shall not have delivered to the Debtors prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Interests which the person or entity has with respect to the Debtors or the Assets or otherwise, then (a) the Debtors are hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Assets and (b) Purchaser is hereby authorized to file, register, or otherwise record a certified copy of this Sale Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all Interests in the Assets of any kind or nature whatsoever; it is further

ORDERED that Purchaser shall not have any liability or responsibility for any liability or other obligation of the Debtors arising under or related to the Assets, other than payment of the Cure Amounts, the amounts specified in the Settlement Terms and the Assumed Liabilities and its obligations to perform under the Assumed Contracts after the Closing Date. Without limiting the generality of the foregoing, Purchaser shall not be liable for any claims against the Debtors or any of their predecessors or affiliates, and Purchaser shall not have any successor or vicarious liabilities of any kind or character whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtors or any obligations of the Debtors arising prior to the Closing Date except as specified in the Settlement Terms; it is further

ORDERED that under no circumstances shall Purchaser be deemed a successor of or to the Debtors for any Interest against or in the Debtors or the Assets of any kind or nature whatsoever. The sale, transfer, assignment and delivery of the Assets shall not be subject to any Interests, and Interests of any kind or nature whatsoever shall remain with, and continue to be obligations of, the Debtors. All persons holding Interests against or in the Debtors or the Assets of any kind or nature whatsoever shall be, and hereby are, forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such Interests against Purchaser, its successors and assigns, its properties, or the Assets with respect to any Interest of any kind or nature whatsoever such person or entity had, has, or may have against or in the Debtors, their estates, officers, directors, shareholders, or the Assets. Following the Closing Date no holder of an Interest in the Debtors shall interfere with Purchaser's title to or use and enjoyment of the Assets based on or related to such Interest, or any actions that the Debtors may take in its chapter 11 case; it is further

ORDERED that subject to, and except as otherwise provided in, the Bidding Procedures Order, any amounts that become payable by the Debtors pursuant to the Agreement or any of the documents delivered by the Debtors pursuant to or in connection with the Agreement shall (a) constitute administrative expenses of the Debtors' estate and (b) be paid by the Debtors in the time and manner as provided in the Agreement without further order of this Court; it is further

ORDERED that this Court retains jurisdiction to enforce and implement the terms and provisions of the Agreement, the Settlement Terms, and all amendments thereto, any waivers and consents thereunder, and of each of the documents executed in connection therewith in all respects, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Assets

to Purchaser, (b) resolve any disputes arising under or related to the Agreement except as otherwise provided therein, (c) interpret, implement, and enforce the provisions of this Sale Order, and (d) protect Purchaser against any Interests in the Debtors or the Assets; it is further

ORDERED that nothing contained in any plan of liquidation confirmed in these cases or in any final order of this Court confirming such plan shall conflict with or derogate from the provisions of the Agreement, the Settlement Terms, or the terms of this Sale Order; it is further

ORDERED that the transfer of the Assets pursuant to the Sale shall not subject Purchaser to any liability with respect to the operation of the Debtors' business prior to the Closing Date or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of law or equity, including, without limitation, any theory of equitable subordination or successor or transferee liability; it is further

ORDERED that the transactions contemplated by the Agreement as modified by the Settlement Terms are undertaken by Purchaser in good faith, as that term is used in Bankruptcy Code § 363(m), and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale to Purchaser, unless such authorization is duly stayed pending such appeal. Purchaser is a purchaser in good faith of the Assets and is entitled to all of the protections afforded by Bankruptcy Code § 363(m); it is further

ORDERED that the terms and provisions of the Agreement, the Settlement Terms and this Sale Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, their estates, and their creditors, Purchaser, and their respective affiliates, successors

and assigns, and any affected third parties including, but not limited to, all persons asserting Interests in the Assets, notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code. The terms and provisions of the Agreement and of this Sale Order likewise shall be binding on any such trustee(s); it is further

ORDERED that the failure specifically to include any particular provisions of the Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Agreement as modified by the Settlement Terms be authorized and approved in its entirety; it is further

ORDERED that the Agreement and related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates or impair the Settlement Terms; it is further

ORDERED that the transfer of the Assets pursuant to the Sale is a transfer pursuant to Bankruptcy Code § 1146(c), and accordingly shall not be taxed under any law imposing a stamp tax or a sale, transfer, or any other similar tax; it is further

ORDERED that as provided by Fed.R.Bankr.P. 6004(g), this Sale Order shall not be stayed for 10 days after the entry of the Sale Order and shall be effective and enforceable immediately upon entry; it is further

ORDERED that the provisions of this Sale Order and the Settlement Terms recited herein are non-severable and mutually dependent; and it is further

ORDERED that in the event that Purchaser fails to close the Sale Agreement as modified by the Settlement Terms on or before June 2, 2003, the Debtors shall close under the next highest bid from Unipoint Holdings, Inc. reflected in its Asset Purchase Agreement of April 25, 2003 (the "Unipoint APA"). In such event, this Order and all of its findings shall be automatically effective as to Unipoint Holdings, Inc. as "Purchaser" and the Unipoint APA as the "Sale Agreement" without further hearing or order of this Court.

END OF ORDER # #

EXHIBIT A TO SALE ORDER

Non-Debtor Contract Party	Agreement Name/Description	Proposed Cure Amount (as of April 4, 2003)
Broadwing Communication Services, Inc.	Master Service Agreement dated February 28, 2001 as amended and supplemented; Settlement Agreement as approved by Bankruptcy Court Order dated January 28, 2003	$ 60,000.00
Campbell Road Village (Ippolito)	Gross Standard Shopping Center Lease dated May 19, 2000	$ 1,455.17
Dell Financial Services	Lease dated August 1, 2001	$ 10,238.32
Electronic Data Systems Corporation (EDS)	Sublease Agreement September 27, 2002	$ -
Gulfcoast Workstation Corp	Equipment Lease Agreement dated February 2, 2002	$ 20,000.00
Illuminet, Inc.	Connectivity Service Agreement dated October 4, 2000	$ 18,116.95
IpVerse/Nexverse	Software Licenses Agreement dated April 11, 2001	$ 746,144.25
IX-2 Networks	License Agreement for Use of Collocation Space dated March 28, 2000	$ -
Looking Glass Networks	Looking Glass Service Agreement dated December 2001	$ 1,062.00
OneStar Long Distance	Wholesale Service Agreement dated November 12, 2002	$ -
Pae Tec Communications, Inc.	Wholesale Local Service Agreement dated July 2002	$ 27,289.38
RiverRock Systems, Ltd.	Application Service Provider Agreement date May 1, 2001	$ 86,029.48
Sun Microsystems, Inc.	Sun Microsystems, Inc. Customer Agreement dated March 28, 2001	$ 27,687.33
The CIT Group	Lease Agreement dated October 16, 2001	$ 1,076.50

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EXHIBIT A TO SALE ORDER

Focal Communications Corporation	Master Service Agreement dated June 14, 2001, as amended	As Agreed	
Transcom Communication Corporation	Master Service Agreement dated August 15, 2001, as supplemented	$	1,192,229.61
Barr Tel/ColoCentral	Master Services Agreement	$	-
C2C Fiber, Inc. n/k/a Capital Telecommunications, Inc.	Master Services Agreement dated August 31, 2001	$	-
Cytus Communication	Master Services Agreement dated December 20, 2002	$	-
ePhone Telecom, Inc.	Master Services Agreement dated April 3, 2002	$	-
Excel Telecommunications, Inc.	Master Services Agreement dated January 19, 2001	$	-
Florida Digital Network	Master Services Agreement dated September 7, 2001	$	-
Go-Comm, Inc.	Master Services Agreement dated April 1, 2002	$	-
Grande Communications Networks, Inc.	Master Services Agreement dated April 13, 2001	$	-
IDT Telecom LLC	Master Services Agreement dated February 12, 2002	$	-
IONEX Telecommunications, Inc.	Master Services Agreement dated October 28, 2002	$	-
ITC DeltaCom Communications, Inc.	Master Services Agreement dated September 25, 2002	$	-
ITXC Corporation	Master Services Agreement dated September 31, 2002	$	-
Linx Communications, Inc.	Master Services Agreement dated June 5, 2002	$	-
Macro Communications, Inc.	Master Services Agreement dated December 3, 2002	$	-

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EXHIBIT A TO SALE ORDER

Novatel, Inc.	Reciprocal Services Agreement dated January 18, 2002	$	-
Novolink Communications, Inc.	Reciprocal Services Agreement dated January 10, 2002	$	-
Orion Telecommunications Corporation	Master Services Agreement dated August 13, 2001	$	-
TCAST Communications, Inc.	Master Services Agreement dated July 10, 2002	$	-
Telic Communications, Inc.	Master Services Agreement dated September 21, 2001	$	-
Transcom Communications, Inc.	Master Services Agreement dated February 16, 2001	$	-
TXU Communications Telecom Services Company	Master Services Agreement dated April 9, 2002	$	-
Voice Exchange, Inc.	Master Services Agreement dated May 2, 2002	$	-
Webtel Wireless, Inc.	Master Services Agreement dated July 19, 2002	$	-
WorldxChange Corporation	Master Services Agreement dated August 15, 2002	$	-
World Link Telecom, Inc.	Master Services Agreement dated October 9, 2002	$	-
XTEL	Master Services Agreement	$	-
TRC Telecom, Inc.	Master Services Agreement dated December 20, 2001	$	-
Capital Telecommunications, Inc.	Master Services Agreement dated March 19, 2001	$	-
SafeTel, Inc.	Master Services Agreement dated June 27, 2002	$	-
CT Cube LP	Master Services Agreement dated September 25, 2002	$	-

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EXHIBIT A TO SALE ORDER

CGKC&H Rural Cellular #2	Master Services Agreement dated September 25, 2002	$	-
Dollar Phone Corporation	Master Services Agreement dated February 4, 2003	$	-
Pae Tec Communications, Inc.	Reciprocal Services Agreement dated July 15, 2002	$	-
MCI Worldcom Network Services, Inc.	Termination Services Agreement dated July 31, 2001	$	-
McGregor Bay Communications, Inc.	Agency Agreement dated March 18, 2002	$	-
Chip Greenberg Studios, Inc.	Agency Agreement dated July 25, 2002	$	-
CallNet, L.L.C.	Agency Agreement dated June 27, 2001	$	-
Barry L. Greenspan	Agency Agreement dated January 10, 2002	$	-
Brandon J. Becicka	Agency Agreement dated May 9, 2002	$	-
		$	2,191,328.99

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Halo/Transcom Answers to Issues 1-8 in WI case, filed Dec. 2, 2011
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EXHIBIT 5

TO
HALO WIRELESS, INC. AND TRANSCOM ENHANCED SERVICES, INC.'S ANSWERS ON ISSUES 1-8 IN THE NOTICE OF PROCEEDING

Federal Communications Commission
Wireless Telecommunications Bureau

RADIO STATION AUTHORIZATION

LICENSEE: HALO WIRELESS

ATTN: NATHAN NELSON
HALO WIRELESS
307 WEST 7TH STREET SUITE 1600
FORT WORTH, TX 76102-5114

Call Sign	File Number
WQJW781	0003681223
Radio Service NN - 3650-3700 MHz	
Regulatory Status Common Carrier	

FCC Registration Number (FRN): 0018359711

Grant Date	Effective Date	Expiration Date	Print Date
01-27-2009	01-27-2009	11-30-2018	01-27-2009

Market Name: Nationwide

Channel Block: 003650.00000000 - 003700.00000000 MHz

Waivers/Conditions:

This nationwide, non-exclusive license qualifies the licensee to register individual fixed and base stations for wireless operations in the 3650-3700 MHz band. This license does not authorize any operation of a fixed or base station that is not posted by the FCC as a registered fixed or base station on ULS and mobile and portable stations are authorized to operate only if they can positively receive and decode an enabling signal transmitted by a registered base station. To register individual fixed and base stations the licensee must file FCC Form 601 and Schedule M with the FCC. See Public Notice DA 07-4605 (rel November 15, 2007)

Conditions:
Pursuant to §309(h) of the Communications Act of 1934, as amended, 47 U.S.C. §309(h), this license is subject to the following conditions: This license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized herein. Neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of the Communications Act of 1934, as amended. See 47 U.S.C. § 310(d). This license is subject in terms to the right of use or control conferred by §706 of the Communications Act of 1934, as amended. See 47 U.S.C. §606.

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 9
PARTY Bellsouth Tel., LLC d/b/a AT&T Florida (AT&T) - Direct
DESCRIPTION J. Scott McPhee (JSM-2)
DATE 07/12/12

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

In Re:	**Case No. 11-42464**
HALO WIRELESS, INC.,	
Debtor.	Sherman, Texas September 19, 2011
	SECTION 341 MEETING OF CREDITORS

TRANSCRIPT OF PROCEEDINGS CONDUCTED
BY THE UNITED STATES TRUSTEE

ATTENDEES:

For the U.S. Trustee:	John M. Vardeman OFFICE OF THE UNITED STATES TRUSTEE 110 N. College Street, Suite 300 Tyler, TX 75702 (903) 590-1450 x218
For the Debtor:	E. Paul Keiffer Kim E. Moses WRIGHT GINSBERG BRUSILOW Republic Center, Suite 4150 325 N. St. Paul Street Dallas, TX 75201 (214) 651-6517
For Texas and Missouri Telephone Companies:	Brook B. Brown MCGINNIS, LOCHRIDGE & KILGORE, LLP 600 Congress Avenue, Ste. 2100 Austin, TX 78701 (512) 495-6000
For TDS Telecom:	Cassandra A. Sepanik David M. Bennett THOMPSON & KNIGHT, LLP One Arts Plaza 1722 Routh Street, Suite 1500 Dallas, TX 75201 (214) 969-1700

For AT&T:	Toby L. Gerber FULBRIGHT & JAWORSKI, LLP 2200 Ross Avenue, Suite 2800 Dallas, TX 75201-2784 (214) 855-8000
Transcription Service:	Kathy Rehling 209 Bay Circle Coppell, TX 75019 (972) 304-1998

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

SHERMAN, TEXAS - SEPTEMBER 19, 2011

MR. VARDEMAN: This is the meeting of creditors in Bankruptcy Case No. 11-42464, Halo Wireless, Inc. That's the name of the debtor. The Debtor's attorney is Mr. Paul Keiffer, and also Ms. Kim Moses. Both of those are present today. The Debtor's representatives are Russell Wiseman and Jeff Miller. I have checked their driver's licenses, for the record.

Mr. Wiseman and Mr. Miller, my name is John Vardeman. I'm an attorney with the U.S. Trustee's Office. I need to swear you in and ask you some questions. Please raise your right hand as I swear you in, and please answer all of my questions out loud. We are recording this.

(Mr. Wiseman and Mr. Miller are sworn.)

MR. VARDEMAN: And Mr. Wiseman, what is your capacity with the Debtor?

MR. WISEMAN: President and Chief Operating Officer.

MR. VARDEMAN: And Mr. Miller?

MR. MILLER: Chief Financial Officer.

MR. VARDEMAN: Okay. Did you help Mr. Keiffer and Ms. Moses in the preparation of the bankruptcy petition, the schedules, and the Statement of Financial Affairs filed in this case?

MR. WISEMAN: Yes.

MR. MILLER: Yes.

MR. VARDEMAN: Is all of the information contained in the bankruptcy filing true and correct?

MR. WISEMAN: Yes, to our knowledge.

MR. MILLER: Yes.

MR. VARDEMAN: Did you list all of the Debtor's assets?

MR. WISEMAN: Yes.

MR. MILLER: Yes.

MR. VARDEMAN: Did you list all of the Debtor's liabilities?

MR. WISEMAN: Yes.

MR. MILLER: Yes.

MR. VARDEMAN: Is there anything in the bankruptcy filing that needs to be changed or corrected at this point?

MR. WISEMAN: No.

MR. MILLER: No.

MR. VARDEMAN: Okay. Mr. Keiffer, as I understand, the Debtor was provided approximately $50,000 as a retainer in this case. Is that correct?

MR. KEIFFER: Correct. Of which $42,000 was filed with the -- as the actual retainer. The $8,000 was pre -- earned prepetition.

MR. VARDEMAN: All right. And there is an application to employ on file. Is that correct?

MR. KEIFFER: Already granted.

MR. VARDEMAN: Are there going to be any other professionals hired in this case?

MR. KEIFFER: There are already two professionals employed by the Court. There are two that remain at issue.

MR. VARDEMAN: These are special counsel?

MR. KEIFFER: Correct.

MR. VARDEMAN: Any CPAs or Realtors or anything, --

MR. KEIFFER: No.

MR. VARDEMAN: -- valuation experts?

MR. KEIFFER: Not at this juncture.

MR. VARDEMAN: All right. Where is the debtor in possession account located?

MR. MILLER: Wells Fargo.

MR. VARDEMAN: Are there any other accounts still open that the Debtor has an interest in?

MR. MILLER: No, sir.

MR. VARDEMAN: How much money does the Debtor have? Everything?

MR. KEIFFER: Today, or on the date of --

MR. VARDEMAN: Today. Approximately.

MR. MILLER: I don't know that. I mean, --

MR. VARDEMAN: Mr. Wiseman, do you know?

MR. WISEMAN: I do not know, no.

MR. VARDEMAN: Okay. How would you find out?

MR. MILLER: I'd just call. I mean, I know at the

end of August there was roughly $300,000 in the account.

MR. GERBER: Could you speak up a bit?

MR. MILLER: Sure.

MR. GERBER: And say it again?

MR. MILLER: Sure. At the end of August, there was roughly $300,000 on the books.

MR. VARDEMAN: Is there a cash collateral issue in this case?

MR. KEIFFER: No.

MR. VARDEMAN: The case was filed on August the 8th. I believe, then, the monthly operating report would be first due tomorrow, on September the 20th, and every 20th of the month thereafter.

MR. KEIFFER: Correct. And working on it now. People are working on it now. We should get our first draft this afternoon.

MR. VARDEMAN: Are you operating a business?

MR. MILLER: Yes.

MR. VARDEMAN: Okay. How many employees --

MR. KEIFFER: Try to be a little more forceful in your --

MR. VARDEMAN: Yeah. We are recording it.

MR. MILLER: I'm sorry. Okay.

MR. VARDEMAN: How many employees?

MR. MILLER: Two employees, and 15 -- 15 --

MR. WISEMAN: Contractor/consultants included, or just employees?

MR. VARDEMAN: Just employees.

MR. MILLER: Two.

MR. VARDEMAN: Are you the two employees?

MR. WISEMAN: No. Well, he is.

MR. MILLER: I am a --

MR. VARDEMAN: Okay. And who's the other employee?

MR. MILLER: Carolyn Malone.

MR. VARDEMAN: All right. Are your wages current since the date of the bankruptcy?

MR. MILLER: Yes.

MR. VARDEMAN: Tax withholding?

MR. MILLER: Yes.

MR. VARDEMAN: All the bills that have come due since the date of the bankruptcy, are those current?

MR. MILLER: Yes. All right. Can you --

MR. KEIFFER: We usually say all the bills that have accrued postpetition and are due currently, we have. There may have been other bills that have come due, but the split, we've -- we'll take the pre and post and take care of that.

MR. VARDEMAN: Is it the same answer?

MR. MILLER: Yes.

MR. VARDEMAN: Okay. Are there any officers that are being compensated? Are you being compensated?

MR. MILLER: Yes.

MR. VARDEMAN: All right. And how much are you compensated, Mr. Miller?

MR. MILLER: $500 a month.

MR. VARDEMAN: Is that it?

MR. MILLER: Yes.

MR. VARDEMAN: Mr. Wiseman?

MR. WISEMAN: Yes, sir?

MR. VARDEMAN: Are you being compensated?

MR. WISEMAN: Yes.

MR. VARDEMAN: How much?

MR. WISEMAN: As -- I'm not an employee.

MR. VARDEMAN: As an officer?

MR. WISEMAN: My annual compensation through my employer is $200,000 a year.

MR. VARDEMAN: Who is your employer?

MR. WISEMAN: Source Communications of America.

MR. VARDEMAN: All right. Do you receive any compensation from Halo Wireless?

MR. KEIFFER: Directly?

MR. WISEMAN: Directly? No.

MR. VARDEMAN: Okay. Any other officers that receive compensation?

MR. MILLER: Carolyn Malone.

MR. KEIFFER: Is she an officer or an employee?

MR. MILLER: She's an officer and an employee.

MR. KEIFFER: All right.

MR. VARDEMAN: How much does she get?

MR. MILLER: $500 a month.

MR. VARDEMAN: Where do you carry your casualty and liability insurance?

MR. MILLER: I'd have to look it up.

MR. KEIFFER: I don't know that there's a statement on it. Do you recall, Kim? Do we pay any -- we sent the data to them.

MR. VARDEMAN: You've provided that to our office?

MR. KEIFFER: Yes. We provided that --

MR. VARDEMAN: Okay. Then I'll waive that question for the time being until we have a chance to look at that.

Okay. Franchises and licenses: Are there franchises and licenses that the Debtor has?

MR. WISEMAN: Would you consider the radio station authorization from the FCC a license?

MR. VARDEMAN: I would.

MR. KEIFFER: Yes.

MR. WISEMAN: Off the top of my head, that's the only one I can think of.

MR. VARDEMAN: FCC license? Is there just one?

MR. WISEMAN: Yes.

MR. VARDEMAN: Are you current with your obligations

on that?

MR. WISEMAN: There are no obligations on it.

MR. KEIFFER: We do have another license listed on Schedule B-23 as Ameliowave software license.

MR. VARDEMAN: Okay.

MR. KEIFFER: But that's -- I don't know if -- you know, that depends upon whether you consider your Microsoft operating system license as a license.

MR. VARDEMAN: Okay. All right.

MR. MILLER: Right. It's just a software license.

MR. VARDEMAN: Right. Mr. Keiffer, very briefly, tell me how we got here and where we're going. I think everybody knows, though.

MR. KEIFFER: Everybody knows and everybody has their opinions on whether they agree with how I put it or not. But the Debtor was facing or involved in at least 20 actions in 10 different states, in either public utilities commissions, public service commissions, state district or U.S. district courts, some of which the Debtor brought themselves but most of which they had not, the vast majority they had not.

Regarding the nature of the Debtor's operations, that 20 -- and, again, continued to increase; it was moving up in time -- litigation sequence was crippling to the Debtor's prospects. The Debtor could not continue, did not have the

There may be interim decisions that may make one thing happen and you have to operate under that, but there'll be appellate rights. This matter will not, I suspect, when the first judge makes the first statement about -- at the first battle, that that will be the end of it. I suspect we'll be going up as far as these -- as circumstances will allow us.

MR. VARDEMAN: Okay. All right. I understand.

Okay. How many creditor groups do we have represented here? If you'll please raise your hand. Okay. I see four hands. Okay. What I'll do is I'll divide your time up ten minutes at a time and we'll go that way and see where we get from at that point.

I think we all sat in on the hearing the other day. I know what the issues are in this case. Please understand that the scope of the 341 is basically to find out about the Debtor's assets, liabilities, income and expenses, and their schedules. So let's please limit the questions to those items.

It's always ladies first. Ma'am, you're first. Your name and who do you represent?

MS. BROWN: Brook Brown.

MR. VARDEMAN: Okay.

MS. BROWN: And I represent the Texas and Missouri Telephone Companies.

MR. VARDEMAN: Do you have questions for the Debtor?

MS. BROWN: Yes, I do. Pull up a chair?

MR. VARDEMAN: You may. That would be the easiest thing to do.

MS. BROWN: Thank you.

MR. VARDEMAN: Okay. Go ahead.

MS. BROWN: Thank you. Mr. Wiseman and Mr. Miller, could you turn to Schedule B? And can you tell me: Are the base stations with which Halo connects with Transcom, are they shown on this Schedule B?

MR. WISEMAN: The base stations that Halo connects to Transcom with? The Halo base stations are leased through a company called SAT Net. So the leasing arrangements are included in the schedules, but the assets themselves are owned by a company called SAT Net.

MR. KEIFFER: The SAT Net reference is in Schedule G. And there is a reference at that point in Schedule G that there's an issue of whether it is or isn't a lease. We reserve that point.

MS. BROWN: Okay. What is the annual amount of that lease?

MR. MILLER: Well, the current payment terms are $165,000 a month for 12 months.

MR. KEIFFER: It would be about $1,900,000 to $2 million?

MR. MILLER: Right. The current --

MR. KEIFFER: For an annual.

MR. MILLER: The current obligation --

MS. BROWN: A month for nine months, did you say? I'm sorry.

MR. MILLER: Twelve. Twelve months.

MS. BROWN: For 12 months? And when was that -- that contract was entered into June 1 of 2010?

MR. MILLER: If that's what it says here, that's correct.

MS. BROWN: Okay. And SAT Net is also an affiliate of the Debtor?

MR. KEIFFER: Under bankruptcy definitions, we believe that to be the case.

MS. BROWN: Okay. Mr. Miller, are you president of SAT Net?

MR. MILLER: I am.

MS. BROWN: Are you an employee of SAT Net?

MR. MILLER: I am.

MS. BROWN: And Ms. Malone is Secretary/Treasurer of SAT Net?

MR. MILLER: She is.

MS. BROWN: Are there any other common directors or owners or investors between SAT Net and Halo?

MR. MILLER: There are.

MS. BROWN: Who are they, please?

MR. MILLER: Gary Shapiro, Tim Terrell and Scott Birdwell.

MS. BROWN: And where are these base stations located? What is the physical address?

MR. MILLER: There's a schedule in the documents that lists the exact address.

MS. BROWN: Could you identify that for me, please?

MR. MILLER: Okay. Exhibit G-1 is the -- is 27 of the 28 tower site addresses. There is one additional site in Enid, Oklahoma. I don't know that we have the address listed here, but if you need the address I can provide it.

MS. BROWN: So is it your -- are you saying that there is a Halo-owned or operated base station at each of the addresses listed on Exhibit G-1?

MR. MILLER: Halo has tower leases in each of those locations --

MS. BROWN: That's not my question.

MR. MILLER: -- from which it operates the base stations which are leased from SAT Net.

MS. BROWN: Let me ask my question again. Are the base stations that Halo uses to connect with Transcom, are those base stations physically located at the addresses listed on G-1?

MR. MILLER: Yes.

MS. BROWN: And I believe that those tower leases

are also leases, right, not Halo assets?

MR. MILLER: Those are leases. And --

MR. KEIFFER: I don't know if I'm going to characterize the leases as being assets are not, but nonetheless they are leases.

MS. BROWN: They're not physical property owned by -- the towers are not owned by Halo?

MR. MILLER: That's correct.

MS. BROWN: They're leased?

MR. WISEMAN: Space on the towers are leased. The towers themselves.

MS. BROWN: And who are they leased by? Are they leased in Halo's name? Does Halo hold the lease?

MR. MILLER: Yes.

MS. BROWN: And who is the lessor?

MR. MILLER: American Tower in 27 of the locations, and SBA Communications in one of them.

MS. BROWN: And who is the second? I'm sorry.

MR. MILLER: SBA Communications. That's the one in Enid, Oklahoma.

MR. KEIFFER: That's the one we need to add.

MS. MOSES: No, it's listed.

MR. WISEMAN: It's listed?

MR. KEIFFER: In G.

MS. MOSES: It's just listed separately.

MR. KEIFFER: Yeah. Rural telephonic service. It's been out there forever.

MR. WISEMAN: It's a fee that any common carrier has to pay to subsidize rural services across the -- every carrier pays it.

MR. KEIFFER: Every carrier. Any phone bill you'll get, you'll see one.

MR. WISEMAN: It's not an optional thing.

MS. SEPANIK: So there's no contract?

MR. KEIFFER: Correct.

MR. WISEMAN: No.

MR. KEIFFER: I think it's statutory.

MR. WISEMAN: We report our --

MS. SEPANIK: It's statutory?

MR. WISEMAN: We report our revenues and they -- it's like any other tax obligation. There's schedules based on your revenues. You pay the fees.

MR. KEIFFER: That's why it's on Schedule E, because it's a statutory obligation.

MS. SEPANIK: Right. Yeah.

MR. KEIFFER: An excise tax --

MS. SEPANIK: Uh-huh.

MR. KEIFFER: -- is what it's been characterized to be similar to.

MS. SEPANIK: Uh-huh.

MR. BENNETT: And is 100 percent of that thought to be priority?

MR. KEIFFER: There's -- yeah. I don't think there's any subdivision, David, for them that they've got to do part of it's priority, and what's not. I think it's just like, everything Uncle Sam has, it's all priority.

MR. WISEMAN: Yeah.

MR. KEIFFER: Okay.

MR. VARDEMAN: A couple of more questions.

MS. SEPANIK: That's it.

MR. VARDEMAN: Okay. Mr. Gerber, do you have any other questions?

MR. GERBER: If you don't mind, sir.

Mr. Wiseman, who do you report to in your capacity as an officer of the Debtor?

MR. WISEMAN: I report to a management committee of the investor-owners.

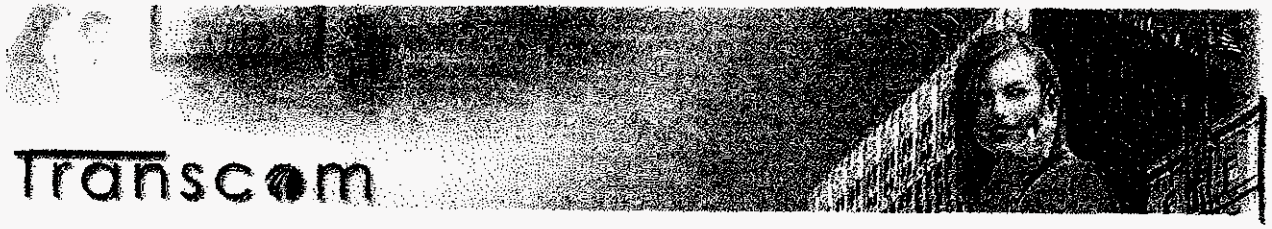
MR. GERBER: Okay. And who is -- who sits on that management committee?

MR. WISEMAN: It's Scott Birdwell, Jake Miller, Carolyn Malone. Occasionally the major investors have participated in that.

MR. GERBER: And who are those -- would you just name those major investors?

MR. WISEMAN: Tim Terrell and Gary Shapiro.

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 10
PARTY Bellsouth Tel., LLC d/b/a AT&T Florida (AT&T) - Direct
DESCRIPTION J. Scott McPhee (JSM-3)
DATE 07/12/12



Products & Services



Transcom's end-to-end global connectivity and comprehensive services do more than meet your communications needs-they give you a competitive advantage in the marketplace.

Our worldwide network, state-of-the-art technology and unmatched reliability enable us to bring you the highest quality services at competitive prices. With Transcom, it's never "one size fits all." We work closely with you to understand your needs and create customized solutions that keep your costs low-without sacrificing quality or efficiency.

Unlike many of our competitors, we're easy to talk to. As a Transcom customer, you'll always have direct access to our executive and customer service teams. That means that when a question comes up, you don't have to work hard to get an answer. As we see it, easy access and personalized service build closer, more profitable relationships.

Transcom is a new kind of communications company. We understand your business. We have the energy and know-how to support your success. **And we make it all easy for you.**

Voice Termination Service
This is our core service offering. Transcom provides termination services throughout the world with a focus on North America . Transcom has an onnet footprint that covers about 70% of the US Population. Customers looking for a TDM interconnect can connect to Transcom's Veraz based network at the following switch locations:

Atlanta

Dallas

Los Angeles

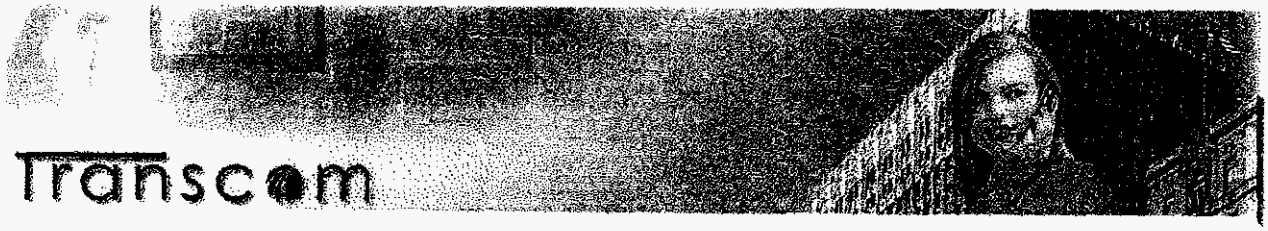
New York

Customers who do not have facilities at these locations or prefer to connect via an IP connection can connect to us via our Nextone SBC (Session Border Controller). We support most protocols with H.323 and SIP being the most common.

Voice Origination Services
Transcom provides origination services using Toll Free numbers and local DIDs. Transcom will pass the originated call to the Customer using dedicated facilities or via an IP handoff. Customer can connect to the above switch locations for this product also.

Toll Free Termination Services
Transcom noticed that many of their customers were having a problem terminating toll free numbers that end-users were calling. This was especially true for many emerging broadband IP Telephony providers. Customers can direct their outbound toll free calling for Transcom to terminate.

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Transcom Enhanced Services is a wholesale enhanced voice service provider serving most of North America. A facilities based provider, Transcom terminates nearly one billion minutes per month. Transcom's customers include the largest Cable/MSOs, CLECs, broadband service providers, and wireless carriers. Transcom's focus is US/Canada termination but its customers are located globally.



Locate star to view offices



Transcom provides superior customer service, seamless interoperability with the customer network, reliable voice service and the best pricing in the industry.

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AT&T Wholesale Agreement

Contract Number: 8792

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 11
PARTY Bellsouth Tel., LLC d/b/a AT&T Florida (AT&T) - Direct
DESCRIPTION J. Scott McPhee (JSM-4)
DATE 07/12/12

MFN AGREEMENT

This MFN Agreement ("MFN Agreement"), which shall be filed with and is subject to approval by the respective State Commissions, as indicated below, and shall become effective ten (10) days after approval by such Commissions ("Effective Date"), is entered into by and between Halo Wireless, Inc. ("CARRIER"), a Texas corporation on behalf of itself, and BellSouth Telecommunications, Inc., d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina and AT&T Tennessee, (collectively, "AT&T"), having an office at 675 W. Peachtree Street, Atlanta, Georgia, 30375, on behalf of itself and its successors and assigns.

WHEREAS, the Telecommunications Act of 1996 (the "Act") was signed into law on February 8, 1996;

WHEREAS, CARRIER has requested that AT&T make available the 251/252 wireless interconnection agreement, in its entirety, executed between BellSouth Telecommunications, Inc. and T-Mobile USA, Inc., dated May 8, 2003, for the State(s) of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee (collectively "AT&T") ("Wireless Agreement");

WHEREAS, pursuant to Section 252(i) of the Act, for purposes of this MFN Agreement, CARRIER has adopted the Wireless Agreement for the State(s) of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee; and,

WHEREAS, the Parties have agreed to add an additional Whereas Clause to the Wireless Agreement, through a separate amendment to the Wireless Agreement, which the Parties are executing concurrent with CARRIER'S execution of this MFN Agreement;

NOW, **THEREFORE**, in consideration of the promises and mutual covenants of this MFN Agreement, CARRIER and AT&T hereby agree as follows:

1. **AT&T** shall be defined as the States of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee.

2. CARRIER and **AT&T** shall adopt, in its entirety, the Wireless Agreement, dated May 8, 2003, and any and all amendments to said Wireless Agreement, executed and approved by the appropriate State Commissions as of the date of the execution of this MFN Agreement. The Wireless Agreement and all amendments thereto are attached hereto as Exhibit 1 and are incorporated herein by this reference. The adoption of the Wireless Agreement with amendment(s) consists of the following:

ITEM
MFN Agreement
Signature Page
Exhibit 1 Cover Page
T-Mobile USA, Inc. Agreement
T-Mobile USA, Inc. Amendment – Effective March 3, 2004
T-Mobile USA, Inc. Amendment – Effective April 30, 2006
T-Mobile USA, Inc. Amendment – Effective April 21, 2008
T-Mobile USA, Inc. Amendment – Effective December 15, 2008
Whereas Clause Amendment

3. In the event that CARRIER consists of two (2) or more separate entities as set forth in the preamble to this MFN Agreement, all such entities shall be jointly and severally liable for the obligations of CARRIER under this MFN Agreement.

The term of this MFN Agreement shall be from the Effective Date as set forth in the first paragraph above and shall expire as of January 7, 2011.

4. CARRIER shall accept and incorporate any approved amendments to the Wireless Agreement executed as a result of any final judicial, regulatory, or legislative action.

5. In entering into this MFN Agreement, the Parties acknowledge and agree that neither Party waives, and each Party expressly reserves, any of its rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in this MFN Agreement with respect to any orders, decisions, legislation or proceedings and any remands by the FCC, State Commission, court, legislature or other governmental body including, without limitation, any such orders, decisions, legislation, proceedings, and remands which were issued, released or became effective prior to the Effective Date of this MFN Agreement, or which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review.

6.

7. Every notice, consent or approval of a legal nature, required or permitted by this MFN Agreement shall be in writing and shall be delivered either by hand, by overnight courier or by US mail postage prepaid addressed to:

To AT&T:

Contract Management
ATTN: Notices Manager
311 S. Akard, 9th Floor
Dallas, TX 75202-5398
Facsimile Number: 214-464-2006

With a Copy To:

Business Markets Attorney
Suite 4300
675 W. Peachtree St.
Atlanta, GA 30375

To CARRIER:

Todd Wallace
CTO
3437 W. 7th Street
Box 127
Fort Worth, TX 76107
Phone Number 682-551-3797
Facsimile Number 817-338-3777
Email: twallace@halowireless.com

or at such other address as the intended recipient previously shall have designated by written notice to the other Party. Where specifically required, notices shall be by certified or registered mail. Unless otherwise provided in this MFN Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.

Halo Wireless, Inc.

By: Todd Wallace

Name: Todd Wallace

Title: CTO

Date: 3-29-2010

BellSouth Telecommunications, Inc., d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina and AT&T Tennessee, by AT&T Operations, Inc., their authorized agent

By: Eddie Reed

Name: Eddie A. Reed, Jr.

Title: Director-Interconnection Agreements

Date: 4.5.10

EXHIBIT 1

By and Between

BellSouth Telecommunications, Inc.

And

T-Mobile USA, Inc. f/k/a VoiceStream Wireless Corporation

INTERCONNECTION

AGREEMENT

BETWEEN

BELLSOUTH TELECOMMUNICATIONS, INC.

AND

T-Mobile USA, Inc.

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Attachments:

A	**Affiliates**
B1	**Local CMRS Interconnections Rates**
B2	**Local CMRS Interconnections Rates (if applicable)**

AGREEMENT

THIS AGREEMENT is made by and between BellSouth Telecommunications, Inc., ("BellSouth"), a Georgia Corporation, and T-Mobile USA, Inc. f/k/a VoiceStream Wireless Corp. ("Carrier") a Delaware Corporation for and on behalf of those entities listed in Attachment A which entities T-Mobile USA, Inc. hereby represents it has authority to bind hereunder (all collectively referred to as "Carrier") and shall be deemed effective as of May 1, 2003, (the "Effective Date"). This Agreement may refer to either BellSouth or Carrier or both as a "party" or "parties."

WITNESSETH

WHEREAS, BellSouth is an incumbent local exchange carrier authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, Carrier is a Commercial Mobile Radio Service ("CMRS") provider licensed by the Federal Communications Commission ("FCC") to provide CMRS in the States of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee; and

WHEREAS, the parties wish to interconnect their facilities and exchange traffic for the purposes of fulfilling their obligations pursuant to sections 251, 252 and 271 of the Telecommunications Act of 1996 and to replace any and all other prior agreements, both written and oral;

NOW THEREFORE, in consideration of the mutual agreements contained herein, BellSouth and Carrier agree as follows:

I. Definitions

For purposes of this Agreement, the following capitalized terms have the meanings set forth below unless the context requires otherwise. Terms that appear herein (whether or not capitalized) that are not defined herein have the meanings ascribed to them in the Act (defined herein), or (if not defined therein) have the meanings customarily associated with them based on ordinary usage in the telecommunications industry as of the Effective Date.

A. Affiliate is defined as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or equivalent thereof) of more than 10 percent.

B. Commission is defined as the appropriate regulatory agency in each of BellSouth's nine state region: Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.

C. Intermediary Traffic is defined as the delivery, pursuant to this agreement or Commission directive, of local or toll (using traditional landline definitions) traffic to or from (i) a local exchange carrier other than BellSouth; (ii) a competitive or alternative local exchange carrier ("CLEC"); or (iii) another telecommunications carrier such as a CMRS provider other than Carrier through the respective networks of BellSouth or Carrier, and delivered from or to an end user of BellSouth or Carrier. All local or toll traffic from a local exchange carrier delivered to Carrier not originated on the BellSouth network by BellSouth is considered Intermediary Traffic.

D. Local Traffic is defined for purposes of reciprocal compensation under this Agreement as: (1) any telephone call that originates on the network of Carrier within a Major Trading Area ("MTA") and terminates on the network of BellSouth in the same MTA and within the Local Access and Transport Area ("LATA") in which the call is handed off from Carrier to BellSouth, and (2) any telephone call that originates on the network of BellSouth that is handed off to Carrier in BellSouth's service territory and in the same LATA in which the call originates and terminates and is delivered to the network of Carrier in the MTA in which the call is handed off from BellSouth to Carrier. For purposes of this Agreement, LATA shall have the same definition as that contained in the Telecommunications Act of 1996, and MTA shall have the same definition as that contained in the FCC's rules. Traffic delivered to or received from an interexchange carrier is not Local Traffic. Interexchange access as defined in 47 CFR Part 69 and in comparable state utility laws ("Access Traffic") is not Local Traffic.

E. Local Interconnection is defined for purposes of this Agreement as the connection of the parties' respective networks for the exchange and delivery of Local Traffic to be terminated on each party's local network so that end users of either party have the ability to reach end users of the other party without the use of any access code or substantial delay in the processing of the call.

F. Non-Local Traffic is defined as all traffic that is neither Local Traffic nor Access Traffic, as described in section VII of this Agreement.

G. Percent of Interstate Usage (PIU) is defined as a factor to be applied to that portion of Non-Local Traffic comprised of interstate interMTA minutes of use in order to designate those minutes that should be rated as interstate access services minutes of use. The numerator is all interstate interMTA minutes of

use, less any interstate minutes of use for "Terminating Party Pays" services, such as 800 Services. The denominator is all interMTA minutes of use less all minutes attributable to Terminating Party Pays services.

H. Percent Local Usage (PLU) is defined as a factor to be applied to terminating minutes of use. The numerator is all "nonintermediary" Local minutes of use. The denominator is the total minutes of use including Local and Non-Local.

I. Point of Interconnection (POI) is defined as the physical geographic location(s), within BellSouth's service area within a LATA, at which the Parties interconnect their facilities for the origination and/or termination of traffic. This point establishes the technical interface, the test point(s), and the point(s) for operational division of responsibility between BellSouth's network and Carrier's network.

J. **Telecommunications Act of 1996 ("Act")** means Public Law 104-104 of the United States Congress effective February 8, 1996. The Act amended the Communications Act of 1934 (47, U.S.C. Section 1 et. seq.).

K. Type 1 Interconnection is a trunk side connection between a BellSouth end office and a Carrier's POI and provides the capability to access all BellSouth end offices within the LATA. Type 1 Interconnection is technically defined in Telcordia Technical Reference GR-145-CORE, Issue 2 May 1998, as in effect from time to time (or any successor thereto).

L. Type 2A Interconnection are one-way or two-way facilities that provide a trunk side connection between a BellSouth tandem switch and a Carrier's POI and provides access to all BellSouth end offices and third party providers subtending the BellSouth tandem. Type 2A Interconnection is technically defined in Telcordia Technical Reference GR-145-CORE, Issue 2 May 1998, as in effect from time to time (or any successor thereto).

M. Type 2B Interconnection are one-way or two-way facilities that provide a high usage route between a BellSouth end office and an Carrier's POI and provides access to all BellSouth NXX codes homed in that specific end office and is provided in conjunction with Type 2A Interconnection. Type 2B Interconnection is technically defined in Telcordia Technical Reference GR-145-CORE, Issue 2 May 1998, as in effect from time to time (or any successor thereto).

II. Purpose

The parties desire to enter into this Agreement consistent with all applicable federal, state and local statutes, rules and regulations in effect as of the date of its

execution including, without limitation, the Act at Sections 251, 252 and 271. The access and interconnection obligations contained herein enable Carrier to provide CMRS in those areas where it is authorized to provide such services within the nine state region of BellSouth.

III. Term of the Agreement

A. The term of this Agreement shall be three years, beginning on the Effective Date and shall apply to the BellSouth territory in the state(s) of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee.

B. The Parties agree that by no earlier than two hundred seventy (270) days and no later than one hundred and eighty (180) days prior to the expiration of this Agreement, they shall commence negotiations for a new agreement to be effective beginning on the expiration date of this Agreement ("Subsequent Agreement").

C. Either party's request under this Section will, for all purposes, be treated as a request under Section 252 of the Act for negotiation received by an incumbent local exchange carrier and will begin the process of voluntary negotiations. If, as of the expiration of this Agreement, a Subsequent Agreement has not been executed by the Parties, this Agreement shall continue in full force and effect while the Parties are within negotiation/arbitration process outlined in Section 252 of the Telecommunications Act of 1996, as may be amended. If the Section 252 process is concluded or abandoned, then this Agreement shall terminate and BellSouth shall continue to offer services to Carrier pursuant to the terms, conditions and rates set forth in BellSouth's then current standard interconnection agreement. In the event that BellSouth's standard interconnection agreement becomes effective as between the Parties, the Parties may continue to negotiate a Subsequent Agreement or arbitrate disputed issues to reach a Subsequent Agreement as set forth in Section III.B above, and the terms of such Subsequent Agreement shall be effective as of the effective date as stated in Subsequent Agreement.

IV. Methods of Interconnection

A. By mutual agreement of the parties, trunk groups arrangements between Carrier and BellSouth shall be established using the interconnecting facilities methods of subsection (B) of this section. Each party will use commercially reasonable efforts to construct its network, including the interconnecting facilities, to achieve optimum cost effectiveness and network efficiency.

B. There are three methods of interconnecting facilities: (1) interconnection via facilities owned, provisioned and/or provided by either party to the other

party[1]; (2) physical collocation; and (3) virtual collocation where physical collocation is not practical for technical reasons or because of space limitations. Type 1, Type 2A and Type 2B interconnection arrangements described in BellSouth's General Subscriber Services Tariff, Section A35, or, in the case of North Carolina, in the North Carolina Connection and Traffic Interchange Agreement effective June 30, 1994, as amended, may be purchased pursuant to this Agreement provided, however, that such interconnection arrangements shall be provided at the rates, terms and conditions set forth in this Agreement. Rates and charges for both virtual and physical collocation may be provided in a separate collocation agreement. Rates for virtual collocation will be based on BellSouth's Interstate Access Services Tariff, FCC #1, Section 20 and/or BellSouth's Intrastate Access Services Tariff, Section E20. Rates for physical collocation will be negotiated on an individual case basis.

C. The parties will accept and provide any of the preceding methods of interconnection. Carrier may establish a POI on BellSouth's network at any technically feasible point in accordance with the 47 CFR 51.703(b). Carrier must designate a POI at at least one BellSouth access tandem within every LATA Carrier desires to serve, or alternatively, Carrier may elect (in addition to or in lieu of access interconnection at BellSouth's access tandem) to interconnect directly at any BellSouth end office for delivery of traffic to end users served by that end office. Such interconnecting facilities shall conform, at a minimum, to the telecommunications industry standard of DS-1 pursuant to Bellcore Standard No. TR-NWT-00499. Signal transfer point, Signaling System 7 ("SS7") connectivity is required at each interconnection point after Carrier implements SS7 capability within its own network. BellSouth will provide out-of-band signaling using Common Channel Signaling Access Capability where technically and economically feasible, in accordance with the technical specifications set forth in the BellSouth Guidelines to Technical Publication, TR-TSV-000905. The parties' respective facilities shall (i) provide the necessary on-hook, off-hook answer and disconnect supervision (ii) shall hand off calling party number ID when technically feasible and (iii) shall honor privacy codes and line blocking requests if possible. In the event a party interconnects via the purchase of facilities and/or services from the other party, it may do so though purchase of services pursuant to the other party's interstate or intrastate tariff, as amended from time to time, or pursuant to a separate agreement between the Parties. . In the event that such facilities are used for two-way interconnection, the appropriate recurring charges for such facilities will be shared by the parties

[1] On some occasions Carrier may choose to purchase facilities from a third party. In all such cases carrier agrees to give BellSouth 45 (forty five) days notice prior to purchase of the facilities, in order to permit BellSouth the option of providing one-way trunking, if, in its sole discretion BellSouth believes one-way trunking to be a preferable option to third party provided facilities. Such notice shall be sent pursuant to Section XXIX. In no event shall BellSouth assess additional interconnection costs or per-port charges to Carrier or its third-party provider should Carrier purchase facilities from a third party, e.g. the same charges that BellSouth would charge Carrier should it provide the service.

based upon percentages equal to the estimated or actual percentage of traffic on such facilities, in accordance with Section VI.B below.

D. Nothing herein shall prevent Carrier from utilizing existing collocation facilities, purchased from the interexchange tariffs, for local interconnection; provided, however, that unless otherwise agreed to by the parties, if Carrier orders new facilities for interconnection or rearranges any facilities presently used for its alternate access business in order to use such facilities for local interconnection hereunder and a BellSouth charge is applicable thereto, BellSouth shall only charge Carrier the lower of the interstate or intrastate tariffed rate or promotional rate.

E. The parties agree to provide at least a P.01 level of service and to work cooperatively in the placement and/or removal of interconnection facilities. The parties will establish trunk groups from the interconnecting facilities of subsection (A) of this section. Each party will use its best efforts to construct its network, including the interconnecting facilities, to achieve optimum cost effectiveness and network efficiency.

F. The parties will use an auditable PLU factor as a method for determining the amount of traffic exchanged by the parties that is Local or Non-Local. The PLU factor will be used for traffic delivered by either party for termination on the other party's network.

G. Unless otherwise agreed, when the parties deliver Access Traffic from an Interexchange Carrier ("IXC") to each other, each party will provide its own access services to (and bill at its own rates) the IXC.

H. The ordering and provision of all services purchased from BellSouth by Carrier shall be as set forth in the BellSouth Telecommunications Wireless Customer Guide as that guide is amended by BellSouth from time to time during the term of this Agreement. The ordering and provisioning of facilities or services by a party, including, but limited to, installation, testing, maintenance, repair, and disaster recovery, shall be provided at a level of quality and care at least equal to that which it provides to itself, an affiliate, or, in the case of BellSouth supplied interconnection, at least equal to that provided by BellSouth to any other similarly situated CMRS provider having interconnection arrangement(s) with BellSouth comparable to the interconnection arrangement(s) provided to Carrier under this Agreement, unless Carrier and BellSouth specifically negotiate a different level of quality or care.

V. Interconnection Trunk Group Options

A. One-Way Trunk Group Arrangement

If the Parties mutually agree upon a one-way trunking arrangement, the following will apply:

BellSouth will provide and bear the cost of all one-way trunk groups to provide for the delivery of Local Traffic from BellSouth to Carrier's POI within BellSouth's service territory and within the LATA, and Carrier will provide or bear the cost of one-way trunk group(s) for the delivery of Carrier's originated Local Traffic and for the receipt and delivery of Intermediary Traffic to each BellSouth access tandem and end office at which the parties interconnect. Carrier may supply its own interconnection facilities or may purchase such facilities (a) from BellSouth pursuant to a separate agreement or tariff for this purpose, or (b) from any other third-party supplier as provided in Section IV(B).

B. Two-Way Trunk Group Arrangement

If the Parties mutually agree upon a two-way trunking arrangement, the following will apply:

BellSouth and Carrier will share the cost of the two-way trunk group carrying both Parties traffic proportionally when purchased via this Agreement or the General Subscriber Services Tariff, Section A35, or, in the case of North Carolina, in the North Carolina Connection and Traffic Interchange Agreement effective June 30, 1994, as amended from time to time. BellSouth will bear the cost of the two-way trunk group for the proportion of the facility utilized for the delivery of BellSouth originated Local traffic to Carrier's POI within BellSouth's service territory and within the LATA (calculated based on the number of minutes of traffic identified as BellSouth's divided by the total minutes of use on the facility), and Carrier will provide or bear the cost of the two-way trunk group for all other traffic, including Intermediary traffic.

C. Combination Trunk Group Arrangement

If the Parties cannot agree upon a trunk group arrangement or elect a combination arrangement, BellSouth will provide and bear the cost of a one-way trunk group to provide for the delivery of Local Traffic from BellSouth to Carrier's POIs within BellSouth's service territory and within the LATA. Carrier will provide or bear the cost of one-way or two-way trunk group(s), if two-way trunk group(s) are elected by Carrier, for the delivery of all Carrier's originated traffic, and also the delivery and receipt of Intermediary Traffic.

VI. Compensation and Billing

A. Compensation of Local Traffic

Each party will pay the other for terminating its Local Traffic on the other's network at the Local Interconnection rates as set forth in Attachment B-1. These rates are reciprocal for mobile-to-land and land-to-mobile calls.

1. Local Traffic Measurement

a. If Carrier has recording capability, but recording limitations that prohibits Carriers ability to determine the amount of BellSouth originated traffic (Local Traffic) terminated to Carrier over two-way multi-use facilities, BellSouth will provide to Carrier, upon Carrier's written request to the Local Interconnection Service Center (LISC), on a quarterly basis the percent of total terminating traffic to Carrier that was originated by BellSouth. Such percent will be used by Carrier to bill BellSouth for the BellSouth Local Traffic for the following quarter.

b. If Carrier has no recording capability and cannot determine the amount of traffic terminated to Carrier, a mutually agreed upon methodology for reciprocal billing percentages for local traffic will be used.

2. The exchange of the parties' traffic on BellSouth's interLATA EAS routes shall be considered Local Traffic and compensation for the termination of such traffic shall be pursuant to the terms of this section. EAS routes are those exchanges within an exchange's Basic Local Calling Area, as defined in Section A3 of BellSouth's General Subscriber Services Tariff.

B. Compensation of Facilities

1. Where one-way trunking is used, each party will be solely responsible for the recurring and non-recurring cost of that facility up to the designated POI(s) on the terminating party's network.

2. The Parties agree to share proportionately in the recurring costs of two-way interconnection facilities.

a. To determine the amount of compensation due to Carrier for interconnection facilities with two-way trunking for the transport of Local Traffic originating on BellSouth's network and terminating on Carrier's network, Carrier will utilize the prior months undisputed Local Traffic usage billed by BellSouth and Carrier to develop the percent of BellSouth originated Local Traffic.

b. BellSouth will bill Carrier for the entire cost of the facility. Carrier will then apply the BellSouth originated percent against the Local Traffic portion of the two-way interconnection facility charges billed by BellSouth to Carrier. Carrier will invoice BellSouth on a monthly basis, this proportionate cost for the facilities utilized by BellSouth.

C. Billing

1. The charges for Local Interconnection are to be billed monthly and paid within thirty (30) days ("Due Date"). Usage charges will be billed in arrears.

2. Each party will pay the other for terminating its Local Traffic on the other's network, the Local Interconnection Rates set forth in Attachment B-1 or B-2, as applicable. Charges for terminating traffic will be the actual conversation minutes of use (MOUs) measured from receipt of answer supervision to receipt of disconnect supervision, with such time accumulated at the end of the billing period and rounded up to the next whole minute.

3. The Parties will use an auditable PLU factor as a method for determining whether traffic is Local or Non-Local. The PLU factor will be used for traffic delivered by either party for termination on the other party's network. The amount that each party shall pay to the other for the delivery of Local Traffic shall be calculated by multiplying the applicable rate in Attachment B-1 for each type of call by the total minutes of use each month for each such type of call. The minutes of use or portion thereof for each call, as the case may be, will be accumulated for the monthly billing period and the total of such minutes of use for the entire month rounded to the nearest minute. The usage charges will be based on the rounded total monthly minutes.

4. Billing disputes shall be handled pursuant to the terms of this section.

a. Each party agrees to notify the other party in writing upon the discovery of a billing dispute. In the event of a billing dispute, the Parties will endeavor to informally resolve the dispute within sixty (60) calendar days of the notification date. If the Parties are unable within the 60 day period to reach resolution, then the aggrieved party may pursue dispute resolution in accordance with the terms of this Agreement.

b. For purposes of this Section, a billing dispute means a dispute of (i) a specific amount of money actually billed by either party (ii) minutes of use (iii) facilities billed for (iv) methodology applied to calculations (v) delay in sending invoices or (vi) any

other bona fide disagreement with compensation or an invoice. The dispute must be clearly explained by the disputing party and supported by written documentation, which clearly shows the basis for disputing charges. By way of example and not by limitation, a billing dispute will not include the refusal to pay all or part of a bill or bills when no written documentation is provided to support the dispute, nor shall a billing dispute include the refusal to pay other undisputed amounts owed by the billed party until the dispute is resolved. Claims by the billed party for damages of any kind will not be considered a billing dispute for purposes of this Section. Once the billing dispute is resolved, the disputing party will make immediate payment of any of the disputed amount owed to the billing party or the billing party shall have the right to pursue normal treatment procedures. Any credits due to the disputing party, pursuant to the billing dispute, will be applied to the disputing party's account by the billing party immediately upon resolution of the dispute.

c. Either party may elect to withhold payment of disputed amounts. If a party disputes a charge and does not pay such charge by the payment due date, or if a payment or any portion of a payment is received by either party after the payment due date, or if a payment or any portion of a payment is received in funds which are not immediately available to the other party, then a late payment charge shall be assessed. However, no such late payment charge shall be owed with respect to any disputed amount resolved in favor of the disputing party. For bills rendered by either party for payment, the late payment charge for both Parties shall be calculated based on the portion of the payment not received by the payment due date times the late payment factor set forth in subsection 5 hereof. The Parties shall assess interest on previously assessed late payment charges only in a state where it has the authority pursuant to its tariffs.

5. Late payment fees, not to exceed 1 1/2% per month (or a lower percent as specified by an appropriate state regulatory agency) after the due date may be assessed, if undisputed charges are not paid, within thirty (30) days after the Due Date of the monthly bill. All charges under this Agreement shall be billed within one (1) year from the time the charge was incurred; previously unbilled charges more than one (1) year old shall not be billed by either party.

6. Deposit Policy. When purchasing new services from BellSouth totaling more than 10% of the monthly average of the previous three month's charges or $500,000, whichever is less, in any one month, Carrier will be required to complete the BellSouth Credit Profile and provide information regarding

credit worthiness. Based on the results of the credit analysis, BellSouth reserves the right to secure the account with a suitable form of security deposit. Such security deposit shall take the form, at Carrier's option, of cash, an Irrevocable Letter of Credit (BellSouth form), Surety Bond (BellSouth form) or some other form of security. Any such security deposit shall in no way release Carrier from its obligation to make complete and timely payments of undisputed amounts of its bill. If Carrier requests to purchase new services, such security may be required by BellSouth if justified as provided herein prior to the installation or provision thereof. If, in the reasonable opinion of BellSouth based on the Creditworthiness Criteria below, the creditworthiness of Carrier has so deteriorated after the Effective Date, that its ability to timely pay undisputed charges under this Agreement is demonstrably in question BellSouth reserves the right to request additional security in the form specified above, at Carrier's option

BellSouth shall base its creditworthiness determination on only the following criteria ("Creditworthiness Criteria):

1. Change from Cash flow positive to Cash flow negative (last FYE and most recent quarter)
2. Change from EBITDA positive to EBITA negative (last FYE and most recent quarter)
3. Debt/tangible net worth 2 or better (last FYE and most recent quarter)
4. Bond rating changes from investment grade as defined by Moody's (if public debt is present)
5. D&B Paydex > 70 (1-100)
6. D&B credit risk class =or < 3
7. Customer falls from compliance with bank (or other loan provider's debt covenants)
8. No more than 2 times slow pay in the last 12 months for undisputed invoices.

Interest on a security deposit, if provided in cash, shall accrue and be paid in accordance with the terms in the appropriate BellSouth tariff. Security deposits collected under this Section shall not exceed an amount not to exceed two (2) months' estimated net undisputed charges to Carrier under this Agreement. In the event Carrier fails to remit to BellSouth any security deposit requested pursuant to this Section, service to Carrier (following thirty 30 day's written notice and opportunity to cure) may be terminated and any security deposits will be applied to Carrier's account(s), provided in the event of a dispute concerning the deposit, then the Dispute Resolution section of this Agreement shall apply and Bellsouth shall not terminate service to Carrier during the pendency of this dispute for the disputed amounts.

VII. Non-Local Traffic Interconnection

A. For terminating its Non-Local Traffic on the other Party's network, each Party will pay either the access charges described in paragraph (B) hereunder or the Non-Local Intermediary Charges described in paragraph (D) hereunder, as appropriate.

B. For originating and terminating intrastate or interstate interMTA Non-Local Traffic, each Party shall pay the other BellSouth's intrastate or interstate, as appropriate, switched network access service rate elements on a per minute of use basis, which are set out in BellSouth's Intrastate Access Services Tariff or BellSouth's Interstate Access Services Tariff as those tariffs may be amended from time to time during the term of this Agreement.

C. If Non-Local Traffic originated by Carrier is delivered by BellSouth for termination to the network of a third party telecommunications carrier that is uniquely identifiable ("Third Party Carrier"), then BST will bill Carrier and Carrier shall pay a $.002 per minute intermediary charge for such Intermediary Traffic in addition to any charges that BST may be obligated to pay to the Third Party Carrier (collectively called "Third Party Termination Charges"). Third Party Termination Charges may change during the term of this Agreement, and the appropriate rate shall be the rate in effect when the traffic is terminated. The Parties agree the percentage of Non-Local Traffic delivered to BellSouth by Carrier shall be subject to Intermediary Charges and Third Party Termination Charges. BellSouth shall not deliver Intermediary Traffic to Carrier for termination to a Third Party Carrier, and therefore, Carrier shall not bill BellSouth any intermediary charges. Intermediary Traffic transiting BellSouth's network to Carrier is not Local Traffic and Carrier shall not bill BellSouth for Intermediary Traffic transiting BellSouth's network. In addition, Carrier shall not bill BellSouth for Traffic received by BellSouth from an interexchange carrier for delivery to Carrier.

D. Where technically possible to measure traffic for classifying traffic percentage's, the Parties shall utilize actual traffic measurements to classify traffic in each of the categories shown in subsection E. below. BellSouth may conduct periodic reviews of Carriers' traffic classification percentage's and shall update those percentages for the aforementioned traffic accordingly.

E. For Carrier's that have not exchanged traffic under a previous CMRS interconnection agreement with BellSouth or for traffic categories that are not technically feasible to measure, the associated **default** traffic classification percentages set forth in this subsection will be used until such time actual traffic patterns have been measured:

Carrier originated traffic to BellSouth
Local Traffic - 60%
Non-Local InterMTA InterState Traffic- .5%
Non-Local InterMTA IntraState Traffic- .5%
Non-Local Intermediary Only Traffic- 31.2%
Non-Local Intermediary Plus Cost Traffic – 7.8%

BellSouth originated traffic to Carrier
Local Traffic - 99%
Non-Local InterMTA InterState Traffic -.5%
Non-Local InterMTA IntraState Traffic -.5%

F. In the event Carrier activates service in a state that was not originally covered by this Agreement ("New State(s)"), and in which New State(s) no traffic classification percentages currently exist, BellSouth will apply an average, based on Carrier's existing traffic classification percentages for the other states in which Carrier has established actual traffic measurements, to such New State(s) until such time as actual traffic percentages have been measured.

VIII. Meet Point Billing

A. Meet Point Billing (MPB), as supported by Multiple Exchange Carrier Access Billing (MECAB) guidelines, shall mean the exchange of billing data relating to jointly provided switched access calls and Intermediary Traffic. MECAB refers to the document prepared by the Billing Committee of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECAB document, published by Telcordia as Special Report SR-BDS-000983, contains the recommended guidelines for the billing of Switched Access Traffic and Intermediary Traffic provided by two or more telecommunications carriers. Subject to Carrier providing all necessary information, BellSouth agrees to participate in MPB for Switched Access Traffic (as described in BellSouth's Tariffs) and Intermediary Traffic. In the event a Third Party Carrier continues to charge BellSouth for Carriers' Intermediary Traffic, Carrier agrees to keep BellSouth whole for such traffic as stipulated in Section VII C. above. BellSouth shall pass Electronic Message Interface (EMI) 1101 call records to Carrier at no charge. Depending on the delivery medium selected by Carrier, appropriate charges for that delivery medium will be applied. Notwithstanding the foregoing, for purposes of MPB, where either or both of the originating or terminating carrier of Intermediary Traffic does not have MPB capability, Section VII C. will apply.

B. Information required from Carriers participating in MPB with BellSouth includes, but is not limited to: (1) Regional Accounting Office code (RAO), (2) Operating Company Number (OCN) per state for each entity to be billed (if an

OCN is not available for each billed entity, BellSouth will only render a bill to Carrier), (3) a unique Access Carrier Name Abbreviation (ACNA), (4) Percent Interstate Usage, (5) Percent Local Usage, (6) 800 Service Percent Interstate Usage or default of 50%, (7) Billing Interconnection Percentage, (8) a Screening Telephone Number (STN) from Carrier's dedicated NXX associated with each Trunk Group subscribed to. A default Billing Interconnection Percentage (BIP) of **0% BellSouth** and **100% Carrier** will be used if Carrier does not file with NECA to establish a BIP other than default. Carrier must support MPB for all Switched Access Traffic and Intermediary_Traffic in accordance with Mechanized MECAB guidelines. The Parties acknowledge that the exchange of 1150 records will not be required.

C. MPB will be provided for Switched Access Traffic and Intermediary Traffic at the access tandem level only. Parties utilizing MPB must subscribe to access tandem level interconnections with BellSouth and must deliver all Intermediary_Traffic to BellSouth over such access tandem level interconnections. Additionally, exchange of records will necessitate both the originating and terminating networks to subscribe to dedicated NXX codes, which can be identified as belonging to the originating and terminating network. NPA/NXX codes are presented in the Local Exchange Routing Guide (LERG) in association with a specific switch Common Language Location Identification (CLLI). Under national programming rules associated with Carrier Access Billing Systems (CABS), each CLLI is associated with a single rate center. Additionally, (i) if the Carrier has Type 2A and Non-Type 2A NPA/NXX codes associated with a single CLLI or, (ii) if the CLLI is associated with additional NPA/NXX codes with rate centers outside of BellSouth's service area or, (iii) if the Type 2A NPA/NXX code or CLLI home on a non-BellSouth SHA "00" tandem or are in a disassociated LATA, then those NPA/NXX codes and CLLI codes will not be included in MPB and Switched Access Traffic and Intermediary Traffic associated with those NPA/NXX codes will continue to be billed in accordance with the provisions of Section VII C. When converting to MPB, if Carrier has NPA/NXX codes with more than a single rate center terminating to a given CLLI, Carrier must provide BellSouth with information stating which BellSouth rate center will be associated with the CLLI. MPB is not available when the access tandem at which the Parties have interconnected does not have the capability to measure actual traffic.

D. In a MPB environment, when Carrier utilizes services provided by BellSouth that are necessary to deliver certain types of calls (e.g. Local Number Portability queries and 800 Data Base queries), Carrier will be billed applicable charges as set forth in BellSouth's federal or state access tariffs, as appropriate. In the alternative, Carrier may perform the appropriate database queries prior to delivery of such traffic to BellSouth.

E. Participation in MPB is outside the reciprocal compensation requirements of this Agreement. Under MPB, Carrier will compensate BellSouth at the rate set forth in Section VII.C of this Agreement for Carrier originated Intermediary Traffic. Meet Point Billing to IXCs for jointly provided switched access traffic will be consistent with the most current MECAB billing guidelines.

F. Exchange of records will begin no earlier than ninety days (90) from the later of the date the contract is signed or the date that all necessary information as defined in Section VIII.B above is provided. Once Carrier sets up MPB arrangements for Intermediary Traffic, Intermediary Traffic will be subject to only the $.002 per minute Intermediary Charge (or such other rate ordered by the state), and Third Party Termination Charges shall not apply. Notwithstanding the foregoing, in the event a Third Party Carrier continues to charge BellSouth for Carriers' Intermediary Traffic, Carrier agrees to keep BellSouth whole for such traffic as stipulated in Section VII C. above. MPB as described in this Section VIII anticipates that Carrier will enter into interconnection or traffic exchange agreements with Third Party Carriers who terminate traffic originated by Carrier. Carrier will be liable to BellSouth for any charges, costs and fees BellSouth may incur for delivering Carrier's Intermediary Traffic.

IX. Access To Poles, Ducts, Conduits, and Rights of Way

BellSouth will provide nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by BellSouth pursuant to 47 U.S.C § 224, as amended by the Act, pursuant to terms and conditions of a license agreement subsequently negotiated with BellSouth's Competitive Structure Provision Center.

XI. Access to Telephone Numbers

Carrier is responsible for interfacing with the North American Numbering Plan administrator for all matters dealing with dedicated NXXs. BellSouth will cooperate with Carrier in the provision of shared NXXs where BellSouth is the service provider.

XII. Local Number Portability

The Permanent Number Portability (PNP) database supplies routing numbers for calls involving numbers that have been ported from one local service provider to another. PNP is currently being worked in industry forums. The results of these forums will dictate the industry direction of PNP. BellSouth will provide access to the PNP database at rates, terms and conditions as set forth by BellSouth and in accordance with an effective FCC or Commission directive.

XIII. Access to Signaling and Signaling Databases

A. BellSouth will offer to Carrier use of BellSouth's signaling network and signaling databases at BellSouth's published tariffed rates. Signaling functionality will be available with both A-link and B-link connectivity.

B. Where interconnection is via B-link connections, charges for the SS7 interconnection elements are as follows: 1) Port Charge - BellSouth shall not bill an STP port charge nor shall BellSouth pay a port charge; 2) SS7 Network Usage - BellSouth shall bill its tariffed usage charge and shall pay usage billed by the Carrier at rates not to exceed those charged by BellSouth; 3) SS7 Link - BellSouth will bill its tariffed charges for only two links of each quad ordered. Application of these charges in this manner is designed to reflect the reciprocal use of the parties' signaling networks. Where interconnection is via A-link connections, charges for the SS7 interconnection elements are as follows: 1) Port Charge - BellSouth shall bill its tariffed STP port charge but shall not pay a termination charge at the Carrier's end office; 2) SS7 Network Usage - BellSouth shall bill its tariffed usage charge but shall not pay for any usage; 3) SS7 Link - BellSouth shall bill its tariffed charges for each link in the A-link pair but shall not pay the Carrier for any portion of those links.

XIV. Network Design and Management

A. The parties will work cooperatively to install and maintain reliable interconnected telecommunications networks, including but not limited to, maintenance contact numbers and escalation procedures. BellSouth will provide public notice of changes in the information necessary for the transmission and routing of services using its local exchange facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.

B. The interconnection of all networks will be based upon accepted industry/national guidelines for transmission standards and traffic blocking criteria.

C. The parties will work cooperatively to apply sound network management principles by invoking appropriate network management controls to alleviate or prevent network congestion.

D. Interconnection reconfigurations will have to be considered individually as to the application of a charge. Notwithstanding the foregoing, the parties do intend to charge non-recurring fees for any additions to, or added capacity to, any facility or trunk purchased. Parties who initiate SS7 STP changes may be charged authorized non-recurring fees from the appropriate tariffs.

E. The parties will provide Common Channel Signaling (CCS) information to one another, where available and technically feasible, in conjunction with all traffic in order to enable full interoperability of CLASS features and functions except for call return. All CCS signaling parameters will be provided, including automatic number identification (ANI), originating line information (OLI) calling party category, charge number, etc. All privacy indicators will be honored, and the parties agree to cooperate on the exchange of Transactional Capabilities Application Part (TCAP) messages to facilitate full interoperability of CCS-based features between the respective networks.

F. For network expansion, the parties will review engineering requirements on a periodic basis and establish non-binding forecasts for trunk utilization as required by Section IV of this Agreement. New trunk groups will be implemented as stated by engineering requirements for both parties.

G. The parties will provide each other with the proper call information, including all proper translations for routing between networks and any information necessary for billing where BellSouth provides recording capabilities. This exchange of information is required to enable each party to bill properly.

XV. Auditing Procedures

Upon thirty (30) days written notice, each party must provide the other the ability and opportunity to conduct an annual audit to ensure the proper billing of traffic between the parties. The parties will retain records of call detail for a minimum of nine months from which the PLU, the percent intermediary traffic, the percent interMTA traffic, and the PIU can be ascertained. The audit shall be accomplished during normal business hours at an office designated by the party being audited. Audit requests shall not be submitted more frequently than one (1) time per calendar year. Audits shall be performed by a mutually acceptable independent auditor paid for by the party requesting the audit. The PLU shall be adjusted based upon the audit results and shall apply to the usage for the quarter the audit was completed, the usage for the quarter prior to the completion of the audit, and to the usage for the two quarters following the completion of the audit.

XVI. Liability and Indemnification

A. EXCEPT AS OTHERWISE PROVIDED FOR IN THIS AGREEMENT OR IN THIS SECTION XVI, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, PUNITIVE, OR SPECIAL DAMAGES SUFFERED BY THE OTHER PARTY (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS SUFFERED BY THE

OTHER PARTY), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING WITHOUT LIMITATION NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE, AND REGARDLESS OF WHETHER THE PARTIES KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT.

B. Neither party shall be liable to the other party for any act or omission of any other telecommunications company providing a portion of a service under this Agreement.

C. Neither party shall be liable for damages to the other party's terminal location, Point of Interface (POI) or customer's premises resulting from the furnishing of a service, including but not limited to the installation and removal of equipment and associated wiring, except to the extent caused by a party's gross negligence, willful or intentional misconduct.

D. Each party shall be indemnified, defended and held harmless by the other party against any action, claim, loss, judgment, injury, liability, expense or damage (collectively "Loss") arising from the other party's acts or omissions under this Agreement, including without limitation: 1) claims for libel, slander, invasion of privacy, or infringement of copyright arising from the other party's own communications; 2) claims for patent infringement arising from combining or using the service furnished by one party in connection with facilities or equipment furnished by the other party or the other party's customer; 3) any claim, loss, or damage claimed by a customer of a party arising from services provided by the other party under this Agreement; or 4) all other claims arising out of an act or omission of the other party in the course of using services provided pursuant to this Agreement. Each party's liability to the other for any Loss, including reasonable attorney's fees relating to or arising out of any negligent act or omission in its performance of this Agreement whether in contract or in tort, shall be limited to a credit for the actual cost of the services or functions not performed or improperly performed.

E. A party may, in its sole discretion, provide in its tariffs and contracts with its customers and third parties that relate to any service, product or function provided or contemplated under this Agreement, that to the maximum extent permitted by Applicable Law, such party shall not be liable to the customer or third party for (i) any Loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such party would have charged that applicable person for the service, product or function that gave rise to such Loss and (ii) for Consequential Damages. To the extent that a party elects not to place in its tariffs or contracts such limitations of liability, and the other party incurs a Loss as a result thereof, such party shall indemnify and reimburse the other party for that portion of the Loss that would have been

limited had the first party included in its tariffs and contracts the limitations of liability that such other party included in its own tariffs at the time of such Loss.

F. Neither BellSouth nor Carrier shall be liable for damages to the other's terminal location, POI or other company's customers' premises resulting from the furnishing of a service, including, but not limited to, the installation and removal of equipment or associated wiring, except to the extent caused by a company's negligence or willful misconduct or by a company's failure to properly ground a local loop after disconnection.

G. Under no circumstance shall a party be responsible or liable for indirect, incidental, or consequential damages, including, but not limited to, economic loss or lost business or profits, damages arising from the use or performance of equipment or software, or the loss of use of software or equipment, or accessories attached thereto, delay, error, or loss of data (collectively "Consequential Damages"). In connection with this limitation of liability, each party recognizes that the other party may, from time to time, provide advice, make recommendations, or supply other analyses related to the Services, or facilities described in this Agreement, and, while each party shall use diligent efforts in this regard, the Parties acknowledge and agree that this limitation of liability shall apply to provision of such advice, recommendations, and analyses.

H. The party providing services hereunder, its Affiliates and its parent company, shall be indemnified, defended and held harmless by the party receiving services hereunder against any claim, loss or damage arising from the receiving company's use of the services provided under this Agreement pertaining to (1) claims for libel, slander or invasion of privacy arising from the content of the receiving company's own communications, or (2) any Loss claimed by the customer of the party receiving services arising from such company's use or reliance on the providing company's services, actions, duties, or obligations arising out of this Agreement.

I. Notwithstanding any other provision of this Agreement, claims for damages by Carrier or Carrier's clients or any other person or entity resulting from the gross negligence or willful misconduct of BellSouth shall not be subject to such limitation of liability.

J. Notwithstanding any other provision of this Agreement claims for damages by BellSouth or any other person or entity resulting from the gross negligence or willful misconduct of Carrier shall not be subject to such limitation of liability.

K. Neither party assumes liability for the accuracy of the data provided to it by the other party.

L. No license under patents (other than the limited license to use) is granted by either party to the other party or shall be implied or arise by estoppel, with respect to any service offered pursuant to this Agreement.

M. If the performance of this Agreement, or any obligation hereunder, is prevented, restricted or interfered with by reason of (i) acts of God; (ii) war, revolution, civil commotion, acts of public enemies, acts of terrorism, embargo; (iii) acts of the government in its sovereign capacity; (iv) labor difficulties, including, without limitation, strikes, slowdowns, picketing or boycotts; or (v) any other circumstances beyond the reasonable control and without the fault or negligence of the party affected, the party affected, upon giving prompt notice to the other party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other party shall likewise be excused from performance of its obligations on a day-to-day basis to the extent such party's obligations are related to the performance so prevented, restricted or interfered with); provided, however, that the party so affected shall use its best efforts to avoid or remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease. Nothing herein shall affect a party's right to interruption or other credits for failure or delay in performance.

N. EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES, OR FACILITIES PROVIDED UNDER THIS AGREEMENT. THE PARTIES DISCLAIM, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.

O. The obligations of the parties contained within this section XVI shall survive the expiration of this Agreement.

XVII. Modification of Agreement

A. BellSouth shall make available, pursuant to 47 USC § 252 and the FCC rules and regulations regarding such availability, to Carrier any interconnection, service, or network element provided under any other agreement filed and approved pursuant to 47 USC § 252. The Parties shall adopt all rates, terms and conditions concerning such other interconnection, service, or network element and any other rates, terms and conditions that are interrelated or were negotiated in exchange for or in conjunction with the interconnection, service or network element being adopted. The adopted interconnection, service, or network element and agreement shall apply to the same states as such other agreement and for the identical term of such other agreement.

B. If Carrier changes its name or makes changes to its company structure or identity due to a merger, acquisition, transfer or any other reason, it is the responsibility of Carrier to notify BellSouth of said change and request that an amendment to this Agreement, if necessary, be executed to reflect said change.

C. No modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.

D. Execution of this Agreement by either party does not confirm or infer that the executing party agrees with any decision(s) issued pursuant to the Telecommunications Act of 1996 and the consequences of those decisions on specific language in this Agreement. Neither party waives its rights to appeal or otherwise challenge any such decision(s) and each party reserves all of its rights to pursue any and all legal and/or equitable remedies, including appeals of any such decision(s).

E. In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of Carrier or BellSouth to perform any material terms of this Agreement, Carrier or BellSouth may, on thirty (30) days' written notice require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the Dispute shall be referred to the Dispute Resolution procedure set forth in Section XX.

XVIII. Taxes and Fees

A. Definition: For purposes of this section, the terms "taxes" and "fees" shall include but not be limited to federal, state or local sales, use, excise, gross receipts or other taxes or tax-like fees of whatever nature and however designated (including tariff surcharges and any fees, charges or other payments, contractual or otherwise, for the use of public streets or rights of way, whether designated as franchise fees or otherwise) which are imposed, or sought to be imposed, on or with respect to the services furnished hereunder or measured by the charges or payments therefor.

B. Taxes And Fees Imposed Directly On Either Providing Party Or Purchasing Party.

1. Taxes and fees imposed on the providing party, which are neither permitted nor required to be passed on by the providing party to its customer, shall be borne and paid by the providing party.

2. Taxes and fees imposed on the purchasing party, which are not required to be collected and/or remitted by the providing party, shall be borne and paid by the purchasing party.

C. Taxes And Fees Imposed On Purchasing Party But Collected And Remitted By Providing Party.

1. Taxes and fees imposed on the purchasing party shall be borne by the purchasing party, even if the obligation to collect and/or remit such taxes or fees is placed on the providing party.

2. To the extent permitted by applicable law, any such taxes and fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing party at the time that the respective service is billed.

3. If the purchasing party determines that in its opinion any such taxes or fees are not payable, the providing party shall not bill such taxes or fees to the purchasing party if the purchasing party provides written certification, reasonably satisfactory to the providing party, stating that it is exempt or otherwise not subject to the tax or fee, setting forth the basis therefor, and satisfying any other requirements under applicable law. If any authority seeks to collect any such tax or fee that the purchasing party has determined and certified not to be payable, or any such tax or fee that was not billed by the providing party, the purchasing party shall have the right, at its own expense, to contest the same in good faith, in its own name or on the providing party's behalf. In any such contest, the purchasing party shall promptly furnish the providing party with copies of all filings in any proceeding, protest, or legal challenge, all rulings issued in connection therewith, and all correspondence between the purchasing party and the governmental authority.

4. In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing party during the pendency of such contest, the purchasing party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.

5. If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing party shall pay such additional amount, including any interest and penalties thereon.

6. Notwithstanding any provision to the contrary, the purchasing party shall protect, indemnify and hold harmless (and defend at the purchasing party's expense) the providing party from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the providing party in connection with any claim for or contest of any such tax or fee.

7. Each party shall notify the other party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a governmental authority; such notice to be provided at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

8. The purchasing party shall have the right, at its own expense, to claim a refund or credit, in its own name or on the providing party's behalf, of any such tax or fee that it determines to have paid in error, and the purchasing party shall be entitled to any recovery thereof.

D. Taxes And Fees Imposed On Providing Party But Passed On To Purchasing Party.

1. Taxes and fees imposed on the providing party, which are required to be passed on by the providing party to its customer, shall be borne by the purchasing party.

2. To the extent permitted by applicable law, any such taxes and fees shall be shown as separate items on applicable billing documents between the parties. Notwithstanding the foregoing, the purchasing party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing party at the time that the respective service is billed.

3. If the purchasing party disagrees with the providing party's determination as to the application or basis of any such tax or fee, the parties shall consult with respect to the imposition and billing of such tax or fee and with respect to whether to contest the imposition of such tax or fee. Notwithstanding the foregoing, the providing party shall retain ultimate responsibility for determining whether and to what extent any such taxes or fees are applicable, and the purchasing party shall abide by such determination and pay such taxes or fees to the providing party. The providing party shall further retain ultimate responsibility for determining whether and how to contest the imposition of such taxes or

fees; provided, however, that any such contest undertaken at the request of the purchasing party shall be at the purchasing party's expense.

4. In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing party during the pendency of such contest, the purchasing party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.

5. If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing party shall pay such additional amount, including any interest and penalties thereon.

6. Notwithstanding any provision to the contrary, the purchasing party shall protect, indemnify and hold harmless (and defend at the purchasing party's expense) the providing party from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the providing party in connection with any claim for or contest of any such tax or fee.

7. Each party shall notify the other party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a governmental authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

E. Mutual Cooperation. In any contest of a tax or fee by one party, the other party shall cooperate fully by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest. Further, the other party shall be reimbursed for any reasonable and necessary out-of-pocket copying and travel expenses incurred in assisting in such contest.

XIX. Treatment of Proprietary and Confidential Information

A. It may be necessary for BellSouth and Carrier, each as the "Discloser," to provide to the other party, as "Recipient," certain proprietary and confidential information (including trade secret information) including but not limited to technical, financial, marketing, staffing and business plans and information, strategic information, proposals, request for proposals, specifications, drawings, maps, prices, costs, costing methodologies, procedures, processes, business systems, software programs, techniques, customer account data, call detail

records and like information (collectively the "Information"). All such Information conveyed in writing or other tangible form shall be clearly marked with a confidential or proprietary legend. Information conveyed orally by the Discloser to Recipient shall be designated as proprietary and confidential at the time of such oral conveyance, shall be reduced to writing by the Discloser within forty-five (45) days thereafter, and shall be clearly marked with a confidential or proprietary legend. Notwithstanding the foregoing, all Information in any party's possession that would constitute Customer Proprietary Network Information of the party or the parties' customers pursuant to any federal or state law or the rules and regulations of the FCC or Commission, and any Information developed or received by a party regarding the other party's facilities, services, volumes, or usage shall automatically be deemed confidential Information for all purposes, even if not marked as such, and shall be held confidential as is required for Information.

B. Use and Protection of Information. Recipient agrees to protect such Information of the Discloser provided to Recipient from whatever source from distribution, disclosure or dissemination to anyone except (i) to employees of Recipient with a need to know such Information solely in conjunction with Recipient's analysis of the Information, (ii) to Recipient's attorney and other professionals under a duty to protect client confidences, and (iii) for no other purpose except as authorized herein or as otherwise authorized in writing by the Discloser. Recipient will not make any copies of the Information inspected by it, and shall use the same standard of care to protect Information as it would use to protect is own confidential information.

C. Exceptions. Recipient will not have an obligation to protect any portion of the Information which:

(a) is made publicly available by the Discloser or lawfully by a nonparty to this Agreement; (b) is lawfully obtained by Recipient from any source other than Discloser; (c) is previously known to Recipient without an obligation to keep it confidential; or (d) is released from the terms of this Agreement by Discloser upon written notice to Recipient.

D. Recipient agrees to use the Information solely for the purposes of negotiations pursuant to 47 U.S.C. 251 or in performing its obligations under this Agreement and for no other entity or purpose, except as may be otherwise agreed to in writing by the Parties. Nothing herein shall prohibit Recipient from providing information requested by the Federal Communications Commission or a state regulatory agency with jurisdiction over this matter, or to support a request for arbitration or an allegation of failure to negotiate in good faith. Furthermore, a Recipient may also disclose all Information it is required or ordered to disclose by law, a court, or governmental agency, as long as the Discloser has been notified of the required disclosure within a reasonable time

after the Recipient becomes aware of its requirement to disclose. The Recipient required to disclose the Information shall take all lawful measures to avoid disclosing the Information called for until the Discloser of the Information has had a reasonable time to seek and comply with a protective order issued by a court or governmental agency of competent jurisdiction that with respect to the Information otherwise required to be disclosed.

E. Recipient agrees not to publish or use the Information for any advertising, sales promotions, press releases, or publicity matters that refer either directly or indirectly to the Information or to the Discloser or any of its affiliates.

F. The disclosure of Information neither grants nor implies any license to the Recipient under any trademark, patent, copyright, or application which is now or may hereafter be owned by the Discloser.

G. Survival of Confidentiality Obligations. The Parties' rights and obligations under this Section XIX shall survive and continue in effect until two (2) years after the expiration or termination date of this Agreement with regard to all Information exchanged during the term of this Agreement. Thereafter, the Parties' rights and obligations hereunder survive and continue in effect with respect to any Information that is a trade secret under applicable law.

XX. Resolution of Disputes

Except as otherwise stated in this Agreement, if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the parties will initially refer the issue to the appropriate company representatives. If the issue is not resolved within 30 days, either party may petition the Commission for a resolution of the dispute, or to the extent that the Commission does not have jurisdiction or declines to review the dispute, then the FCC. However, each party reserves the right to seek judicial or FCC review of any ruling made by the Commission concerning this Agreement.

XXI. Waivers

Any failure or delay by either party to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and each party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

XXII. Assignment

Any assignment by either arty to any non-Affiliated entity of any right, obligation or duty, or of any other interest hereunder, in whole or in part, without the prior written consent

of the other party shall be void. A party may assign this Agreement or any right, obligation, duty or other interest hereunder to an Affiliate of the party without the consent of the other party; provided, however, that the assigning party shall notify the other party in writing of such assignment thirty (30) days prior to the Effective Date thereof. The Parties shall amend this Agreement to reflect such assignments and shall work cooperatively to implement any changes required due to such assignment. All obligations and duties of any party under this Agreement shall be binding on all successors in interest and assigns of such party. No assignment or delegation hereof shall relieve the assignor of its obligations under this Agreement in the event that the assignee fails to perform such obligations.

XXIII. Amendment

This Agreement may not be amended in any way except upon written consent of the parties.

XXIV. Severability

In the event that any provision of this Agreement shall be held invalid, illegal, or unenforceable, it shall be severed from the Agreement and the remainder of this Agreement shall remain valid and enforceable and shall continue in full force and effect; provided however, that if any severed provisions of this Agreement are essential to any party's ability to continue to perform its material obligations hereunder, the parties shall immediately begin negotiations of new provisions to replace the severed provisions.

XXV. Survival

Any liabilities or obligations of a party for acts or omissions prior to the cancellation or termination of this Agreement, any obligation of a party under the provisions regarding indemnification, confidential information, limitations of liability and any other provisions of this Agreement which, by their terms, are contemplated to survive (or be performed after) termination of this Agreement, shall survive expiration or termination thereof for a period of two (2) years.

XXVI. Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the state in which service is provided, without regard to its conflict of laws principles, and the Communications Act of 1934 as amended by the Act.

XXVII. Arm's Length Negotiations

This Agreement was executed after arm's length negotiations between the undersigned parties and reflects the conclusion of the undersigned that this Agreement is in the best interests of all parties.

XXVIII. Filing of Agreement

Upon execution of this Agreement it shall be filed with the appropriate state regulatory agency pursuant to the requirements of Section 252 of the Act. If the regulatory agency imposes any filing or public interest notice fees regarding the filing or approval of the Agreement, Carrier shall be responsible for publishing the required notice and the publication and/or notice costs shall be borne by Carrier.

XXIX. Notices

A. Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered in person, via overnight mail, or given by postage prepaid mail, address to:

BellSouth Telecommunications, Inc.
675 W. Peachtree St. N.E.
Suite 4300
Atlanta, Georgia 30375
Attn: Legal Dept. "Wireless " Attorney

CC: Randy Ham, Director Wireless Interconnection

T-Mobile USA, Inc.

12920 SE 38th St.
Bellevue, WA 98006
ATTN: General Counsel
CC: Carrier Management

or at such other address as the intended recipient previously shall have designated by written notice to the other party.

B. Where specifically required, notices shall be by certified or registered mail. Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails; and by overnight mail, the day after being sent.

C. Except as otherwise provided in this Agreement, "writing" or "written" may mean electronic (including E-mail transmissions where receipt is acknowledged by the recipient, but excluding voice-mail), or hard copy, including by facsimile

(with acknowledgment of receipt from the recipient's facsimile machine) unless otherwise stated.

XXX. Headings of No Force or Effect

The headings of Articles and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

XXXI. Multiple Counterparts

This Agreement may be executed multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document. A facsimile copy of a party's execution of this Agreement shall be valid and binding upon the party and must be followed as soon as practicable thereafter by the original version of such execution.

XXXII. Entire Agreement

This Agreement, together with its preamble, recitals and all its Attachments (incorporated herein by this reference), all of which, when taken together, are intended to constitute one indivisible agreement. This Agreement sets forth the entire understanding and supersedes prior agreements between the parties relating to the subject matter contained herein and merges all prior discussions between them. Neither party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise, pre-printed form or other instrument, other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the party to be bound thereby. In the event of any conflict between the term(s) of this Agreement and those of an applicable tariff, the terms of this Agreement shall control.

XXXIII. No Joint Venture

The parties are independent contractors and nothing herein shall be construed to imply that they are partners, joint venturers or agents of one another.

XXXIV. Remedies Cumulative

Except as otherwise expressly provided in this Agreement, each of the remedies provided under this Agreement is cumulative and is in addition to any remedies that may be available at law or in equity.

XXXV. No Third Party Beneficiaries

Except as may be specifically set forth in this Agreement, this Agreement does not provide and shall not be construed to provide any person not a party or proper assignee or successor hereunder with any beneficial interest, remedy, claim, liability, reimbursement, cause of action, or other privilege arising under or relating to this Agreement.

XXXVI. References to Other Documents

Whenever any provision of this Agreement refers to a technical reference, technical publication, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement, it will be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) or such documents that is in effect, and will include the most recent version or edition (including any amendments, supplements, addenda, or successors) or each document incorporated by reference in such a technical reference, technical publication, or publication of industry standards. Should there be an inconsistency between or among publications or standards or if there is a bona-fide dispute as to what is the most recent version or edition, the parties shall mutually agree upon which requirement shall apply.

XXXVII. Miscellaneous

References to the "Term" include any extensions thereto.

WHEREFORE, the parties have caused this Agreement to be executed by their duly appointed representatives as follows:

BellSouth Telecommunications, Inc.	**T-Mobile USA, Inc.**
By: signature on file	By: signature on file
Name: Randy J. Ham	Name: Abdul Saad
Title: Assistant Director – Wireless Interconnection	Title: Vice President-Systems Engr. & Netwrk. Opns.
Date: 5/8/03	Date: 5/2/03

Attachment A

AFFILIATES

VoiceStream GSM I Operating Company, LLC

VoiceStream GSM II Holdings, LLC

VoiceStream Houston, Inc. fka Aerial Houston, Inc.

VoiceStream PCS BTA I Corporation

Cook Inlet/VS GSM IV PCS, LLC

Powertel/Birmingham, Inc.

Powertel/Memphis, Inc.

Powertel/Kentucky, Inc.

Powertel/Atlanta, Inc.

Powertel, Inc.

VoiceStream Tampa/Orlando, Inc. fka Aerial Tampa/Orlando, Inc.

VoiceStream Central Communications, Inc. f/k/a Aerial Communications, _Inc.

Omnipoint Holdings, Inc.

Powertel/Jacksonville, Inc.

Eliska Wireless Venture I, Inc. f/k/a Digiph PCS, Inc.

Attachment B-1

CMRS Local Interconnection Rates
(All rates are Per Minute of Use)

Effective date through June 14, 2003	
Type 1 (End Office Switched)	$.0010
Type 2A (Tandem Switched)	$.0010
Type 2B Dedicated End Office)	$.0010
June 15, 2003 through June 14, 2004	
(If such dates are applicable during the term of this Agreement)	
Type 1 (End Office Switched)	$.0007
Type 2A (Tandem Switched)	$.0007
Type 2B Dedicated End Office)	$.0007

Attachment B-2

Type 1, Type 2A, & 2B Mobile To Land Trunk Usage
(All Rates are Per Voice Grade Trunk)

Mobile originated IntraMTA traffic over Type 1, Type 2A and Type 2B trunks, which terminate at BellSouth Tandems (Local or Access) and/or BellSouth End Offices, without recording capability, may be billed in either of two ways. Carrier may choose to either be billed a surrogate usage rate, on a per voice grade trunk basis, for mobile originated Traffic completed over one-way outward or two way trunks or may choose to provide Traffic data in a company prescribed format to be used for billing purposes. Carriers' provided Traffic data will be billed at the rates prescribe in Attachment B-1. If the Carrier chooses to provide Traffic data, then the detail level provided must be in accordance with BellSouth reasonable requirements. Traffic data must be provided no more that 30 days in arrears from the close of the normal billing cycle. If the Traffic data is not received in the BellSouth prescribed format in the specified time period, the surrogate usage rate set forth in this Attachment will be applied. Surrogate Usage for IntraMTA mobile originated Traffic, which terminates in BellSouth's local service area, shall be billed at a per voice grade trunk level rate as follows:

	Type 1	TYPE 2A	Type 2B
All BellSouth States			
Effective Date Thru June 14, 2003	$13.00	$13.00	$13.00
June 15, 2003 Thru June 14, 2004 (If such dates are applicable during the term of this Agreement)	$9.10	$9.10	$9.10

AMENDMENT
TO THE
AGREEMENT BETWEEN
T-MOBILE USA, INC.
AND
BELLSOUTH TELECOMMUNICATIONS, INC.
DATED MAY 1, 2003

Pursuant to this Amendment, (the "Amendment"), T-Mobile USA, Inc. ("T-Mobile"), and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to collectively as the "Parties", hereby agree to amend that certain Interconnection Agreement between the Parties dated May 1, 2003 ("Agreement").

WHEREAS, BellSouth and T-Mobile entered into the Agreement on May 1, 2003, and;

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. Attachment A of the Agreement is hereby deleted in its entirety and replaced with a new Attachment A as set forth in Exhibit 1 to this Amendment, incorporated herein by this reference.

2. All of the other provision of the Agreement, dated May 1, 2003, shall remain in full force and effect.

3. Either or both of the Parties is authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below.

BellSouth Telecommunications, Inc.

By: _____

Name: Randy J. Ham

Title: Assistant Director – Wireless Interconnection

Date: 3/3/04

T-Mobile USA, Inc.

By: _____

Name: Dave Mayo

Title: ~~Vice President, Finance & Planning~~ Engineering & Technical Operations

Date: 3/1/04

ATTACHMENT A

KNLF620	B042- C3	Biloxi-Gulfport-Pascagoula, MS	Eliska Wireless Ventures License Subsidiary I, L.L.C.
KNLF621	B154 - C	Fort Walton Beach, FL	Eliska Wireless Ventures License Subsidiary I, L.L.C.
KNLF622	B186 - C	Hattiesburg, MS	Eliska Wireless Ventures License Subsidiary I, L.L.C.
KNLF623	B246 - C	Laurel, MS	Eliska Wireless Ventures License Subsidiary I, L.L.C.
KNLF624	B292 - C1	Meridian, MS	Eliska Wireless Ventures License Subsidiary I, L.L.C.
KNLF618	B302 - C	Mobile, AL	Eliska Wireless Ventures License Subsidiary I, L.L.C.
KNLF619	B343 - C	Pensacola, FL	Eliska Wireless Ventures License Subsidiary I, L.L.C.
KNLG925	B269 - F	McComb-Brookhaven, MS	Eliska Wireless Ventures License Subsidiary I, L.L.C.
KNLG369	B009 - F	Alexandria, LA	Eliska Wireless Ventures License Subsidiary I, L.L.C.
KNLF222	M011 - B	Atlanta, GA	Powertel Atlanta Licenses, Inc.
KNLF258	M029 - B	Birmingham, AL	Powertel Birmingham Licenses, Inc.
KNLF273	M037 - A	Jacksonville, FL	Powertel Jacksonville Licenses, Inc.
WPXE651	M015 - A6	Miami-Ft. Lauderdale, FL	Powertel Jacksonville Licenses, Inc.
WPXE650	M017 - A2	New Orleans- Baton Rouge, LA	Powertel Jacksonville Licenses, Inc.
KNLF517	B320 - A	New Orleans - Baton Rouge, LA	LA CVIS IV License Sub 1, LLC
WPXE649	B152 - A	Ft. Pierce, FL	VoiceStream Tampa/Orlando, Inc.
KNLH402	B052 - D	Bowling Green-Glasgow, KY	Powertel Kentucky Licenses, Inc.
KNLH403	B052 - E	Bowling Green-Glasgow, KY	Powertel Kentucky Licenses, Inc.
KNLH416	B083 -D	Clarksville, TN	Powertel Kentucky Licenses, Inc.
KNLH417	B083 - E	Clarksville, TN	Powertel Kentucky Licenses, Inc.
KNLH408	B098 - D	Corbin, KY	Powertel Kentucky Licenses, Inc.
KNLH409	B098 - E	Corbin, KY	Powertel Kentucky Licenses, Inc.
KNLH400	B135 - D	Evansville, IN	Powertel Kentucky Licenses, Inc.
KNLH401	B135 - E	Evansville, IN	Powertel Kentucky Licenses, Inc.
KNLH398	B252 - D	Lexington, KY	Powertel Kentucky Licenses, Inc.
KNLH399	B252 - E	Lexington, KY	Powertel Kentucky Licenses, Inc.
KNLG209	B263 - D	Louisville, KY	Powertel Kentucky Licenses, Inc.
KNLH397	B263 - E	Louisville, KY	Powertel Kentucky Licenses, Inc.
KNLH412	B273 - D	Madisonville, KY	Powertel Kentucky Licenses, Inc.
KNLH413	B273 - E	Madisonville, KY	Powertel Kentucky Licenses, Inc.
KNLH406	B338 - D	Owensboro, KY	Powertel Kentucky Licenses, Inc.
KNLH407	B338 - E	Owensboro, KY	Powertel Kentucky Licenses, Inc.
KNLH404	B339 - D	Paducah-Murray-Mayfield, KY	Powertel Kentucky Licenses, Inc.
KNLH405	B339 - E	Paducah-Murray-Mayfield, KY	Powertel Kentucky Licenses, Inc.
KNLH410	B423 - D	Somerset, KY	Powertel Kentucky Licenses, Inc.
KNLH411	B423 - E	Somerset, KY	Powertel Kentucky Licenses, Inc.
KNLH420	B232 -E	Knoxville, TN	Powertel Knoxville Licenses, Inc.
KNLF255	M028 - A	Memphis-Jackson, KY	Powertel Memphis Licenses, Inc.

KNLH418	B096 – D	Cookeville, TN	Powertel Nashville Licenses, Inc.
KNLH419	B096 - E	Cookeville, TN	Powertel Nashville Licenses, Inc.
KNLH414	B314 - D	Nashville, TN	Powertel Nashville Licenses, Inc.
KNLH415	B314 - E	Nashville, TN	Powertel Nashville Licenses, Inc.
WPVN593	M015 - A4	Naples, FL	VoiceStream Houston, Inc.
KNLF978	B293 - E	Miami-Ft. Lauderdale, FL	Omnipoint Miami E License, LLC
WPXE649	M015 - A8	Miami-Ft. Lauderdale, FL	VoiceStream Tampa/Orlando, Inc.
KNLF979	B293 - F	Miami-Ft. Lauderdale, FL	VoiceStream GSM II, LLC
KNLG277	B408 - F	Sarasota-Bradenton, FL	VoiceStream GSM II, LLC.
KNLF225	M013 - A	Tampa-St. Petersburg-Orlando, FL	VoiceStream Tampa/Orlando, Inc.
KNLF980	B469 - F	West Palm Beach-Boca Raton, FL	VoiceStream GSM II, LLC
KNLG724	B469 - E	West Palm Beach-Boca Raton, FL	Omnipoint Holdings, Inc.
WPWR849	B357 - A4	Portland-Brunswick, ME	VoiceStream Tampa/Orlando, Inc.
WPXE649	B151 - A	Fort Myers, FL	VoiceStream Tampa/Orlando, Inc.
WPOJ732	B032 - C	Baton Rouge, LA	VoiceStream GSM I, LLC
KNLG288	B044 - D	Birmingham, AL	VoiceStream GSM II, LLC
KNLF968	B125 - E	El Dorado-Magnolia-Camden, AR	Omnipoint Little Rock-El Dorado E License, LLC
WPOJ734	B125 - C	El Dorado-Magnolia-Camden, AR	VoiceStream GSM I, L.L.C.
WPUD910	B147 - C3	Florence, SC	VoiceStream PCS BTA I License Corporation
KNLH746	B153 - D	Fort Smith, AR	VoiceStream PCS BTA I License Corporation
KNLG729	B152 - F	Ft. Pierce-Vero Beach-Stuart FL	Cook Inlet/VS GSM IV PCS, LLC
KNLF951	B158 - F	Gadsden, AL	VoiceStream GSM II, LLC
WPUD912	B178-C4	Greenwood, SC	VoiceStream PCS BTA I License Corporation
WPUD911	B177-C4	Greenville-Spartanburg, SC	VoiceStream PCS BTA I License Corporation
WPOJ736	B180 - C	Hammond, LA	VoiceStream GSM I, L.L.C.
KNLH748	B182 - D	Harrison, AR	VoiceStream PCS BTA I License Corporation
KNLG759	B193 - D	Hot Springs, AR	VoiceStream PCS BTA I License Corporation
KNLF504	B195 - C1-15	Houma-Thibodaux LA	CIVS IV License Sub I, LLC
KNLF952	B198 - F	Huntsville, AL	VoiceStream GSM II, LLC
KNLG810	B219 - E	Jonesboro-Paragould, AR	VoiceStream PCS BTA I License Corporation
WPOJ738	B236 - C	Lafayette-New Iberia, LA	VoiceStream GSM I, LLC
KNLG766	B257 - D	Little Rock, AR	VoiceStream PCS BTA I License Corporation
WPSF245	MTA040 -A4	Little Rock, AR	Omnipoint Holdings, Inc.
KNLF947	B271 - F	Macon-Warner Robins, GA	VoiceStream GSM II, LLC
WPOJ808	B304 - C2	Monroe. LA (C2-15)	Cook Inlet/VS GSM VI PCS, LLC
WPUD913	BTA312 - C4	Myrtle Beach, SC	VoiceStream PCS BTA I License Corporation
KNLG777	B348 - D	Pine Bluff, AR	VoiceStream PCS BTA I License Corporation
KNLH347	B367 - E	Quincy, IL-Hannibal, MO	Omnipoint Wichita-E. Hutchinson E License, LLC
KNLG779	B367 - D	Quincy, IL-Hannibal, MO	VoiceStream PCS BTA I License Corporation
KNLG830	B387 - E	Russellville, AR	VoiceStream PCS BTA I License Corporation
KNLF948	B410 - F	Savannah, GA	VoiceStream GSM II, LLC

SECOND AMENDMENT
TO THE
INTERCONNECTION AGREEMENT BETWEEN
BELLSOUTH TELECOMMUNICATIONS, INC.
AND
T-MOBILE USA, INC.
DATED MAY 1, 2003

Pursuant this Amendment, (the "Amendment") and BellSouth Telecommunications, Inc., and T-Mobile USA, Inc. hereinafter referred to collectively as the "Parties," hereby agree to amend that certain Interconnection Agreement between the Parties dated May 1, 2003.

WHEREAS, the BellSouth Telecommunications, Inc. and T-Mobile USA, Inc. entered into the Agreement on May 1, 2003; and

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. The Parties agree to delete all references to the state of Louisiana from this Agreement.

2. The Parties agree to delete subsection A. of Section III., Term of the Agreement and replace it with the following:

   A. The term of this Agreement shall be the Effective Date as set forth above and shall expire as of November 1, 2006. The Agreement shall apply to the BellSouth territory in the states of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee.

3. The Parties agree to delete subsection C of Section III., Term of the Agreement and replace it with the following:

   C. Either Party's request under this Section will, for purposes, be treated as a request under Section 252 of the Act for negotiation received by an incumbent local exchange carrier and will begin the process of voluntary negotiations. If, as of the expiration of this Agreement, a Subsequent Agreement has not been executed by the Parties, this Agreement shall continue in full force and effect, on a month-to-month basis, while the Parties are within negotiation/arbitration process outlined in Section 252 of the Telecommunications Act, as may be amended. If the Section 252 process is abandoned, then this Agreement shall automatically renew for additional six (6) month term, unless either Party provides written notice of termination to

the other Party at least sixty (60) days prior to the end of the then-current term.

4. The Parties agree to delete subsection C. of Section VII., Non-Local Traffic Interconnection and replace it with the following:

C. If Non-Local Traffic originated by Carrier is delivered by BellSouth for termination to the network of a third party telecommunications carrier that is uniquely identifiable ("Third Party Carrier"), then BellSouth will bill Carrier and Carrier shall pay a $.003 per minute intermediary charge for such Intermediary Traffic in addition to any charges that BellSouth may be obligated to pay to the Third Party Carrier (collectively called "Third Party Termination Charges"). Third Party Termination Charges may change during the term of this Agreement, and the appropriate rate shall be the rate in effect when the traffic is terminated. The Parties agree the percentage of Non-Local Traffic delivered to BellSouth by Carrier shall be subject to Intermediary Charges and Third Party Termination Charges. BellSouth shall not deliver Intermediary Traffic to Carrier for termination to a Third Party Carrier, and therefore, Carrier shall not bill BellSouth any intermediary charges. Intermediary Traffic transiting BellSouth's network to Carrier is not Local Traffic and Carrier shall not bill BellSouth for Intermediary Traffic transiting BellSouth's network. In addition, Carrier shall not bill BellSouth for Traffic received by BellSouth from an interexchange carrier for delivery to Carrier.

5. The Parties agree to delete subsection F. of Section VIII., Meet Point Billing and replace it with the following:

F. Exchange of records will begin no earlier than ninety (90) days from the later of the date the contract is signed or the date that all necessary information as defined in Section VII.B. above is provided. Once Carrier sets up MPB arrangements for Intermediary Traffic, Intermediary Traffic will be subject to only the $.003 per minute Intermediary Charge (or such other rate ordered by the state), and Third Party Termination Charge shall not apply. Notwithstanding the foregoing, in the event a Third Party Carrier continues to charge BellSouth for Carriers' Intermediary Traffic, Carrier agrees to keep BellSouth whole for such traffic as stipulated in Section VII.C. above. MPB as described in this Section VIII anticipates that Carrier will enter into interconnection or traffic exchange agreements with Third Party Carriers who terminate traffic originated by Carrier. Carrier will be liable to BellSouth for any charges, costs and fees BellSouth may incur delivering Carrier's Intermediary Traffic.

6. All of the other provisions of the Interconnection Agreement, dated May 1, 2003, shall remain in full force and effect.

7. Either or both of the Parties is authorized to submit this Amendment to each Public Service Commission for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

Signature Page
CMRS0043

IN WITNESS WHEREOF, the Parties have executed this Amendment the day and year written below.

BellSouth Telecommunications, Inc.

By: Randy J. Ham

Name: Randy J. Ham

Title: Assistant Director - Wireless Interconnection

Date: 4/30/06

T-Mobile USA, Inc.

By:

Name: Dave Mayo

Title: VP Eng + Ops. Finance & Planning

Date: 04/30/2006

CKS

Amendment to the Agreement
Between
T-Mobile USA, Inc.
and
BellSouth Telecommunications, Inc.,
d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky,
AT&T Mississippi, AT&T North Carolina, AT&T South Carolina
and AT&T Tennessee
Effective May 1, 2003

Pursuant to this Amendment, (the "Amendment"), T-Mobile, USA, Inc. ("T-Mobile") and BellSouth Telecommunications, Inc., now d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina and AT&T Tennessee (collectively, "AT&T"), hereinafter referred to collectively as the "Parties", hereby agree to amend that certain Interconnection Agreement between the Parties effective May 1, 2003 (the "Agreement").

WHEREAS, AT&T and T-Mobile entered into the Agreement effective May 1, 2003, and:

WHEREAS, the Parties desire to amend the Agreement in order to extend the term of the Agreement:

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. The term of the Agreement shall be extended three (3) years from the date of T-Mobile's extension request to January 7, 2011.

2. EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.

3. In entering into this Amendment, neither Party waives, and each Party expressly reserves, any rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in the underlying Agreement (including intervening law rights asserted by either Party via written notice predating this Amendment) with respect to any orders, decisions, legislation or proceedings and any remands thereof, which the Parties may have not yet incorporated into the Agreement or which may be the subject of further review.

4. This Amendment shall be filed with and is subject to approval by the respective State Commissions in which the Agreement has been filed and approved; this Amendment shall be effective upon approval by the respective State Commissions (the "Effective Date").

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below.

BellSouth Telecommunications, Inc. ,
by AT&T Operations, Inc., its authorized agent.

By: Kathy Wilson-Chu

Name: Kathy Wilson-Chu

Title: Director

Date: 4/21/08

T-Mobile, USA, Inc.

By:

Name: Dave Wayne
Vice President - Engineering
Finance/Strategy & Development

Title:

Date:

T-Mobile Legal Approval By:

4-2-05

Amendment to the Agreement
Between
T-Mobile USA, Inc.
and
BellSouth Telecommunications, Inc.,
d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky,
AT&T Mississippi, AT&T North Carolina, AT&T South Carolina
and AT&T Tennessee
Effective May 1, 2003

Pursuant to this Amendment, (the "Amendment"), T-Mobile, USA, Inc. ("T-Mobile") and BellSouth Telecommunications, Inc., now d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina and AT&T Tennessee (collectively, "AT&T"), hereinafter referred to collectively as the "Parties", hereby agree to amend that certain Interconnection Agreement between the Parties effective May 1, 2003 (the "Agreement").

WHEREAS, AT&T and T-Mobile entered into the Agreement effective May 1, 2003, and:

WHEREAS, the Parties desire to amend the Agreement to update the affiliates listed in Attachment A;

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. Delete from the Agreement Attachment A and replace with Attachment A to this Amendment, which is incorporated herein by reference:

2. EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.

3. In entering into this Amendment, neither Party waives, and each Party expressly reserves, any rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in the underlying Agreement (including intervening law rights asserted by either Party via written notice predating this Amendment) with respect to any orders, decisions, legislation or proceedings and any remands thereof, which the Parties may have not yet incorporated into the Agreement or which may be the subject of further review.

4. This Amendment shall be filed with and is subject to approval by the respective State Commissions in which the Agreement has been filed and approved; this Amendment shall be effective the date of the last signature executing the amendment (the "Effective Date").

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below.

BellSouth Telecommunications, Inc.,
by AT&T Operations, Inc.,
its authorized agent.

By: _____

Name: Eddie A. Reed, Jr.

Title: Director - Interconnection Agreements

Date: 12-15-08

T-Mobile USA, Inc.

By: _____

Name: **Dave Mayo**

Title: **Vice President - Engineering Finance,Strategy & Development**

Date: _____

T-Mobile Legal Approval By:

10-25-08

Attachment A

AFFILIATES

T-Mobile South LLC
Powertel/Memphis, Inc.
SunCom Wireless Operating Company, L.L.C.

AT&T Wholesale Amendment

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 12
PARTY Bellsouth Tel., LLC d/b/a AT&T Florida (AT&T) - Direct
DESCRIPTION J. Scott McPhee (JSM-5)
DATE 07/12/12

AMENDMENT TO THE AGREEMENT BETWEEN HALO WIRELESS, INC. AND BELLSOUTH TELECOMMUNICATIONS, INC., D/B/A AT&T ALABAMA, AT&T FLORIDA, AT&T GEORGIA, AT&T KENTUCKY, AT&T MISSISSIPPI, AT&T NORTH CAROLINA, AT&T SOUTH CAROLINA AND AT&T TENNESSEE

This Amendment (the "Amendment") amends the Interconnection Agreement by and between BellSouth Telecommunications, Inc., d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina and AT&T Tennessee (collectively, "AT&T") and Halo Wireless, Inc. ("Carrier"). AT&T and Carrier are hereinafter referred to collectively as the "Parties" and individually as a "Party".

WHEREAS, AT&T and Carrier are Parties to an Interconnection Agreement under Sections 251 and 252 of the Communications Act of 1934, as amended (the "Act"), dated _____, ____; and

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth herein, the Parties agree to amend the Agreement as follows:

1. The Parties agree to add the following language after the second "Whereas" clause:

   Whereas, the Parties have agreed that this Agreement will apply only to (1) traffic that originates on AT&T's network or is transited through AT&T's network and is routed to Carrier's wireless network for wireless termination by Carrier; and (2) traffic that originates through wireless transmitting and receiving facilities before Carrier delivers traffic to AT&T for termination by AT&T or for transit to another network.

2. EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE UNDERLYING AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.

3. This Amendment shall not modify or extend the Effective Date or Term of the underlying Agreement, but rather, shall be coterminous with such Agreement.

4. In entering into this Amendment, neither Party waives, and each Party expressly reserves, any rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in the underlying Agreement (including intervening law rights asserted by either Party via written notice predating this Amendment) with respect to any orders, decisions, legislation or proceedings and any remands thereof, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further review.

5. This Amendment shall be filed with and is subject to approval by the respective State Commissions and shall become effective ten (10) days following approval by such Commissions.

Halo Wireless, Inc.

By: Todd Wallace

Name: Todd Wallace

Title: CTO

Date: 3-29-2010

BellSouth Telecommunications, Inc., d/b/a AT&T Alabama, d/b/a AT&T Florida, d/b/a AT&T Georgia, d/b/a AT&T Kentucky, d/b/a AT&T Mississippi, d/b/a AT&T North Carolina, d/b/a AT&T South Carolina, d/b/a AT&T Tennessee; by AT&T Operations, Inc., their authorized agent

By:

Name: Eddie A. Reed, Jr.

Title: Director-Interconnection Agreements

Date: 4.5.10

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 13
PARTY Bellsouth Tel., LLC d/b/a AT&T Florida (AT&T) - Direct
DESCRIPTION J. Scott McPhee (JSM-6)
DATE 07/12/12

McCOLLOUGH|HENRY PC

dotLAW.biz
W. Scott McCollough
1250 South Capital of Texas Highway, Bldg 2-235
West Lake Hills, Texas 78746
Phone: 512.888.1112
Fax: 512.692.2522
wsmc@dotlaw.biz

BOARD CERTIFIED Administrative Law

August 12, 2011

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Room TWB-204
Washington, DC 20554

Ex Parte Notice

RE: *Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-State Board on Universal Service*, CC Docket No. 96-45

Dear Ms. Dortch:

Halo Wireless, Inc. hereby gives notice that it met with the Commission persons identified below on August 10, 2011. The Halo representatives were Russ Wiseman, Halo's President and Chief Operating Officer, counsel Steven Thomas of McGuire, Craddock & Strother, P.C and counsel W. Scott McCollough of McCollough|Henry, P.C. The Commission participants were:

Wireline Competition Bureau: Randy Clarke, Travis Litman, John Hunter, Al Lewis, Richard Hovey, Rebekah Goodheart and Marcus Maher

Wireless Telecommunications Bureau: Joseph Levin

Enforcement Bureau: Margaret Dailey

The purpose of the meeting was to introduce Halo to the Commission, describe Halo's operations and to respond to certain assertions made by various RLECs in recent filings and meetings with the Commission in the context of the above-cited proceedings. Halo distributed the attached document that served as the basis for discussion during the meeting.

Sincerely,

W. Scott McCollough
Counsel for Halo Wireless, Inc.

Halo wireless

FCC Meeting

Wireline Competition Bureau and Wireless Telecommunications Bureau

Halo Wireless, Inc.

Connect America Fund, WC Docket No. 10-90
A National Broadband Plan for Our Future, GN Docket No. 09-51
Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135
High-Cost Universal Service Support, WC Docket No. 05-337
Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92
Federal-State Board on Universal Service, CC Docket No. 96-45

August 10, 2011

Halo wireless

FCC Meeting August 10, 2011

Agenda

- Introduce Halo representatives
- Provide FCC staff an overview of Halo Wireless, Inc.
- Address questions and allegations raised by ILECs in state complaints
- Q&A

Halo wireless

FCC Meeting August 10, 2011

Halo Wireless has built an all IP network, presently in 28 markets across the U.S., using 3.65 Ghz spectrum and 802.16(e) Wi-Max wireless access technology

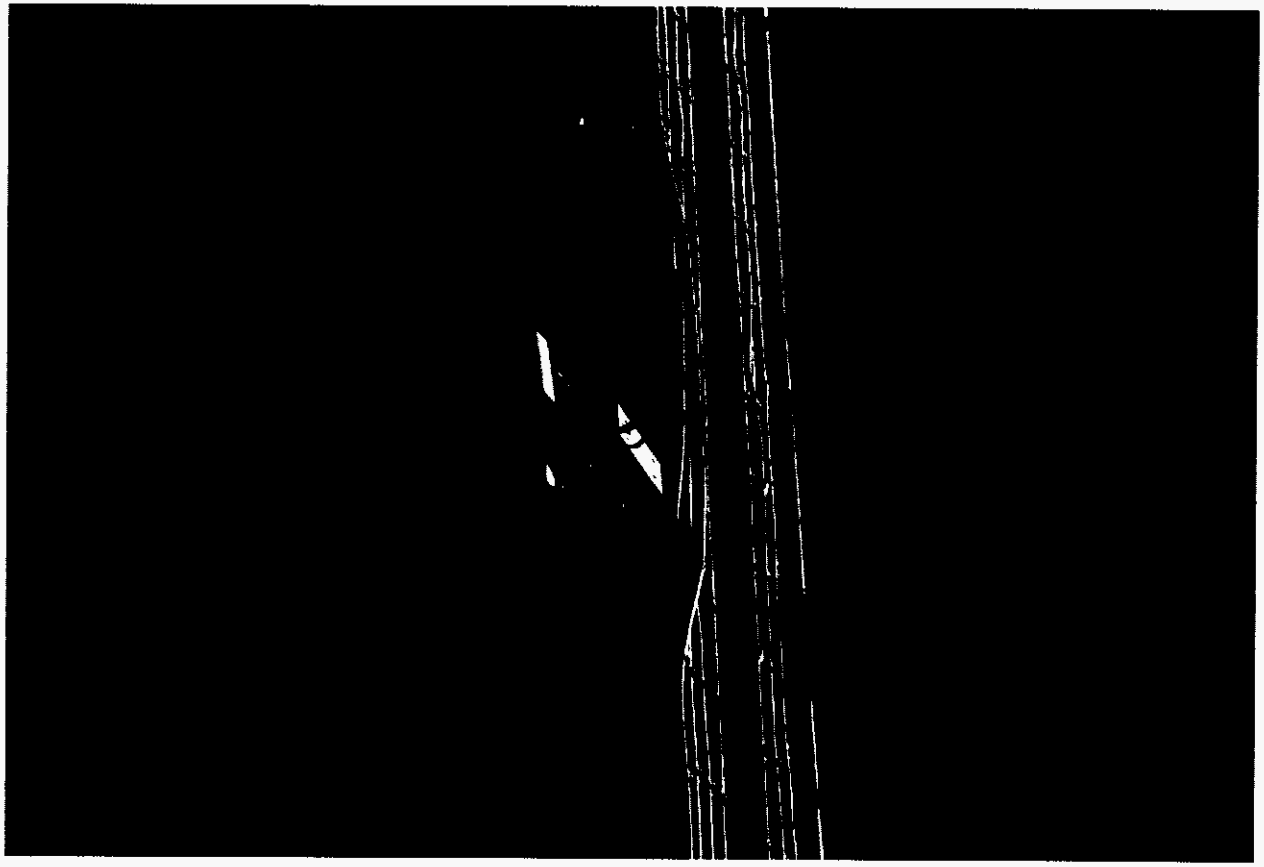
MTA	Tower Locations
LA	**Amargosa Valley, NM**
San Francisco	Tulare, CA
Chicago	**Danville, IL**
Detroit	Britton, MI
Charlotte	**Orangeburg, SC**
Dallas-Fort Worth	Tyler, TX
Atlanta	**Cartersville, GA**
Tampa-Orlando	Palm Coast, FL
Houston	**Brenham, TX**
Southeast FL	Bonita Springs, FL
New Orleans	**Hammond, LA**
Cleveland	Huntsburg, OH
Cincinnati-Dayton	**Wilmington, OH**
St Louis	Wentzville, MO

MTA	Tower Locations
Milwaukee	**New Glarus, WI**
Louisville	Paducah, KY
Memphis-Jackson	**Greenville, MS**
Birmingham	Graysville, AL
Indianapolis	**Portland, IN**
San Antonio	Pleasanton, TX
Kansas City	**Junction City, KS**
Jacksonville	Green Cove Springs, FL
Columbus	**Carroll, OH**
Little Rock	Van Buren, AR
OKC	**Henryetta, OK**
Nashville	Gainesboro, TN
Knoxville	**Amherst, TN**
Tulsa	Enid, OK

Halo wireless

FCC Meeting August 10, 2011

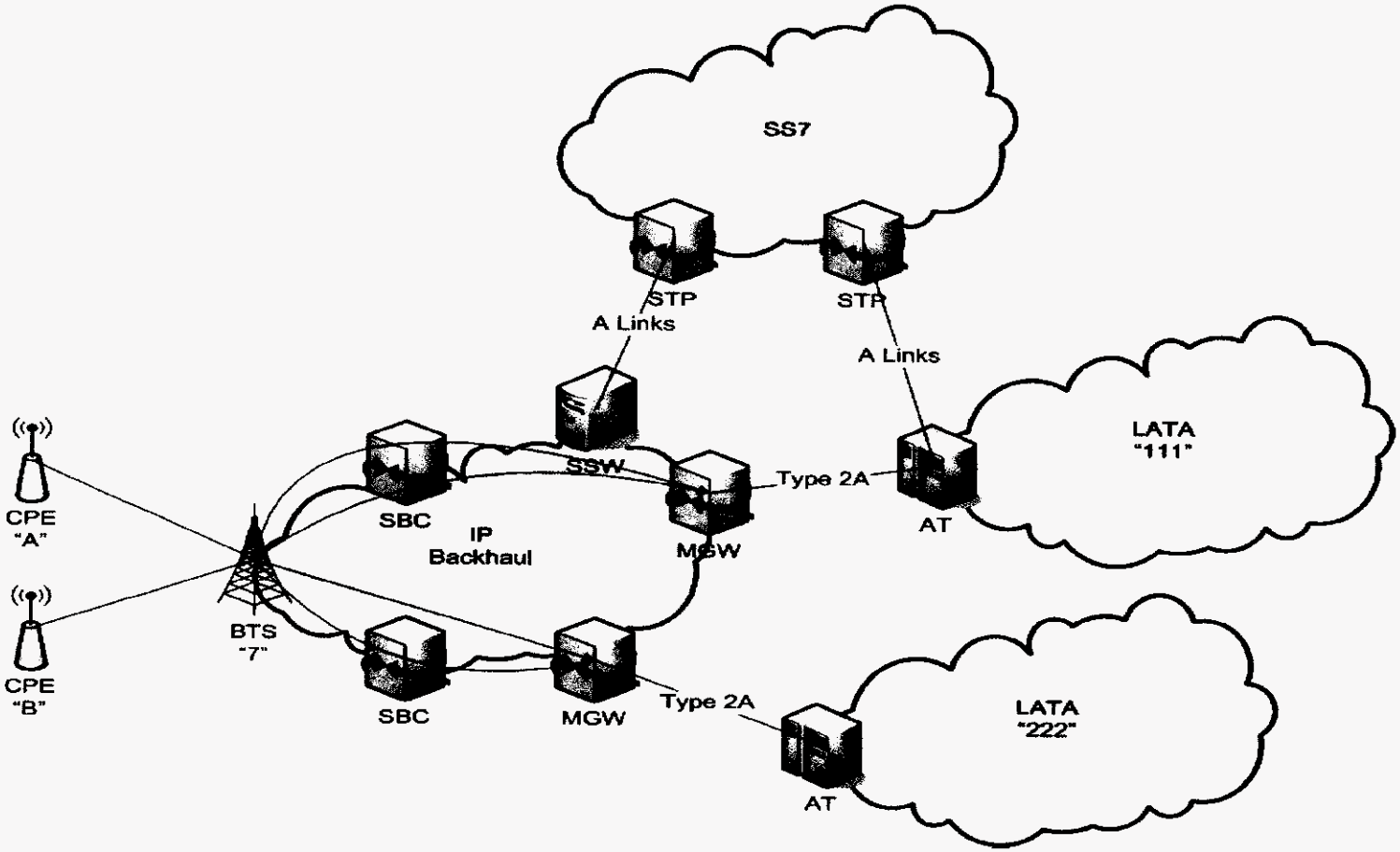
Halo Wireless has invested substantial capital in its 3.65 Ghz WiMax 802.16(e) wireless network.



Halo wireless

FCC Meeting August 10, 2011

Halo Wireless's core network is all IP from customer wireless access points up through the IP-TDM conversion for ILEC traffic exchange.*



Halo is a legitimate, independent business with a novel, legal business strategy.

Leverage the availability of 3.65Ghz spectrum and WiMax mobile access technology to offer two sets of services in rural areas:

① **Broadband wireless mobile voice and data services to retail consumers and small businesses in under served rural communities throughout the U.S.**

- **Voice service currently requires soft client running on laptop.**
  - **Awaiting FCC certification on Airpsan USB device.**
  - **Testing integrated 3.65/WiFi access points for enhanced mobility.**
  - **Evaluating iPhone/Android smart phone clients.**

- **Hundreds of thousands of marketing dollars spent to date; small base of retail customers acquired, with continued efforts to expand base underway.**

Halo wireless

FCC Meeting August 10, 2011

Halo is a legitimate, independent business with a novel, legal business strategy.

Leverage the availability of 3.65Ghz spectrum and WiMax mobile access technology to offer two sets of services in rural areas:

② Common Carrier wireless exchange services to ESP and enterprise customers.
- One primary customer; other arrangements under development
- Customer connects wirelessly to Halo base stations in each MTA. All traffic traversing interconnection arrangements originates from customer with wireless link to base station in same MTA.
- Halo transmits intelligence of the customer's choosing.

- Operating Rules and Requirements:
  - Must obtain interconnection agreements with ILECs to enable traffic exchange across wide footprint, starting with principal ILEC that operates primary tandems.
  - Only traffic destined to telephone exchange in the same MTA in which the tower resides is accepted for termination over this link; all other traffic is routed to an IXC for handling, and exchange access charges are paid.

Halo's detractors are railing at the rules, but blaming Halo.

Are Halo's services CMRS?

- Halo's small volume customers can make and receive calls using soft clients on laptop computers or tablets connected to mobile/nomadic CPE. While not as elegant as a mobile phone, these services are functionally equivalent to that where traditional handset is used.
- Halo's high volume service offering is also CMRS, as the customer connects to Halo's base station using wireless equipment which is capable of operation while in motion.
- The customer is originating calls to Halo by virtue of its exercise of the right to attach to the network and use telecommunications. *See , In Re Atlantic Richfield Co., 3 FCC Rd. 3089 (1988), aff'd PUC of Texas v. FCC, 886 F.2d 1325 (D.C. Cir. 1989).*

Halo's detractors are railing at the rules, but blaming Halo.

Is Halo's traffic local IntraMTA?

- The origination point for Halo traffic is the base station to which Halo's customers connect wirelessly.
- Halo is transmitting, between or among points specified by the user, information of the user's choosing.
- The customer is originating calls to Halo by virtue of its exercise of the right to attach to the network and use telecommunications. *See , In Re Atlantic Richfield Co., 3 FCC Rd. 3089 (1988), aff'd PUC of Texas v. FCC, 886 F.2d 1325 (D.C. Cir. 1989).*
- Halo's voice service is entirely within the MTA, and is therefore telephone exchange service, not telephone toll.
- Halo does not provide roaming.

Halo's detractors are railing at the rules, but blaming Halo

Halo's signaling practices follow industry standards and comply with the FCC's proposed "Phantom Traffic" rules

- Halo connects to the customer using WiMax, an IP-based technology fully capable of supporting native SIP communications.
- Halo locates the SIP header information corresponding to the Calling Party Number and populates the address in the SS7 ISUP IAM CPN parameter address signal location. Halo does not change or manipulate this information in any way; it is protocol converted and populated without change.
- Since Halo's customer is the responsible party, Halo also populates the SS7 Charge Number parameter with a Halo number corresponding to the customer's BTN for that MTA.
- The FCC's proposed phantom traffic rules would require precisely the practices Halo has adopted.

Halo's detractors are railing at the rules, but blaming Halo.

RLEC Interconnection Activities

- Halo has accepted proper requests for interconnection from almost 50 RLECs, and the parties are currently in § 252 negotiations. Halo is paying interim compensation to those carriers.
- The RLECs where we have disputes:
  - Do not like the "no compensation if no contract or request for interconnection" result prescribed in *T-Mobile*, and criticize Halo for relying on that result.
  - Refuse to follow rule 20.11(e) requiring them to both "request interconnection" and "invoke the negotiation and arbitration procedures contained in section 252 of the Act." We believe they are motivated by desire to receive very high non-TELRIC prices for termination and are concerned that if they "request interconnection" they may have to interconnect via IP.
  - Are misusing the " § 252 process" to challenge and limit Halo's activities pursuant to federal permissions.
- Their desired result is to deem Halo's traffic as subject to access charges, not § 251(b)(5), and classify Halo as an IXC rather than a CMRS provider.
  - Statutory service definitions and FCC precedent do not support these outcomes.

The issues raised by the RLECs fall exclusively within the FCC's jurisdiction, and are not suitable for state commissions

- Neither Congress nor the Commission have delegated enforcement of § 332 and rule 20.11 to the states.
  - The states have delegated power to conduct arbitrations, but only for topics covered by § 251 (unless the parties voluntarily consent to negotiate without regard to standards in the Act).
- Halo continues to be prepared to negotiate, and if necessary arbitrate, for interconnection agreements implementing the mandatory topics.
  - The debate is not about how to implement the RLECs' § 251(a), (b) and/or (c) duties. Rather, the RLECs are challenging CMRS' right to enter the market with a new business model and compete directly with the incumbents for telephone exchange and exchange access service.
- Only the FCC can decide whether an activity is or is not "wireless" or "CMRS"; and the FCC has already decided when a CMRS service constitutes "telephone exchange service" vs. "telephone toll."
  - The scope and nature of "permitted activities" under a nationwide FCC license is not a proper topic for state-level arbitration.
  - One nationwide license cannot have 50 variations, and cannot be subjected to 50 state-level cases and 50 state-level re-hearings of FCC decisions.

Thank you for your time.

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 14
PARTY Bellsouth Tel., LLC d/b/a AT&T Florida (AT&T) - Direct
DESCRIPTION J. Scott McPhee (JSM-7)
DATE 07/12/12

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BOARD CERTIFIED Administrative Law

October 17, 2011

Written Ex Parte; Via Electronic Filing
Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington D.C. 20554

RE: *Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-State Board on Universal Service*, CC Docket No. 96-45

Dear Ms. Dortch:

Pursuant to 47 C.F.R. § 1.1206 of the Commission's rules, Halo Wireless, Inc. ("Halo") respectfully submits this written *ex parte* communication into the above-captioned proceedings. This letter responds to the submission of the Eastern Rural Telecom Association ("ERTA") dated October 14, 2011.[1]

ERTA's submission makes a number of false representations of material fact, and mischaracterizes Halo and its traffic. The allegations that Halo is engaging in some kind of fraud, is refusing in any way to compensate ILECs for termination, and is sending "phantom traffic" or "laundering traffic" are all completely baseless. ERTA members are entitled to their own opinions, but they are not entitled to their own facts. Apparently, they believe that repeated prevarication somehow makes it all true. The Commission, however, cannot engage in this kind of magical thinking.

Halo is a CMRS provider. As such, it can and does provide "telephone exchange service."[2] Halo has authority from this Commission to provide CMRS-based telephone exchange service to any "end user" business customer that has its own wireless CPE and connects to Halo in an MTA, thereby obtaining the ability to originate and receive calls within that MTA. The service arrangement at issue uses new technology, but it is functionally the same as what an ILEC provides to a business customer with a PBX. This is merely a new and promising wireless telephone exchange service to end users. The other thing ERTA refuses to acknowledge is that Halo also has consumer customers that are presently enjoying 4G wireless broadband in *rural* areas. We thought the Commission *wanted* CMRS to compete with the ILECs and to deploy

[1] Available at http://fjallfoss.fcc.gov/ecfs/document/view?id=7021714450.

[2] *See Local Competition Order* ¶¶ 1004, 1006, 1008.

wireless broadband to consumers. Were all of the statements to this effect in countless reports and orders not the true sentiment and goal?

Halo's "high volume" customer is an end user, not an IXC. Two different courts – in four separate opinions – have so held. Those courts held that Halo's "high volume" customer is fully entitled to purchase telecommunications service as an end user, and cannot be compelled to subscribe to the ILECs' exchange access tariffs. *See* Transcom Enhanced Services, LLC Written *Ex Parte* (October 11, 2011).[3] Halo is providing "end user" telephone exchange service to Transcom. Every Halo-related call that the ILECs are terminating is originated by Transcom using wireless CPE in the same MTA. This traffic is *not* exchange access traffic. It is, as a matter of law, subject to § 251(b)(5), since it is intraMTA and "non-access."

Further, this traffic is not "phantom traffic." The RLECs receive sufficient signaling information to identify and bill the appropriate provider."[4] All Halo traffic contains address signal content in both the CPN and CN parameters. Neither Halo nor Transcom manipulate or change CPN address signal content. Halo does populate the CN with a Halo number, but that is perfectly in accord with industry standards. This is exactly what any ILEC would do when serving a business user that has an ISDN PRI PBX and originates a call from a station with an identifier other than the Billing Telephone Number ("BTN") associated with the PBX system. The RLECs can obviously identify both the end user customer originating the call (Transcom) and the "responsible carrier" (Halo). They know the entity from whom they may seek *reciprocal compensation*: Halo.

Since Halo and the ERTA members do not at present have an interconnection agreement, and since all of the traffic involved is "non-access,"[5] the applicable compensation regime is "no compensation." This is exactly the express result imposed by the Commission in *T-Mobile.*[6] *T-Mobile* also provides a remedy. If the ERTA members wish to be paid reciprocal compensation then all they need to do is notice Halo that they "request interconnection" and desire to "invoke the negotiation and arbitration procedures contained in section 252 of the Act." From and after receipt of that notice the ERTA members will be entitled to reciprocal compensation, under the Commission's "interim" rules. *See* 47 C.F.R. § 20.11(e).

Halo is already paying reciprocal compensation to over 50 ILECs. More than 50% of Halo's monthly operating expense is related to these payments. ERTA's assertion that Halo

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[3] Available at http://fjallfoss.fcc.gov/ecfs/document/view?id=7021713675.

[4] *See* NPRM and FNPRM, *Connect America Fund et al.*, WC Docket Nos. 10-90 *et al.*, FCC 11-13, ¶ 37 and note 719, 26 FCC Rcd 4554 (Feb. 9, 2011) ("*2011 ICC NPRM*") (defining "phantom traffic" as "unidentifiable and unbillable" because the terminating provider cannot "identify and bill the appropriate provider.")

[5] *See* 47 C.F.R. § 20.11(d).

[6] Declaratory Ruling and Report and Order, *In the Matter of Developing a Unified Intercarrier Compensation Regime, T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, CC Docket 01-92, FCC 05-42, 20 FCC Rcd 4855 (2005) ("*T-Mobile*"). Note 57 expressly provides that "Under the amended rules, however, in the absence of a request for an interconnection agreement, no compensation is owed for termination."

refuses to pay anything is flatly incorrect. They simply will not follow the rules or use the remedy given to them. When they use the *T-Mobile* remedy they will be paid reciprocal compensation from and after the date of a 20.11(e)-compliant notice.

The ERTA members, however, are not satisfied with the prospect of payment that "merely" recovers "a reasonable approximation of the additional costs of terminating" these calls. *See* § 252(d)(2)(A)(ii). Instead, they desire payment in the form of exchange access, and for every minute regardless of whether they have invoked § 20.11(e). In order to accomplish this result they have engaged in a campaign of repeated defamation of both Halo and its "high volume" end user customer before state commissions and the FCC. They falsely and incorrectly claim that Halo is not "really" CMRS"; the calls are not "really wireless" and Halo's customer is "really" just an IXC. They also constantly repeat scurrilous and unsupported claims that Halo and/or its "high volume" customer are engaging in signaling improprieties.

The bottom line is that they are simply not telling the truth, and they refuse to accept what the Act and rules require. The Commission cannot and should not accept their characterizations or reward them for their misdeeds by trying to impose exchange access on what is clearly telephone exchange service traffic. When ERTA truly wants to be paid for terminating calls, all they have to do is use the 47 C.F.R. § 20.11(e) remedy the Commission gave them. They should be sending "requests for interconnection" to Halo instead of engaging in *ex parte* communications that would violate 47 C.F.R. § 1.17 if proffered in an adjudicatory proceeding as part of their illicit attempts to recover amounts they are not due.

Respectfully Submitted

W. Scott McCollough
Counsel for Halo Wireless, Inc.

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 15
PARTY Bellsouth Tel., LLC d/b/a AT&T Florida (AT&T) - Direct
DESCRIPTION J. Scott McPhee (JSM-8)
DATE 07/12/12

PSC REF#:160528

Transcript of Proceedings - February 28, 2012
Volume 2 - Technical Session

Public Service Commission of Wisconsin
RECEIVED: 03/01/12, 1:06:49 PM

BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

INVESTIGATION INTO PRACTICES OF HALO WIRELESS, INC., and TRANSCOM ENHANCED SERVICES, INC.	Docket No. 9594-TI-100

EXAMINER MICHAEL E. NEWMARK, PRESIDING

TRANSCRIPT OF PROCEEDINGS

FEBRUARY 28, 2012

VOLUME 2

TECHNICAL SESSION

Reported By:
JENNIFER M. STEIDTMANN, RPR, CRR
Gramann Reporting, Ltd.
(414) 272-7878

HEARING HELD:

February 28, 2012

Madison, Wisconsin

9:30 a.m.

TRANSCRIPT PAGES:

1 - 141,
151 - 307, Incl.

EXHIBITS:

Prefiled; J.S. McPhee 5; T. McCabe 17; L. Robinson 13

Transcom's business telephone number, their BTN, no business reason possible whatsoever, can't even imagine?

A Well, Halo admitted that they did it. As far as their business reason, I can only assume that they did it to disguise the call as a local intraMTA wireless in the middle call because the originator of the call was in some distant state or other calling area.

Q Okay. Well, let's go back to our hypothetical a little bit ago. I'm that guy at home, work at home tunnelling into a network and signaling my wireless number. You with me? Do you remember that hypothetical?

A I do.

Q In this instance, the ISDN PRI that the tire company gets from AT&T Wisconsin signals its charge number given by AT&T.

A Okay.

Q Now, when AT&T passes that on, you'll have a wireless number in the CPN and a wireline number in the charge number, right?

A In that hypothetical you would.

Q Now, when AT&T passes that on, are they doing that to deceive the terminating carrier?

A No. Because the PBX customer is the one that's responsible for any long distance charges, and that's what the charge number is designed for.
Q Well, let's assume the ISDN PRI operator doesn't even populate the charge number information element. Doesn't put anything in there at all. It's empty when it goes up the D-channel to AT&T.
A Okay.
Q You with me?
A Okay.
Q AT&T's going to populate the charge number, isn't it?
A That's in the translations.
Q Because the CPN is different than the trunk?
A Well, it's only if that customer, when they subscribed to the PRI service, requests a charge number and a billing telephone number to be used.
Q And as you just testified, the purpose of that is to tell the world who the responsible party is, this tire company, right?
A That's what the industry has decided to do.
Q Well, isn't it just possible that Halo is telling the world that the responsible party was Transcom?
A I believe that they did, but I also believe that the FCC has shot that argument down.
Q Well, they may have, but I mean, you say here the

only reason was to disguise.

A In my experience --

MR. FRIEDMAN: There's no question.

BY MR. McCOLLOUGH:

Q Okay. You say in here the only reason was to disguise, to deceive. Isn't it at least possible that Halo was telling the world, responsible party's Transcom, here's your billing telephone number? Isn't that possible?

A It seems far-fetched, but I suppose in some world it might be.

Q Generally when people are out there trying to deceive, they're hiding something, aren't they?

A I believe that's true.

Q How is signaling additional information specifically identifiable to a particular customer hiding something?

A When it's not the original customer, it's some sort of deception.

Q That's Halo's customer?

A It may or may not be Halo's customer, but it has nothing to do with the originator of the call.

Q Granted, granted. Now, you understand Halo took the position all along, even before the FCC order, based on our reading of all the rules, we thought Transcom

was the originating party. You understand we took that position, right?

A I've read that.

Q Okay. And the FCC disagreed on November 18th?

A I've read that, too.

Q So just in terms of intent, isn't it at least possible that what Halo was saying is I've got an end user customer and I'm going to act much like AT&T does when it has an ISDN PBX customer with PRI and, you know, if the charge numbers -- I mean, if the CPN doesn't signify, quote, the people we think to be the responsible party, we're going to signal it and charge them?

MR. FRIEDMAN: I'm going to object on two grounds. One is it was asked, albeit in a slightly different form, and already answered. Second is it's cumulative and argumentative. The testimony says what it says. Counsel has made his point. I'm not sure how much use it would be to the Commission to have further debate on this.

EXAMINER NEWMARK: Sustained.

BY MR. McCOLLOUGH:

Q Page 8 of your direct --

MR. McCOLLOUGH: And by the way, Your Honor, if we get to a stopping point that's

also have AT&T wireless services, and I got a neat little Android phone and I'm running a VoIP client on there.

A Okay.

Q I can configure that to signal the TDS assigned number, can't I?

A You probably could.

Q Did you discount that for purposes of your study?

A There's no way to count that. That's why the industry and AT&T supports FCC to write new rules to compensate for the technological changes that have occurred over the last 10, 15 years. The rules are what the rules are. They're changing, but we can only run through the regulations that were in place during the time of this agreement, which is what we were doing.

Q So really what we got here is a deeming exercise, isn't it? You're deeming these to be wireline originated --

A Not --

Q -- in a rate center where the number's associated. You don't know how the LEC call really is originated there, do you?

MR. FRIEDMAN: Your Honor, I'm going to make an objection, if I may. And the objection is

the line of question is becoming cumulative and a waste of time for the following reasons. As the witness testified, the exact percentage of landline-originated traffic that Halo is sending AT&T is really here nor there, and nibbling around the edges of it, at least for purposes of this case, at least from AT&T's point of view, makes -- is a waste of time.

Halo has not denied that it in effect does deliver substantial volumes of traffic to AT&T that starts out on landline equipment. Halo of course argues that it's originated elsewhere, but it really is uncontested that Halo, notwithstanding the parties' interconnection agreement, is handing off to AT&T Wisconsin substantial volumes of traffic of the sort that's depicted there and makes no particular effort to avoid doing that.

So I respectfully leave it to Your Honor how much more time is worth spending arguing about what in effect is going to amount to whether it's 40 percent or 38 percent or 36 percent, but that's the objection. I suggest it's a waste of time.

EXAMINER NEWMARK: Response.

MR. McCOLLOUGH: Well, in response to Mr. Wiseman's testimony, he said okay, I'll just

adjust down the number. You know, that's what the witness said. My point, Your Honor, is, you know, I had to sit here and cross-examine this guy, and he'd say, okay, well, I can fix that by changing the number and add to that an amount that supposedly wireline originated would go down and down and down. At some point that would get mighty small.

He's acknowledged that even the TDS numbers that showed up might well have been originated on a wireless unit using an ESP, Skype, going to another ESP, we say Transcom and to Halo. And our contention is that's originating with Halo, and I don't think no matter how many times you read those two paragraphs, the FCC said it is not. What they were talking about is traffic that does originate on other carriers' networks.

Now, is it true that Halo has said, sure, some of these calls may have started somewhere else, but if you read the rebuttal, what Mr. Wiseman said was we built our business plan reading these FCC rules and, oh, by the way, not just the FCC, the Court of Appeals decisions out of the D.C. Circuit that said ESPs are end users and originate calls.

I just want to make sure that the Commission understands that you can't always put

these things in these old wireline boxes. If this state wants to advance into the new technological world --

EXAMINER NEWMARK: Okay. Hang on. Oh, whoa, whoa. Hang on. I'll sustain the objection because I think the Commission does have enough in the record right now for that purpose.

MR. McCOLLOUGH: We'll move on.

EXAMINER NEWMARK: Let's go off the record for a minute.

(Discussion held off the record.)

BY MR. McCOLLOUGH:

Q Page 12, line 16.

A Are we in direct or rebuttal?

Q This is still your direct, sir. Is there a technical reason a carrier would want to deliver calls to Halo before they were terminated to AT&T. Who's the carrier that you're referring to there?

A The carriers that were originating these calls.

Q So are you saying that Halo is serving all those carriers that originated calls?

A I believe the arrangement that Halo has testified to is that Transcom has customers who are carriers that Halo advanced calls to Halo that terminates to AT&T and to others.

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 16
PARTY Bellsouth Tel., LLC d/b/a AT&T Florida (AT&T) - Direct
DESCRIPTION J. Scott McPhee (JSM-9)
DATE 07/12/12

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 26, 2012

IN RE:	)	
	)	**DOCKET NO.**
BELLSOUTH TELECOMMUNICATIONS LLC D/B/A AT&T TENNESSEE V. HALO WIRELESS, INC.	)	**11-00119**
	)	

ORDER

This matter came before Chairman Kenneth C. Hill, Director Sara Kyle and Director Mary W. Freeman of the Tennessee Regulatory Authority ("Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on January 23, 2012 for consideration of the *Complaint* filed by BellSouth Telecommunications, LLC d/b/a AT&T Tennessee ("AT&T") against Halo Wireless, Inc. ("Halo") and Halo's *Motion to Dismiss Complaint With Prejudice.*

TRAVEL OF THE CASE

On July 26, 2011, AT&T filed a *Complaint* against Halo, pursuant to 47 U.S.C. § 252 and TRA Rule 1220-1-2-.02, requesting that the TRA issue an order "allowing it to terminate its wireless Interconnection Agreement ("ICA") with Halo based on Halo's material breaches of that ICA."[1] The *Complaint* also states that AT&T "seeks an Order requiring Halo to pay AT&T Tennessee the amounts Halo owes" as a result of "an access charge avoidance scheme."[2] On August 10, 2011, Halo filed a Suggestion of Bankruptcy informing the TRA that "on August 8, 2011 Halo filed a voluntary petition under Chapter 11 of Title 11 of the United States Code in the

[1] *Complaint*, p. 1 (July 26, 2011).
[2] *Id.*

United States Bankruptcy Court for the Eastern District of Texas (Sherman Division)" ("Bankruptcy Court").[3] Accordingly, Halo stated, "the automatic stay is now in place" and "prohibits further action against [Halo] in the instant proceeding."[4]

On August 19, 2011, Halo filed a notice of removal to federal district court, which references a separate notice of removal and states that this matter has been removed to the United States District Court for the Middle District of Tennessee, Nashville Division ("District Court") "pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure."[5] On November 10, 2011, AT&T filed a letter informing the TRA that it may now hear this matter, the District Court having remanded it to the TRA and the Bankruptcy Court having lifted the automatic stay on a limited basis. AT&T requested that this matter be placed on the agenda for the Authority Conference scheduled for November 21, 2011 "for appointing a Hearing Officer and other action as necessary."[6] On November 17, 2011, Halo filed a *Motion to Abate*, in which Halo requested that the TRA "abate" this proceeding until conclusion of Halo's appeal of the Bankruptcy Court's October 26, 2011 Order to the United States Court of Appeals for the Fifth Circuit.

At the regularly scheduled Authority Conference held on November 21, 2011, the Authority voted unanimously to deny the *Motion to Abate* and to convene a contested case in this matter and appoint Chairman Kenneth C. Hill as Hearing Officer to handle any preliminary matters, including entering a protective order, ruling on any intervention requests, setting a procedural schedule, and addressing other preliminary matters.[7] Immediately following the Authority Conference, the Hearing Officer convened a scheduling conference in this matter.

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[3] *Suggestion of Bankruptcy*, p. 1 (August 10, 2011).
[4] *Id.* at 2.
[5] *Notice of Removal to Federal Court*, p. 1 (August 19, 2011).
[6] Letter from Joelle Phillips to Chairman Kenneth C. Hill (November 10, 2011).
[7] *Order Denying Motion to Abate, Convening a Contested Case and Appointing a Hearing Officer* (December 19, 2011).

On December 1, 2011, Halo filed *Halo Wireless, Inc.'s Partial Motion to Dismiss and Answer to the Complaint of BellSouth Telecommunications, LLC d/b/a AT&T Tennessee* ("*Partial Motion to Dismiss*"), and AT&T filed its response to Halo's motion on December 8, 2011. The Hearing Officer heard arguments from AT&T and Halo (collectively, "the Parties") on the *Partial Motion to Dismiss* on December 12, 2011, and issued an order denying the *Partial Motion to Dismiss* on December 16, 2011.[8] The Parties submitted pre-filed direct testimony of their witnesses on December 19, 2011, and pre-filed rebuttal testimony on January 3, 2012. In addition, the Parties submitted pre-hearing memoranda on January 6, 2012.

MOTION TO DISMISS COMPLAINT WITH PREJUDICE

After business hours on Friday, January 13, 2012, Halo filed *Halo Wireless, Inc.'s Notice of May 16, 2006 Order Confirming Plan of Reorganization of Transcom Enhanced Services and Motion to Dismiss Complaint With Prejudice* ("*Motion to Dismiss Complaint With Prejudice*"). At the beginning of the Hearing on January 17, 2012, Chairman Hill addressed the *Motion to Dismiss Complaint With Prejudice*, giving AT&T an opportunity to respond and setting the matter for consideration during the January 23, 2012 Authority Conference. AT&T filed *BellSouth Telecommunications, LLC dba AT&T Tennessee's Response to Halo Wireless, Inc's Motion to Dismiss Complaint With Prejudice* ("*Response*") on January 19, 2012.

As more fully explained in the discussion of AT&T's *Complaint* below, Halo's business plan is centered on their assertion that Transcom Enhanced Services, Inc. ("Transcom") is an Enhanced Service Provider ("ESP"). In its *Motion to Dismiss Complaint With Prejudice,* Halo requests that the TRA dismiss AT&T's *Complaint* with prejudice on the grounds that during

[8] *Order Denying Motion to Dismiss* (December 16, 2011).

Transcom's 2005 bankruptcy proceeding,[9] BellSouth/AT&T Corporation were creditors/parties in interest.[10] In the Transcom Bankruptcy Court's April 28, 2005 Memorandum Opinion, the Court concluded that "[Transcom]'s service is an enhanced service, not subject to payment of access charges."[11] Some of the creditors appealed the April 28, 2005 order to the United States District Court for the Northern District of Texas, Dallas Division ("Transcom District Court"), but the Transcom District Court dismissed the appeal as moot and vacated the bankruptcy court's Order and Memorandum Opinion.[12] However, the Transcom Bankruptcy Court entered an order on May 16, 2006 confirming Transcom's bankruptcy plan.[13] In this Confirmation Order, the Transcom Bankruptcy Court again stated that Transcom's services are not subject to access charges, but rather qualify as information services and enhanced services that must pay end-user charges.[14] No creditor appealed the May 16, 2006 Order.[15] Halo argues that because this Confirmation Order is binding, AT&T cannot challenge Transcom's status as an ESP.[16] In addition, Halo asserts that *res judicata* or collateral estoppel bars the claims that have been litigated in the bankruptcy court.

To assert a *res judicata* defense, a party must establish: 1) the parties must be identical in both suits; 2) the prior judgment must have been rendered by a court of competent jurisdiction; 3) there must have been a final judgment on the merits; and 4) the same cause of action must be involved in both cases.[17] Halo claims that these standards are satisfied because 1) BellSouth was a party to the Transcom bankruptcy case and litigants who have a close and significant relationship (e.g. Transcom/Halo) satisfy the "identical parties" test; 2) the Transcom Bankruptcy Court had

[9] Transcom filed a voluntary petition for Chapter 11 bankruptcy in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, ("Transcom Bankruptcy Court") on February 18, 2005 in Case No. 05-31929-HDH-11 ("Transcom bankruptcy"). *See Motion to Dismiss Complaint With Prejudice*, p. 2, ¶ 3 (January 13, 2012).
[10] *Motion to Dismiss Complaint With Prejudice*, p. 2, ¶ 4 (January 13, 2012).
[11] *Id.* at 3, ¶ 7.
[12] *Id.*
[13] *Id.* at 4, ¶ 10.
[14] *Id.*
[15] *Id.* at 4, ¶ 11.
[16] *Id.* at 6, ¶ 14.
[17] *Id.* at 6, ¶ 17, *citing Osherow v. Ernst & Young, LLP* (*In re Intelogic Trace, Inc.*), 300 F.3d 382, 386 (5th Cir. 2000).

jurisdiction over the 2006 Confirmation Order; 3) the 2006 Confirmation Order is final; and 4) the two actions are based on the same nucleus of operative facts, because the primary issue in both proceedings is whether Transcom provides enhanced services.[18]

Collateral estoppel precludes a party from litigating an issue already raised in an earlier action if: 1) the issue at stake is identical to the one involved in the earlier action; 2) the issue was actually litigated in the prior action; and 3) the determination of the issue in the prior action was a necessary part of the judgment in that action.[19] Halo asserts that 1) AT&T's *Complaint* confronts the authority with an identical issue to that raised in the 2006 Transcom Bankruptcy Court's Confirmation Order, i.e. that Transcom is an ESP not subject to access charges; 2) the issue was litigated in 2006 in the Transcom bankruptcy proceeding; and 3) the determination that Transcom is an ESP was a necessary part of the Confirmation because if it were not, the Plan would not have been feasible and the Confirmation would have been denied.[20]

AT&T opposes the *Motion to Dismiss Complaint With Prejudice* on the grounds that the Motion is at odds with the Federal Communications Commission's ("FCC") *Connect America Fund* Order.[21] AT&T argues that none of the Transcom bankruptcy court proceedings or other earlier proceedings cited by Halo is binding on either AT&T or the Authority.[22] None of the Transcom Bankruptcy Court orders states or suggests that Transcom actually is an end-user, and none of them implies or says anything about the termination or origination of calls.[23] Rather, an ESP is treated as

[18] *Motion to Dismiss Complaint With Prejudice*, pp. 7-8, ¶¶ 18-26 (January 13, 2012).
[19] *Id.* at 10, ¶ 28, *citing Petro-Hunt, L.L.C. v. U.S.*, 365 F.2d 385, 397 (5th Cir, 2004).
[20] *Id.* at 10-11, ¶¶ 27-30.
[21] *Response*, p. 1 (January 19, 2012); *See Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45; WT Docket No. 10-208; FCC 11-161, __ FCC Rcd __ ("*Connect America Fund Order*") (November 18, 2011).
[22] *Response*, p. 3 (January 19, 2012).
[23] *Id.* at 4.

an end-user for the purpose of being exempted from access charges, nothing more.[24] Further the exemption applies only to ESPs, not carriers (like Halo) that transport calls for ESPs.[25] AT&T asserts that the Authority rejected Halo's *res judicata* and collateral estoppel arguments when it rejected Halo's *Partial Motion to Dismiss*.[26] AT&T further asserts that *res judicata* and collateral estoppel cannot apply because: 1) the main order Halo relies upon was vacated by the federal district court; 2) the bankruptcy cases involved Transcom, not Halo, and therefore were not between identical parties; 3) the Transcom bankruptcy cases did not involve the same cause of action as this case, since this case involves claims for Halo's breach of a contract that was not even formed until after the bankruptcy cases, while the bankruptcy cases involved the issue of whether Transcom was subject to access charges; and 4) the issue in this case (whether Transcom must be deemed to originate or re-originate calls) was never raised, much less decided, in the bankruptcy cases.[27]

The Authority agrees with AT&T that neither *res judicata* nor collateral estoppel applies in this case. The panel finds that *res judicata* does not apply because the Transcom bankruptcy case and this docket do not involve identical parties and this is a breach of contract case and, therefore, is not the same cause of action. The panel also finds that collateral estoppel does not apply because the issue in this case - the origination or re-origination and termination of Halo's calls – was not raised in the Transcom bankruptcy case. Based on these findings, the Authority concludes unanimously that Halo's *Motion to Dismiss Complaint With Prejudice* should be denied.

THE HEARING

A Hearing in this matter was held before the voting panel of Directors assigned to this docket on January 17, 2012. The Hearing was publicly noticed by the Hearing Officer on

[24] *Id.*
[25] *Id.* at 4, n. 8.
[26] *Id.* at 3, n. 6.
[27] *Id.*

December 16, 2011 and January 12, 2012. Participating in the Hearing were the following parties and their respective counsel:

> **For BellSouth Telecommunications, LLC d/b/a AT&T Tennessee – Joelle Phillips, Esq.**, 333 Commerce Street, Suite 2101, Nashville TN 37201 and **J. Tyson Covey, Esq.**, Mayer Brown, LLP, 71 S. Wacker Drive, Chicago, IL 60606.
>
> **For Halo Wireless, Inc. – Paul S. Davidson, Esq.**, Waller Lansden Dortch & Davis, LLP, 511 Union Street, Suite 2700, Nashville, TN 37219; **Steven H. Thomas, Esq.** and **Jennifer M. Larson, Esq.**, McGuire, Craddock & Strother, P.C., 2501 N. Harwood, Suite 1800, Dallas, TX 75201; **W. Scott McCollough, Esq.**, McCollough/Henry PC, 1250 S. Capital of Texas Highway, Bldg. 2-235, West Lake Hills, TX 78746.

During the Hearing, the Authority heard testimony from AT&T witnesses J. Scott McPhee and Mark Neinast. Russ Wiseman and Robert Johnson testified for Halo.

AT&T'S *COMPLAINT*

In its *Complaint*, AT&T seeks to terminate its wireless ICA with Halo because Halo has violated the ICA by sending AT&T large volumes of traffic that does not originate on a wireless network. AT&T further asks the TRA to order Halo to pay it the amounts that it owes AT&T. AT&T asserts that the TRA has jurisdiction over this matter, because it involves (1) violations of an ICA entered into under 27 U.S.C. §§ 251 and 252 that was approved by the Authority and (2) violations of AT&T Tennessee's state tariffs.[28] The *Complaint* contains four counts:

Count 1 - Breach of ICA: Sending Wireline-Originated Traffic to AT&T Tennessee: AT&T charges that Halo sends AT&T traffic that is wireline-originated, interstate, interLATA or intraLATA toll traffic and that Halo disguises it as local traffic to avoid access charges that apply to such traffic. AT&T asks the TRA to order Halo to terminate the Parties' ICA for this breach or, in

[28] *Complaint*, p. 3 (July 26, 2011).

the alternative, to order Halo to cease and desist from sending wireline-originated traffic not authorized by the ICA to AT&T.[29]

Count 2 - Breach of ICA: Alteration or Deletion of Call Detail: AT&T alleges that Halo consistently alters the Charge Number ("CN"), which prevents AT&T from properly billing Halo based on where the traffic originated. AT&T requests that the Authority authorize it to terminate the Parties' ICA, or, in the alternative, to order Halo to cease and desist from altering the CN on traffic that it delivers to AT&T.[30]

Count 3 – Payment for Termination of Wireline-Originated Traffic: The wireline-originated traffic that Halo previously sent to AT&T is not governed by the Parties' ICA but is instead subject to tariffed switched access charges. AT&T therefore asks the Authority to order Halo to pay all access charges due to AT&T within thirty days of the Authority's order.[31]

Count 4 – Breach of ICA: Non-payment for Facilities: AT&T asks the TRA to order Halo to pay it for transport facilities that AT&T has provided but for which Halo has refused to pay.[32]

POSITIONS OF THE PARTIES

The Parties have set forth their arguments in full in the record of this docket, in their pre-hearing memoranda and in the presentation of their cases at the Hearing. The following section is intended as a *brief* summary of the positions of AT&T and Halo in this matter.

Position of AT&T Tennessee

AT&T asserts that Halo has engaged in three separate types of breaches of the Parties' ICA.[33] Although the ICA requires Halo to send only wireless-originated traffic to AT&T, 74% of

[29] *Id.* at 3-4.
[30] *Id.* at 4-5.
[31] *Id.* at 5-6.
[32] *Id.* at 6.
[33] *Pre-hearing Memorandum of BellSouth Telecommunications, LLC dba AT&T Tennessee*, p. 1 (January 6, 2012).

the traffic Halo sends to AT&T is landline-originated traffic.[34] According to AT&T, Halo's contention that it is not breaching the ICA is based on a "wireless in the middle" theory, where Transcom is an ESP; ESPs are treated as end-users; and Transcom must be deemed to "re-originate" every call that passes through Transcom to Halo.[35]

AT&T argues that the FCC has expressly rejected Halo's theory in the *Connect America Fund Order*, where the FCC singled out Halo by name.[36] The FCC rejected Halo's theory that calls that begin with an end-user dialing a call on a landline network can be "re-originated" as wireless calls by passing through an ESP with wireless equipment in the middle of the call. [37] Further, the ESP exemption from access charges applies only to ESPs themselves, not to carriers like Halo that serve them.[38] AT&T asserts, however, that Transcom is not an ESP because reducing background noise and inserting "comfort noise" in periods of silence do not alter the fundamental character of the service from the end-user's perspective.[39]

AT&T argues that its call study showing 74% of the calls Halo sends to AT&T are landline-originated is reliable. Further, Halo does not deny that at least some of its calls it sends to AT&T are landline or IP-originated,[40] which results in a breach of the ICA.[41]

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[34] *Id.* at 5. The terms "wireline" and "landline" are used interchangeably in the parties' testimony. For background, federal law specifies that wireless calls that originate and terminate within the same Major Trading Area ("MTA") are "local calls" and subject to reciprocal compensation rates. Calls exchanged between end-users in different MTAs are considered "InterMTA" and are subject to tariffed interstate or intrastate access charges, which are higher than reciprocal compensation rates. Calls that originate from landline telephones are considered "local" if they both originate and terminate within the same local exchange area. Intercarrier compensation rates for intra-exchange calls are set by the landline ICA; the rates for intrastate inter-exchange calls are set by the state access tariff, and the rates for interstate inter-exchange calls are set by the FCC access tariff. *See* J. Scott McPhee, Pre-filed Direct Testimony, p. 9 (December 19, 2011).
[35] *Id.*
[36] *Pre-hearing Memorandum of BellSouth Telecommunications, LLC dba AT&T Tennessee*, p. 6 (January 6, 2012).
[37] *Id.* at 7.
[38] *Id.* at 9.
[39] *Id.* at 10-11.
[40] The term "IP" refers to Internet Protocol.
[41] *Id.* at 11-12.

AT&T asserts that Halo also breached the ICA by inserting false charge numbers; specifically, Halo inserts a Transcom Charge Number ("CN") on every call, and the effect is that every call appears local.[42]

AT&T alleges that Halo is breaching the ICA by refusing to pay for interconnection facilities it obtains from AT&T. Because 100% of the traffic between the Parties is traffic that Halo terminates on AT&T's network, Halo is responsible for 100% of the cost of the interconnection facility under the Parties' wireless ICA.[43]

Position of Halo Wireless, Inc.

Halo asserts that it is not in breach of the ICA and AT&T is not entitled to "significant amounts of money" from Halo for the traffic at issue.[44] Halo further asserts that it has a valid and subsisting Radio Station Authorization from the FCC authorizing Halo to provide wireless service as a common carrier and to operate stations in the "3650-3700" MHz band,[45] and is therefore governed exclusively by federal law.[46] Halo argues that the FCC has exclusive jurisdiction over federal licensing and that a state commission cannot take any action that would amount to a suspension or revocation of a federal license.[47]

Halo provides Commercial Mobile Radio Service ("CMRS") and sells telephone exchange service to Transcom, which is a high volume customer.[48] Halo asserts that Transcom is an ESP because it changes the information content of every call that passes through its system and also

[42] *Id.* at 12-13.
[43] *Id.* at 14-15.
[44] *Halo Wireless, Inc.'s Pre-hearing Memorandum*, p.1 (January 6, 2012).
[45] Russ Wiseman Pre-filed Direct Testimony, p. 2 (December 19, 2011).
[46] *Halo Wireless, Inc.'s Pre-hearing Memorandum*, p. 2 (January 6, 2012).
[47] *Id.* at 2-3.
[48] *Id.* at 1.

offers enhanced capabilities.[49] Transcom is an end-user, not a carrier.[50] Therefore, Halo argues that it is a CMRS carrier selling wireless telephone exchange service to an ESP end-user and its traffic is not wireline-originated.[51] All of the calls received from Transcom within a particular MTA are terminated in the same MTA, so that all of the traffic is subject to local charges in the ICA. [52]

Halo argues that it does not alter or delete call detail in violation of the ICA.[53] Halo populates the CN parameter with the Billing Telephone Number ("BTN") of its end-user customer - Transcom.[54] AT&T alleges improper modification of signaling information related to the CN parameter, but the basis of this claim once again results from the assertion that Transcom is a carrier rather than an end-user.[55] Halo is exactly following industry practice applicable to an exchange carrier providing telephone exchange service to an end-user, and in particular a communications-intensive business end-user with sophisticated Customer Premises Equipment ("CPE").[56]

Halo asserts that it does not owe facilities charges to AT&T.[57] Under the ICA, AT&T may only charge for interconnection facilities when AT&T-provided facilities are used by Halo to reach the mutually agreed Point of Interconnection ("POI").[58] Under the terms of the ICA, the POI is where Halo's network ends.[59] AT&T is attempting to shift cost responsibility for what it calls facilities" to Halo when the ICA assigns responsibility to AT&T because the "facilities" are all on AT&T's side of the POI.[60]

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[49] *Id.*
[50] *Id.* at 4.
[51] *Id.* at 4-6.
[52] *Id.* at 1.
[53] *Id.* at 6-8.
[54] *Id.* at 8.
[55] *Id.*; *see also* Russ Wiseman Pre-filed Direct Testimony pp. 26-28 (December 19, 2011).
[56] *Id.*
[57] *Id.* at 9-14.
[58] *Id.* at 9.
[59] *Id.*
[60] *Id.* at 14.

FINDINGS AND CONCLUSIONS

Jurisdiction

Throughout these proceedings, Halo has raised objections and challenged the jurisdiction of the Authority to consider the *Complaint* in this matter. The Authority finds that it has jurisdiction to consider the *Complaint* pursuant to both federal and state law. The Authority approved the interconnection agreement between AT&T Tennessee and Halo by order dated June 21, 2010 in TRA Docket No. 10-00063.[61] Interconnection agreements are reviewable and enforceable by the Authority pursuant to 47 U.S.C. § 252 and, in instances where the "market regulation" statute applies, are enforceable pursuant to Tenn. Code Ann. § 65-5-109(m). Further, the Authority has jurisdiction over complaints concerning telecommunications service providers who have elected "market regulation" such as AT&T, pursuant to Tenn. Code Ann. § 65-5-109(m). Halo did not object to the Authority's jurisdiction to approve the interconnection agreement that now lies at the center of this dispute.[62]

The District Court, in its Order remanding this matter back to the Authority, also recognized the TRA's jurisdiction over the interpretation of the ICA. The District Court explained the respective roles of the Court and the Authority, stating:

> The Telecommunications Act of 1996 ("the Act") requires that all ICAs be approved by a state regulatory commission before they become effective. State commissions such as the TRA have authority to approve and disapprove interconnection agreements, such as the one at issue herein. 47 U.S.C. § 252(e)(1). That authority includes the authority to interpret and enforce the provisions of agreements that the state commissions have approved. *Southwestern Bell Telephone Co. v. Public Utility Comm'n of Texas*, 208 F.3d 475, 479 (5th Cir. 2000); *Millennium One Communications, Inc. v. Public Utility Comm'n of Texas*, 361 F.Supp.2d 634, 636 (W.D. Tex. 2005). Federal district courts have jurisdiction to review interpretation

[61] *See In Re: Petition For Approval Of The Interconnection Agreement and Amendment Thereto Between BellSouth dba AT&T Tennessee and Halo Wireless, Inc.*, Docket No. 10-00063, *Order Approving the Interconnection Agreement and Amendment Thereto* (June 21, 2010).

[62] *See In Re: Petition for Approval of the Interconnection Agreement and Amendment Thereto Between BellSouth dba AT&T Tennessee and Halo Wireless, Inc.*, Docket No. 10-00063.

and enforcement decisions of the state commissions. *Id.; Southwestern Bell* at p. 480, 47 U.S.C. § 252(e)(6). Here, as noted above, there is no state commission determination to review.

In *Central Telephone Co. of Virginia v. Sprint Communications Co. of Virginia, Inc.*, 759 F.Supp.2d 772 (E.D. Va. 2011), the court held that federal district courts have federal question jurisdiction to interpret and enforce an ICA, pursuant to 28 U.S.C. § 1331. *Id. at 778; see also BellSouth Telecommunications, Inc. v. MCImetro Access Transmission Servs., Inc.*, 317 F.3d 1270, 1278-79 (11th Cir. 2003) (federal courts have jurisdiction under Section 1331 to hear challenges to state commission orders interpreting ICAs because they arise under federal law) and *Michigan Bell Telephone Co. v. MCI Metro Access Transmission Servs.*, 323 F.3d 348, 353 (6th Cir. 2003)(federal courts have jurisdiction to review state commission orders for compliance with federal law). Although these cases involved state commission orders, their holdings provide guidance on this issue.

Based on the reasoning in the above-cited cases, the Court finds that it has subject matter jurisdiction to hear this matter, pursuant to 28 U.S.C. § 1331 because the ICAs arise under federal law. As stated in *Verizon Maryland*, ICAs are federally mandated agreements and to the extent the ICA imposes a duty consistent with the Act, that duty is a federal requirement. *Verizon Maryland, Inc. v. Global NAPS, Inc.*, 377 F.3d 355, 364 (4th Cir. 2004).

The fact that this Court has jurisdiction does not end the matter, however. The fact that the Court *could* hear this action does not necessarily mean the Court *should* hear this action. Although the Act details how parties, states and federal courts can draft and approve ICAs, it is silent on how and in what fora parties can enforce ICAs. *Global NAPS, Inc. v. Verizon New England Inc.*, 603 F.3d 71, 83 (1st Cir. 2010). Because the Act does not specifically mandate exhaustion of state action, whether to construe the Act as prescribing an exhaustion requirement is a matter for the Court's discretionary judgment. *Ohio Bell Tel. Co., Inc. v. Global NAPS Ohio, Inc.*, 540 F.Supp.2d 914, 919 (S.D. Ohio 2008).

The Third Circuit Court of Appeals has held that interpretation and enforcement actions that arise after a state commission has approved an ICA must be litigated in the first instance before the relevant state commission. *Core Communications, Inc. v. Verizon Pennsylvania, Inc.*, 493 F.3d 333, 344 (3d Cir. 2007). A party may then proceed to federal court to seek review of the commission's decision. *Id.* Citing *Core*, a district court in Ohio has also held that a complainant is required to first litigate its breach-of-ICA claims before the state commission in order to seek review in the district court. *Ohio Bell*, 540 F.Supp.2d at 919-920 (citing cases from numerous district courts).

On the other hand, in *Central Telephone*, the court held that a party to an ICA is not required to exhaust administrative remedies by bringing claims for breach of an ICA first to a state commission. *Central Telephone*, 759 F.Supp.2d at 778 and 786.

> The Court agrees with the reasoning of the *Core* and *Ohio Bell* opinions. The Act provides for judicial review of a "determination" by the state commission. Until such determination is made, the Court cannot exercise this judicial review. *See Ohio Bell,* 540 F.Supp.2d at 919. As the *Core* court stated: "a state commission's authority to approve or reject an interconnection agreement would itself be undermined if it lacked authority to determine in the first instance the meaning of an agreement that it has approved." *Core,* 493 F.3d at 343 (citing *BellSouth Telecommunications,* 317 F.3d at 1278, n.9).[63]

The Authority is mindful, however, of the restrictions placed upon these proceedings by the Order of the Bankruptcy Court. In an Order issued on October 26, 2011, the Bankruptcy Court ruled that "pursuant to 11 U.S.C. § 362(b)(4), the automatic stay imposed by 11 U.S.C. § 362 . . . is not applicable to currently pending State Commission Proceedings," including proceedings brought by AT&T.[64] However, the Bankruptcy Court further stated that

> any regulatory proceedings . . . may be advanced to a conclusion and a decision in respect of such matters may be rendered; provided however, that nothing herein shall permit, as part of such proceedings:
>
> A. liquidation of the amount of any claim against the Debtor; or
>
> B. any action which affects the debtor-creditor relationship between the Debtor and any creditor or potential creditor.[65]

Therefore, nothing in this Order is intended to permit as part of these proceedings the liquidation of the amount of any claim against Halo or to affect the debtor-creditor relationship between the Parties beyond that permitted in the Bankruptcy Court's October 26, 2011 Order.

AT&T's *Complaint* - Count 1

Count 1 of the *Complaint* alleges that Halo has breached the ICA by impermissibly sending traffic originating from wireline telephones to AT&T, although the interconnection agreement only

[63] *BellSouth Telecommunications, Inc. v. Halo Wireless, Inc,* Case No. 3-11-0795, M.D. Tenn., *Memorandum*, pp. 4-6 (November 1, 2011).
[64] *In re: Halo Wireless, Inc.*, Case No. 11-42464, Bkrtcy. E. D. Tex., *Order Granting Motion of the AT&T Companies to Determine Automatic Stay Inapplicable and for Relief from the Automatic Stay*, p. 1 (October 26, 2011).
[65] *In re: Halo Wireless, Inc.*, Case No. 11-42464, Bkrtcy. E. D. Tex., *Order Granting Motion of the AT&T Companies to Determine Automatic Stay Inapplicable and for Relief from the Automatic Stay*, p. 2.

permits Halo to send AT&T traffic that originates from wireless networks. The applicable language from the interconnection agreement reads:

> Whereas, the Parties have agreed that this Agreement will apply only to (1) traffic that originates on AT&T's network or is transited through AT&T's network and is routed to Carrier's wireless network for wireless termination by Carrier; and (2) traffic that originates through wireless transmitting and receiving facilities before [Halo] delivers traffic to AT&T for termination by AT&T or for transit to another network.[66]

The Authority interprets the language of the ICA to require Halo only to deliver traffic that has originated through wireless transmitting and receiving facilities. Thus, evidence that Halo has delivered wireline-originated traffic will result in a finding that Halo has breached the ICA.

The Authority has reviewed Halo's *ex parte* filings with the FCC in the *Connect America Fund* docket, where the description of Halo and Transcom's operations is the same as that which has been presented to the TRA in this proceeding. Indeed, reviewing the *ex parte* filings made by Halo makes it clear that the FCC was aware of Halo's assertion that it provided service to ESPs and used wireless technology. In the resulting *Connect America Fund Order,* the FCC addressed and rejected Halo's assertion that traffic from its customer Transcom is wirelessly originated. The *Connect America Fund Order* states:

> We first address a dispute regarding the interpretation of the intraMTA rule. Halo Wireless (Halo) asserts that it offers "Common Carrier wireless exchange services to ESP and enterprise customers" in which the customer "connects wirelessly to Halo base stations in each MTA." It further asserts that its "high volume" service is CMRS because "the customer connects to Halo's base station using wireless equipment which is capable of operation while in motion." Halo argues that, for purposes of applying the intraMTA rule, "[t]he origination point for Halo traffic is the base station to which Halo's customers connect wirelessly." On the other hand, ERTA claims that Halo's traffic is not from its own retail customers but is instead from a number of other LECs, CLECs, and CMRS providers. NTCA further submitted an analysis of call records for calls received by some of its member rural LECs from Halo indicating that most of the calls either did not originate on a CMRS line or were not intraMTA, and that even if CMRS might be used "in the middle,"

[66] J. Scott McPhee, Pre-filed Direct Testimony, pp. 6-7 (December 19, 2011).

> this does not affect the categorization of the call for intercarrier compensation purposes. These parties thus assert that by characterizing access traffic as intraMTA reciprocal compensation traffic, Halo is failing to pay the requisite compensation to terminating rural LECs for a very large amount of traffic. Responding to this dispute, CTIA asserts that "it is unclear whether the intraMTA rules would even apply in that case."[67]

After clearly describing the operations of Halo, including its use of wireless technology and relationship with Transcom, the FCC found that calls are not originated by Transcom and that wireline originated calls are not reclassified as wireless calls because of a wireless link in the middle of the call path. The FCC in the *Connect America Fund Order* continues:

> We clarify that a call is considered to be originated by a CMRS provider for purposes of the intraMTA rule only if the calling party initiating the call has done so through a CMRS provider. Where a provider is merely providing a transiting service, it is well established that a transiting carrier is not considered the originating carrier for purposes of the reciprocal compensation rules. Thus, we agree with NECA that the "re-origination" of a call over a wireless link in the middle of the call path does not convert a wireline-originated call into a CMRS-originated call for purposes of reciprocal compensation and we disagree with Halo's contrary position.[68]

The Authority agrees with the FCC's rejection of Halo's assertions and finds that the "re-origination" of a call over a wireless link in the middle of the call path does not convert a wireline-originated call into a wireless-originated call for purposes of reciprocal compensation.

Nor does Halo deny that it is sending traffic that originated on the wireline PSTN.[69] In response to the question, "Do you admit that some of the communications in issue actually started on other networks?" Halo's witness Mr. Wiseman responds "Most of the calls probably did start on other networks before they came to Transcom for processing. It would not surprise me if some of them started on the PSTN."[70]

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[67] *Connect America Fund Order*, ¶ 1005 *(footnotes omitted)*. The term "CLEC" refers to Competitive Local Exchange Carrier.
[68] *Connect America Fund Order*, ¶ 1006 *(footnotes omitted)*.
[69] The term "PSTN" refers to the Public Switched Telephone Network, which means the calls were originated on the landline network.
[70] Russ Wiseman, Pre-filed Direct Testimony, p. 14 (December 19, 2011).

AT&T's traffic study also demonstrates that Halo has delivered wireline traffic to AT&T. AT&T estimates that about 74% of the traffic Halo sends to AT&T originates on the networks of landline carriers.[71] Even though Halo does not deny it has likely sent wireline traffic to AT&T, it contests the accuracy of AT&T's traffic study. Halo's arguments against AT&T's traffic study are: (1) that telephone numbers are an unreliable indictor of who originates a call, if wireless technology is used for the call and where the call originates and (2) calls that originate using IP technology are not landline calls.

The Authority acknowledges that a certain degree of imprecision can occur when analyzing the origin to individual telephone calls, due to factors such as the advent of number portability and the growth of wireless and IP telephony. However, because of these technical issues, the industry has developed conventions and practices to evaluate calls for the purpose of intercarrier compensation. The Authority finds that the methodology used to collect the data and the interpretation of the data in the AT&T study are based upon common industry practices to classify whether traffic is originated on wireline or wireless networks. In addition, the Authority finds that the convention of collecting data for a single week is sufficient to demonstrate whether wireline traffic was sent to AT&T by Halo. Further, Halo identifies several calls included in AT&T's traffic study as likely being IP-originated,[72] which is considered by the industry to be wireline-originated for the purpose of intercarrier compensation rules.[73]

Based upon the Authority's agreement with the FCC's dispositive decision in the *Connect America Fund Order*, Halo's admission that it has delivered wireline-originated and IP-originated traffic to AT&T, and the information contained in AT&T's traffic study, the Authority finds that Halo has materially breached its interconnection agreement with AT&T.

[71] Mark Neinast, Pre-filed Direct Testimony, pp. 3, 11 and Attachment MN-3 (December 19, 2011).
[72] Russ Wiseman, Pre-filed Rebuttal Testimony, pp. 8-9 (January 3, 2012).
[73] Mark Neinast, Pre-filed Rebuttal Testimony, p. 6 (January 3, 2012).

AT&T's *Complaint* - Count 2

Count 2 of the *Complaint* alleges that Halo breached its interconnection agreement with AT&T by improperly altering call detail information that allows AT&T to properly classify calls for the purpose of intercarrier compensation. Section XIV.G of the ICA requires:

> The parties will provide each other with the proper call information, including all proper translations for routing between networks and any information necessary for billing where BellSouth provides recording capabilities. This exchange of information is required to enable each party to bill properly.[74]

In addition, Section XIV.E of the ICA also requires Halo to provide many types of call detail information, including the Charge Number.

In most cases, industry members use the Calling Party Number ("CPN") to determine whether a call is jurisdictionally long-distance or local. In rare cases a CN is included in the call detail record to indicate the number that will actually be financially responsible for the call. For example, some businesses want all calls made by its employees in a particular office to be billed to single number. Halo admits that it uses Transcom's BTN to populate the CN fields on traffic since February 2011.[75]

As with Count 1, the Authority finds that the FCC's *Connect America Fund Order* dispositively resolves this issue. Because the FCC dismisses "re-origination" by Transcom, Transcom clearly cannot be the originating entity and thus inserting Transcom's number as the Charge Number is inappropriate. Therefore, because Halo has improperly altered call detail information, the Authority finds that Halo has materially breached its interconnection agreement with AT&T.

[74] *Complaint*, p. 4 (July 26, 2011).
[75] Russ Wiseman, Pre-filed Direct Testimony, pp. 29-30 (December 19, 2011).

AT&T's *Complaint* – Count 3

Count 3 of the *Complaint* alleges that Halo has not properly compensated AT&T for the traffic it has delivered. Halo has been paying AT&T reciprocal compensation, which is only appropriate if the end-user initiated the call wirelessly within the MTA in which it is terminated, instead of switched access charges, which are appropriate for wireline-originated calls. The FCC's decision in the *Connect America Fund Order*, with which the Authority concurs, is that Halo's traffic does not originate within an MTA with its customer Transcom. In addition, AT&T's traffic study demonstrates that AT&T terminated calls that originated outside the MTA where it was terminated. Further, Halo's use of MTA specific numbers to assert a 100% intra-MTA factor necessarily implies that switched access charges were avoided since Transcom was not the true originating party.

The Authority's findings on Counts 1 and 2 of the *Complaint* concerning the wireline and IP-origination of Halo's traffic necessarily lead to the conclusion that Halo has not been properly compensating AT&T for the traffic it has delivered. The payment of reciprocal compensation is only appropriate if the end-user, which is not Transcom, initiated the call wirelessly within the MTA where it is terminated. Thus, Halo has failed to compensate AT&T for calls where it was due switched access charges. Therefore, the Authority finds that Halo is liable to AT&T Tennessee for access charges on the interstate and intrastate interLATA and intraLATA landline traffic it has sent to AT&T Tennessee.

AT&T's *Complaint* - Count 4

Count 4 of the *Complaint* alleges that Halo has refused to pay AT&T for transport facilities. Section V.B, page 10 of the ICA states:

> BellSouth will bear the cost of the two-way trunk group for the proportion of the facility utilized for the delivery of BellSouth originated Local traffic to Carrier's POI within BellSouth's service territory and within the LATA (calculated based on the number of minutes of traffic identified as BellSouth's divided by the total minutes of use on the facility), and Carrier will provide or bear the cost of the two-way trunk group for all other traffic, including Intermediary traffic.[76]

Halo does not dispute that it terminates all of its traffic on AT&T's network, but it does dispute AT&T's charges for the two-way trunk groups that connect the Parties. Halo details the arrangement of facilities with which it connects to AT&T in various locations, and it cites from FCC rules to argue that AT&T cannot charge Halo for facilities on AT&T's side of the POI.[77] This line of reasoning might be appropriate if Halo were a CLEC. However, Halo is not a CLEC but rather a CMRS provider, and under the ICA it signed with AT&T, each party is required to pay its share of the facilities cost. The Authority finds that Halo owes AT&T for the proportionate share of the facilities that connect Halo's Point of Presence ("POP") to AT&T's network as required by the ICA. The ICA allocates the costs of facilities based on the proportion of traffic each party sends to the other party, and since Halo sends 100 % of its traffic to AT&T, the Authority finds that Halo should pay 100% of the cost for these facilities as required by the ICA.

Transcom Is Not an Enhanced Service Provider

The FCC has established a bright-line rule that the "enhanced" service designation does not apply to services that merely "facilitate establishment of a basic transmission path over which a telephone call may be completed, without altering the fundamental character of the telephone service," and that a service is not "enhanced" when the service does not alter the fundamental character of the service *from the end-user's perspective*.[78] Thus, for example, the FCC has held that

[76] Mark Neinast, Pre-filed Direct Testimony, p.19 (December 19, 2011).
[77] Russ Wiseman, Pre-filed Direct Testimony, p. 41 (December 19, 2011).
[78] *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934*, 11 FCC Rcd. 21905, ¶ 107 (1996).

services are not "enhanced" when customers use the same dialing method for allegedly "enhanced" calls that they would for any other call,[79] or where the alleged "enhancement" was made "without the advance knowledge or consent of the customer" that placed the call and the customer is not "provided with the 'capability' to do anything other than make a telephone call."[80]

The Authority finds that Transcom's services fail to meet the FCC's bright-line rule, since the record in this proceeding indicates that Transcom provides no services to actual end-users and does not offer any enhancements discernable to the person that actually places the call.[81] The record also supports the conclusion that end-users are completely unaware that Transcom is even involved in call delivery.[82] Nor does Halo's testimony prove that Transcom is an ESP. Halo asserts that Transcom

> ... employs computer processing applications that act on the format, content, code, protocol or similar aspects of the received information. The platform will provide the customer additional, different, or restructured information. This is done by generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information via telecommunications.[83]

However, despite the claim of computer processing of data, Transcom only reduces background noise and inserts "comfort noise" in periods of silence so that those periods of silence are not mistaken for the end of a call.[84] The Pennsylvania Public Utility Commission rejected a similar claim relating to Transcom's services, finding that "the removal of background noise" and

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[79] *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, 19 FCC Rcd. 7457, ¶ 15 (2004) ("*IP-in-the-Middle Order*").
[80] *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, 20 FCC Rcd. 4826, ¶ 16, n. 28 (2005) ("*AT&T Calling Card Decision*").
[81] Mark Neinast, Pre-filed Rebuttal Testimony, p. 5 (January 3, 2012).
[82] *Id.*
[83] Robert Johnson, Pre-filed Rebuttal Testimony, p. 12 (January 3, 2012).
[84] *Id.* at 12-13.

"the insertion of white noise" do not make Transcom an ESP.[85] The alleged "enhancements" that Transcom claims it makes to calls that transit its network are simply processes to improve the quality of the call. Telecommunications networks have been routinely making those types of improvements for years and, in some cases, decades. Carriers have routinely incorporated equipment into networks that have, for example, expanded the dynamic range of a voice call to improve clarity. The conversion from analog to digital and back to analog has significantly improved call quality, yet none of these processes are deemed "enhancements" in the sense of an ESP.[86] For the reasons above, the Authority finds that Transcom is not an ESP for this particular traffic.

IT IS THEREFORE ORDERED THAT:

1. Halo Wireless Inc.'s *Motion to Dismiss Complaint With Prejudice* is denied.

2. BellSouth Telecommunications, LLC d/b/a AT&T Tennessee is authorized to terminate the interconnection agreement previously approved by the Authority in TRA Docket No. 10-00063 and to stop accepting traffic from Halo Wireless, Inc.

3. Halo Wireless, Inc. is liable to BellSouth Telecommunications, LLC d/b/a AT&T Tennessee for access charges on the interstate and intrastate interLATA and intraLATA landline traffic it has sent to AT&T Tennessee thus far and for the interconnection facilities it has obtained from AT&T Tennessee. However, nothing in this Order is intended to permit as part of these proceedings the liquidation of the amount of any claim against Halo or to affect the debtor-creditor relationship between the Parties beyond that permitted in the *Order Granting Motion of the AT&T*

[85] *Palmerton Tel. Co. v. Global NAPS South, Inc., et al.*, PA PUC Docket No. C-2009-2093336, 2011 WL 1259661, at 16-17 (Penn. PUC, March 16, 2010). ("We find that Transcom does not supply GNAPS with 'enhanced' traffic under applicable federal rules"). Note that the Pennsylvania Public Utility Commission specifically rejected the Transcom Bankruptcy Court's April 28, 2005 Memorandum Opinion finding Transcom to be an ESP on the basis that Transcom had indicated in that proceeding that it provided "data communications services over private IP networks (VoIP)." *Id.* The Authority is not persuaded by the Transcom bankruptcy court rulings regarding Transcom's status as an ESP, either.

[86] *Id.*

Companies to Determine Automatic Stay Inapplicable and for Relief From the Automatic Stay [Dkt. No. 13], issued by the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division, in Case No. 11-42464-btr-11 on October 26, 2011. AT&T Tennessee may pursue further action for the collection of access charges or facilities charges in the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division, or other appropriate fora as permitted by that Court.

4. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen days from the date of this Order.

5. Any party aggrieved by the Authority's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty days from the date of this Order.

Kenneth C. Hill, Chairman

Sara Kyle, Director

Mary W. Freeman, Director

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 17
PARTY Bellsouth Tel., LLC d/b/a AT&T Florida (AT&T) - Direct
DESCRIPTION Mark Neinast (MN-1)
DATE 07/12/12

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 26, 2012

IN RE:	)	
	)	**DOCKET NO.**
BELLSOUTH TELECOMMUNICATIONS LLC D/B/A AT&T TENNESSEE V. HALO WIRELESS, INC.	)	**11-00119**
	)	

ORDER

This matter came before Chairman Kenneth C. Hill, Director Sara Kyle and Director Mary W. Freeman of the Tennessee Regulatory Authority ("Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on January 23, 2012 for consideration of the *Complaint* filed by BellSouth Telecommunications, LLC d/b/a AT&T Tennessee ("AT&T") against Halo Wireless, Inc. ("Halo") and Halo's *Motion to Dismiss Complaint With Prejudice.*

TRAVEL OF THE CASE

On July 26, 2011, AT&T filed a *Complaint* against Halo, pursuant to 47 U.S.C. § 252 and TRA Rule 1220-1-2-.02, requesting that the TRA issue an order "allowing it to terminate its wireless Interconnection Agreement ("ICA") with Halo based on Halo's material breaches of that ICA."[1] The *Complaint* also states that AT&T "seeks an Order requiring Halo to pay AT&T Tennessee the amounts Halo owes" as a result of "an access charge avoidance scheme."[2] On August 10, 2011, Halo filed a Suggestion of Bankruptcy informing the TRA that "on August 8, 2011 Halo filed a voluntary petition under Chapter 11 of Title 11 of the United States Code in the

[1] *Complaint*, p. 1 (July 26, 2011).
[2] *Id.*

United States Bankruptcy Court for the Eastern District of Texas (Sherman Division)" ("Bankruptcy Court").[3] Accordingly, Halo stated, "the automatic stay is now in place" and "prohibits further action against [Halo] in the instant proceeding."[4]

On August 19, 2011, Halo filed a notice of removal to federal district court, which references a separate notice of removal and states that this matter has been removed to the United States District Court for the Middle District of Tennessee, Nashville Division ("District Court") "pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure."[5] On November 10, 2011, AT&T filed a letter informing the TRA that it may now hear this matter, the District Court having remanded it to the TRA and the Bankruptcy Court having lifted the automatic stay on a limited basis. AT&T requested that this matter be placed on the agenda for the Authority Conference scheduled for November 21, 2011 "for appointing a Hearing Officer and other action as necessary."[6] On November 17, 2011, Halo filed a *Motion to Abate*, in which Halo requested that the TRA "abate" this proceeding until conclusion of Halo's appeal of the Bankruptcy Court's October 26, 2011 Order to the United States Court of Appeals for the Fifth Circuit.

At the regularly scheduled Authority Conference held on November 21, 2011, the Authority voted unanimously to deny the *Motion to Abate* and to convene a contested case in this matter and appoint Chairman Kenneth C. Hill as Hearing Officer to handle any preliminary matters, including entering a protective order, ruling on any intervention requests, setting a procedural schedule, and addressing other preliminary matters.[7] Immediately following the Authority Conference, the Hearing Officer convened a scheduling conference in this matter.

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[3] *Suggestion of Bankruptcy*, p. 1 (August 10, 2011).
[4] *Id.* at 2.
[5] *Notice of Removal to Federal Court*, p. 1 (August 19, 2011).
[6] Letter from Joelle Phillips to Chairman Kenneth C. Hill (November 10, 2011).
[7] *Order Denying Motion to Abate, Convening a Contested Case and Appointing a Hearing Officer* (December 19, 2011).

On December 1, 2011, Halo filed *Halo Wireless, Inc.'s Partial Motion to Dismiss and Answer to the Complaint of BellSouth Telecommunications, LLC d/b/a AT&T Tennessee* ("*Partial Motion to Dismiss*"), and AT&T filed its response to Halo's motion on December 8, 2011. The Hearing Officer heard arguments from AT&T and Halo (collectively, "the Parties") on the *Partial Motion to Dismiss* on December 12, 2011, and issued an order denying the *Partial Motion to Dismiss* on December 16, 2011.[8] The Parties submitted pre-filed direct testimony of their witnesses on December 19, 2011, and pre-filed rebuttal testimony on January 3, 2012. In addition, the Parties submitted pre-hearing memoranda on January 6, 2012.

MOTION TO DISMISS COMPLAINT WITH PREJUDICE

After business hours on Friday, January 13, 2012, Halo filed *Halo Wireless, Inc.'s Notice of May 16, 2006 Order Confirming Plan of Reorganization of Transcom Enhanced Services and Motion to Dismiss Complaint With Prejudice* ("*Motion to Dismiss Complaint With Prejudice*"). At the beginning of the Hearing on January 17, 2012, Chairman Hill addressed the *Motion to Dismiss Complaint With Prejudice*, giving AT&T an opportunity to respond and setting the matter for consideration during the January 23, 2012 Authority Conference. AT&T filed *BellSouth Telecommunications, LLC dba AT&T Tennessee's Response to Halo Wireless, Inc's Motion to Dismiss Complaint With Prejudice* ("*Response*") on January 19, 2012.

As more fully explained in the discussion of AT&T's *Complaint* below, Halo's business plan is centered on their assertion that Transcom Enhanced Services, Inc. ("Transcom") is an Enhanced Service Provider ("ESP"). In its *Motion to Dismiss Complaint With Prejudice,* Halo requests that the TRA dismiss AT&T's *Complaint* with prejudice on the grounds that during

[8] *Order Denying Motion to Dismiss* (December 16, 2011).

Transcom's 2005 bankruptcy proceeding,[9] BellSouth/AT&T Corporation were creditors/parties in interest.[10] In the Transcom Bankruptcy Court's April 28, 2005 Memorandum Opinion, the Court concluded that "[Transcom]'s service is an enhanced service, not subject to payment of access charges."[11] Some of the creditors appealed the April 28, 2005 order to the United States District Court for the Northern District of Texas, Dallas Division ("Transcom District Court"), but the Transcom District Court dismissed the appeal as moot and vacated the bankruptcy court's Order and Memorandum Opinion.[12] However, the Transcom Bankruptcy Court entered an order on May 16, 2006 confirming Transcom's bankruptcy plan.[13] In this Confirmation Order, the Transcom Bankruptcy Court again stated that Transcom's services are not subject to access charges, but rather qualify as information services and enhanced services that must pay end-user charges.[14] No creditor appealed the May 16, 2006 Order.[15] Halo argues that because this Confirmation Order is binding, AT&T cannot challenge Transcom's status as an ESP.[16] In addition, Halo asserts that *res judicata* or collateral estoppel bars the claims that have been litigated in the bankruptcy court.

To assert a *res judicata* defense, a party must establish: 1) the parties must be identical in both suits; 2) the prior judgment must have been rendered by a court of competent jurisdiction; 3) there must have been a final judgment on the merits; and 4) the same cause of action must be involved in both cases.[17] Halo claims that these standards are satisfied because 1) BellSouth was a party to the Transcom bankruptcy case and litigants who have a close and significant relationship (e.g. Transcom/Halo) satisfy the "identical parties" test; 2) the Transcom Bankruptcy Court had

[9] Transcom filed a voluntary petition for Chapter 11 bankruptcy in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, ("Transcom Bankruptcy Court") on February 18, 2005 in Case No. 05-31929-HDH-11 ("Transcom bankruptcy"). *See Motion to Dismiss Complaint With Prejudice*, p. 2, ¶ 3 (January 13, 2012).
[10] *Motion to Dismiss Complaint With Prejudice*, p. 2, ¶ 4 (January 13, 2012).
[11] *Id.* at 3, ¶ 7.
[12] *Id.*
[13] *Id.* at 4, ¶ 10.
[14] *Id.*
[15] *Id.* at 4, ¶ 11.
[16] *Id.* at 6, ¶ 14.
[17] *Id.* at 6, ¶ 17, *citing Osherow v. Ernst & Young, LLP* (*In re Intelogic Trace, Inc.*), 300 F.3d 382, 386 (5th Cir. 2000).

jurisdiction over the 2006 Confirmation Order; 3) the 2006 Confirmation Order is final; and 4) the two actions are based on the same nucleus of operative facts, because the primary issue in both proceedings is whether Transcom provides enhanced services.[18]

Collateral estoppel precludes a party from litigating an issue already raised in an earlier action if: 1) the issue at stake is identical to the one involved in the earlier action; 2) the issue was actually litigated in the prior action; and 3) the determination of the issue in the prior action was a necessary part of the judgment in that action.[19] Halo asserts that 1) AT&T's *Complaint* confronts the authority with an identical issue to that raised in the 2006 Transcom Bankruptcy Court's Confirmation Order, i.e. that Transcom is an ESP not subject to access charges; 2) the issue was litigated in 2006 in the Transcom bankruptcy proceeding; and 3) the determination that Transcom is an ESP was a necessary part of the Confirmation because if it were not, the Plan would not have been feasible and the Confirmation would have been denied.[20]

AT&T opposes the *Motion to Dismiss Complaint With Prejudice* on the grounds that the Motion is at odds with the Federal Communications Commission's ("FCC") *Connect America Fund* Order.[21] AT&T argues that none of the Transcom bankruptcy court proceedings or other earlier proceedings cited by Halo is binding on either AT&T or the Authority.[22] None of the Transcom Bankruptcy Court orders states or suggests that Transcom actually is an end-user, and none of them implies or says anything about the termination or origination of calls.[23] Rather, an ESP is treated as

[18] *Motion to Dismiss Complaint With Prejudice*, pp. 7-8, ¶¶ 18-26 (January 13, 2012).
[19] *Id.* at 10, ¶ 28, *citing Petro-Hunt, L.L.C. v. U.S.*, 365 F.2d 385, 397 (5th Cir, 2004).
[20] *Id.* at 10-11, ¶¶ 27-30.
[21] *Response*, p. 1 (January 19, 2012); *See Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208; FCC 11–161, __ FCC Rcd __ ("*Connect America Fund Order*") (November 18, 2011).
[22] *Response*, p. 3 (January 19, 2012).
[23] *Id.* at 4.

an end-user for the purpose of being exempted from access charges, nothing more.[24] Further the exemption applies only to ESPs, not carriers (like Halo) that transport calls for ESPs.[25] AT&T asserts that the Authority rejected Halo's *res judicata* and collateral estoppel arguments when it rejected Halo's *Partial Motion to Dismiss*.[26] AT&T further asserts that *res judicata* and collateral estoppel cannot apply because: 1) the main order Halo relies upon was vacated by the federal district court; 2) the bankruptcy cases involved Transcom, not Halo, and therefore were not between identical parties; 3) the Transcom bankruptcy cases did not involve the same cause of action as this case, since this case involves claims for Halo's breach of a contract that was not even formed until after the bankruptcy cases, while the bankruptcy cases involved the issue of whether Transcom was subject to access charges; and 4) the issue in this case (whether Transcom must be deemed to originate or re-originate calls) was never raised, much less decided, in the bankruptcy cases.[27]

The Authority agrees with AT&T that neither *res judicata* nor collateral estoppel applies in this case. The panel finds that *res judicata* does not apply because the Transcom bankruptcy case and this docket do not involve identical parties and this is a breach of contract case and, therefore, is not the same cause of action. The panel also finds that collateral estoppel does not apply because the issue in this case - the origination or re-origination and termination of Halo's calls – was not raised in the Transcom bankruptcy case. Based on these findings, the Authority concludes unanimously that Halo's *Motion to Dismiss Complaint With Prejudice* should be denied.

THE HEARING

A Hearing in this matter was held before the voting panel of Directors assigned to this docket on January 17, 2012. The Hearing was publicly noticed by the Hearing Officer on

[24] *Id.*
[25] *Id.* at 4, n. 8.
[26] *Id.* at 3, n. 6.
[27] *Id.*

December 16, 2011 and January 12, 2012. Participating in the Hearing were the following parties and their respective counsel:

> **For BellSouth Telecommunications, LLC d/b/a AT&T Tennessee – Joelle Phillips, Esq.**, 333 Commerce Street, Suite 2101, Nashville TN 37201 and **J. Tyson Covey, Esq.**, Mayer Brown, LLP, 71 S. Wacker Drive, Chicago, IL 60606.
>
> **For Halo Wireless, Inc. – Paul S. Davidson, Esq.**, Waller Lansden Dortch & Davis, LLP, 511 Union Street, Suite 2700, Nashville, TN 37219; **Steven H. Thomas, Esq.** and **Jennifer M. Larson, Esq.**, McGuire, Craddock & Strother, P.C., 2501 N. Harwood, Suite 1800, Dallas, TX 75201; **W. Scott McCollough, Esq.**, McCollough/Henry PC, 1250 S. Capital of Texas Highway, Bldg. 2-235, West Lake Hills, TX 78746.

During the Hearing, the Authority heard testimony from AT&T witnesses J. Scott McPhee and Mark Neinast. Russ Wiseman and Robert Johnson testified for Halo.

AT&T'S *COMPLAINT*

In its *Complaint*, AT&T seeks to terminate its wireless ICA with Halo because Halo has violated the ICA by sending AT&T large volumes of traffic that does not originate on a wireless network. AT&T further asks the TRA to order Halo to pay it the amounts that it owes AT&T. AT&T asserts that the TRA has jurisdiction over this matter, because it involves (1) violations of an ICA entered into under 27 U.S.C. §§ 251 and 252 that was approved by the Authority and (2) violations of AT&T Tennessee's state tariffs.[28] The *Complaint* contains four counts:

Count 1 - Breach of ICA: Sending Wireline-Originated Traffic to AT&T Tennessee: AT&T charges that Halo sends AT&T traffic that is wireline-originated, interstate, interLATA or intraLATA toll traffic and that Halo disguises it as local traffic to avoid access charges that apply to such traffic. AT&T asks the TRA to order Halo to terminate the Parties' ICA for this breach or, in

[28] *Complaint*, p. 3 (July 26, 2011).

the alternative, to order Halo to cease and desist from sending wireline-originated traffic not authorized by the ICA to AT&T.[29]

Count 2 - Breach of ICA: Alteration or Deletion of Call Detail: AT&T alleges that Halo consistently alters the Charge Number ("CN"), which prevents AT&T from properly billing Halo based on where the traffic originated. AT&T requests that the Authority authorize it to terminate the Parties' ICA, or, in the alternative, to order Halo to cease and desist from altering the CN on traffic that it delivers to AT&T.[30]

Count 3 – Payment for Termination of Wireline-Originated Traffic: The wireline-originated traffic that Halo previously sent to AT&T is not governed by the Parties' ICA but is instead subject to tariffed switched access charges. AT&T therefore asks the Authority to order Halo to pay all access charges due to AT&T within thirty days of the Authority's order.[31]

Count 4 – Breach of ICA: Non-payment for Facilities: AT&T asks the TRA to order Halo to pay it for transport facilities that AT&T has provided but for which Halo has refused to pay.[32]

POSITIONS OF THE PARTIES

The Parties have set forth their arguments in full in the record of this docket, in their pre-hearing memoranda and in the presentation of their cases at the Hearing. The following section is intended as a *brief* summary of the positions of AT&T and Halo in this matter.

Position of AT&T Tennessee

AT&T asserts that Halo has engaged in three separate types of breaches of the Parties' ICA.[33] Although the ICA requires Halo to send only wireless-originated traffic to AT&T, 74% of

[29] *Id.* at 3-4.
[30] *Id.* at 4-5.
[31] *Id.* at 5-6.
[32] *Id.* at 6.
[33] *Pre-hearing Memorandum of BellSouth Telecommunications, LLC dba AT&T Tennessee*, p. 1 (January 6, 2012).

the traffic Halo sends to AT&T is landline-originated traffic.[34] According to AT&T, Halo's contention that it is not breaching the ICA is based on a "wireless in the middle" theory, where Transcom is an ESP; ESPs are treated as end-users; and Transcom must be deemed to "re-originate" every call that passes through Transcom to Halo.[35]

AT&T argues that the FCC has expressly rejected Halo's theory in the *Connect America Fund Order*, where the FCC singled out Halo by name.[36] The FCC rejected Halo's theory that calls that begin with an end-user dialing a call on a landline network can be "re-originated" as wireless calls by passing through an ESP with wireless equipment in the middle of the call. [37] Further, the ESP exemption from access charges applies only to ESPs themselves, not to carriers like Halo that serve them.[38] AT&T asserts, however, that Transcom is not an ESP because reducing background noise and inserting "comfort noise" in periods of silence do not alter the fundamental character of the service from the end-user's perspective.[39]

AT&T argues that its call study showing 74% of the calls Halo sends to AT&T are landline-originated is reliable. Further, Halo does not deny that at least some of its calls it sends to AT&T are landline or IP-originated,[40] which results in a breach of the ICA.[41]

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[34] *Id.* at 5. The terms "wireline" and "landline" are used interchangeably in the parties' testimony. For background, federal law specifies that wireless calls that originate and terminate within the same Major Trading Area ("MTA") are "local calls" and subject to reciprocal compensation rates. Calls exchanged between end-users in different MTAs are considered "InterMTA" and are subject to tariffed interstate or intrastate access charges, which are higher than reciprocal compensation rates. Calls that originate from landline telephones are considered "local" if they both originate and terminate within the same local exchange area. Intercarrier compensation rates for intra-exchange calls are set by the landline ICA; the rates for intrastate inter-exchange calls are set by the state access tariff, and the rates for interstate inter-exchange calls are set by the FCC access tariff. *See* J. Scott McPhee, Pre-filed Direct Testimony, p. 9 (December 19, 2011).
[35] *Id.*
[36] *Pre-hearing Memorandum of BellSouth Telecommunications, LLC dba AT&T Tennessee*, p. 6 (January 6, 2012).
[37] *Id.* at 7.
[38] *Id.* at 9.
[39] *Id.* at 10-11.
[40] The term "IP" refers to Internet Protocol.
[41] *Id.* at 11-12.

AT&T asserts that Halo also breached the ICA by inserting false charge numbers; specifically, Halo inserts a Transcom Charge Number ("CN") on every call, and the effect is that every call appears local.[42]

AT&T alleges that Halo is breaching the ICA by refusing to pay for interconnection facilities it obtains from AT&T. Because 100% of the traffic between the Parties is traffic that Halo terminates on AT&T's network, Halo is responsible for 100% of the cost of the interconnection facility under the Parties' wireless ICA.[43]

Position of Halo Wireless, Inc.

Halo asserts that it is not in breach of the ICA and AT&T is not entitled to "significant amounts of money" from Halo for the traffic at issue.[44] Halo further asserts that it has a valid and subsisting Radio Station Authorization from the FCC authorizing Halo to provide wireless service as a common carrier and to operate stations in the "3650-3700" MHz band,[45] and is therefore governed exclusively by federal law.[46] Halo argues that the FCC has exclusive jurisdiction over federal licensing and that a state commission cannot take any action that would amount to a suspension or revocation of a federal license.[47]

Halo provides Commercial Mobile Radio Service ("CMRS") and sells telephone exchange service to Transcom, which is a high volume customer.[48] Halo asserts that Transcom is an ESP because it changes the information content of every call that passes through its system and also

[42] *Id.* at 12-13.
[43] *Id.* at 14-15.
[44] *Halo Wireless, Inc.'s Pre-hearing Memorandum*, p.1 (January 6, 2012).
[45] Russ Wiseman Pre-filed Direct Testimony, p. 2 (December 19, 2011).
[46] *Halo Wireless, Inc.'s Pre-hearing Memorandum*, p. 2 (January 6, 2012).
[47] *Id.* at 2-3.
[48] *Id.* at 1.

offers enhanced capabilities.[49] Transcom is an end-user, not a carrier.[50] Therefore, Halo argues that it is a CMRS carrier selling wireless telephone exchange service to an ESP end-user and its traffic is not wireline-originated.[51] All of the calls received from Transcom within a particular MTA are terminated in the same MTA, so that all of the traffic is subject to local charges in the ICA. [52]

Halo argues that it does not alter or delete call detail in violation of the ICA.[53] Halo populates the CN parameter with the Billing Telephone Number ("BTN") of its end-user customer - Transcom.[54] AT&T alleges improper modification of signaling information related to the CN parameter, but the basis of this claim once again results from the assertion that Transcom is a carrier rather than an end-user.[55] Halo is exactly following industry practice applicable to an exchange carrier providing telephone exchange service to an end-user, and in particular a communications-intensive business end-user with sophisticated Customer Premises Equipment ("CPE").[56]

Halo asserts that it does not owe facilities charges to AT&T.[57] Under the ICA, AT&T may only charge for interconnection facilities when AT&T-provided facilities are used by Halo to reach the mutually agreed Point of Interconnection ("POI").[58] Under the terms of the ICA, the POI is where Halo's network ends.[59] AT&T is attempting to shift cost responsibility for what it calls facilities" to Halo when the ICA assigns responsibility to AT&T because the "facilities" are all on AT&T's side of the POI.[60]

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[49] *Id.*
[50] *Id.* at 4.
[51] *Id.* at 4-6.
[52] *Id.* at 1.
[53] *Id.* at 6-8.
[54] *Id.* at 8.
[55] *Id.*; *see also* Russ Wiseman Pre-filed Direct Testimony pp. 26-28 (December 19, 2011).
[56] *Id.*
[57] *Id.* at 9-14.
[58] *Id.* at 9.
[59] *Id.*
[60] *Id.* at 14.

FINDINGS AND CONCLUSIONS

Jurisdiction

Throughout these proceedings, Halo has raised objections and challenged the jurisdiction of the Authority to consider the *Complaint* in this matter. The Authority finds that it has jurisdiction to consider the *Complaint* pursuant to both federal and state law. The Authority approved the interconnection agreement between AT&T Tennessee and Halo by order dated June 21, 2010 in TRA Docket No. 10-00063.[61] Interconnection agreements are reviewable and enforceable by the Authority pursuant to 47 U.S.C. § 252 and, in instances where the "market regulation" statute applies, are enforceable pursuant to Tenn. Code Ann. § 65-5-109(m). Further, the Authority has jurisdiction over complaints concerning telecommunications service providers who have elected "market regulation" such as AT&T, pursuant to Tenn. Code Ann. § 65-5-109(m). Halo did not object to the Authority's jurisdiction to approve the interconnection agreement that now lies at the center of this dispute.[62]

The District Court, in its Order remanding this matter back to the Authority, also recognized the TRA's jurisdiction over the interpretation of the ICA. The District Court explained the respective roles of the Court and the Authority, stating:

> The Telecommunications Act of 1996 ("the Act") requires that all ICAs be approved by a state regulatory commission before they become effective. State commissions such as the TRA have authority to approve and disapprove interconnection agreements, such as the one at issue herein. 47 U.S.C. § 252(e)(1). That authority includes the authority to interpret and enforce the provisions of agreements that the state commissions have approved. *Southwestern Bell Telephone Co. v. Public Utility Comm'n of Texas*, 208 F.3d 475, 479 (5th Cir. 2000); *Millennium One Communications, Inc. v. Public Utility Comm'n of Texas*, 361 F.Supp.2d 634, 636 (W.D. Tex. 2005). Federal district courts have jurisdiction to review interpretation

[61] *See In Re: Petition For Approval Of The Interconnection Agreement and Amendment Thereto Between BellSouth dba AT&T Tennessee and Halo Wireless, Inc.*, Docket No. 10-00063, *Order Approving the Interconnection Agreement and Amendment Thereto* (June 21, 2010).

[62] *See In Re: Petition for Approval of the Interconnection Agreement and Amendment Thereto Between BellSouth dba AT&T Tennessee and Halo Wireless, Inc.*, Docket No. 10-00063.

and enforcement decisions of the state commissions. *Id.; Southwestern Bell* at p. 480, 47 U.S.C. § 252(e)(6). Here, as noted above, there is no state commission determination to review.

In *Central Telephone Co. of Virginia v. Sprint Communications Co. of Virginia, Inc.*, 759 F.Supp.2d 772 (E.D. Va. 2011), the court held that federal district courts have federal question jurisdiction to interpret and enforce an ICA, pursuant to 28 U.S.C. § 1331. *Id. at 778; see also BellSouth Telecommunications, Inc. v. MCImetro Access Transmission Servs., Inc.*, 317 F.3d 1270, 1278-79 (11th Cir. 2003) (federal courts have jurisdiction under Section 1331 to hear challenges to state commission orders interpreting ICAs because they arise under federal law) and *Michigan Bell Telephone Co. v. MCI Metro Access Transmission Servs.*, 323 F.3d 348, 353 (6th Cir. 2003)(federal courts have jurisdiction to review state commission orders for compliance with federal law). Although these cases involved state commission orders, their holdings provide guidance on this issue.

Based on the reasoning in the above-cited cases, the Court finds that it has subject matter jurisdiction to hear this matter, pursuant to 28 U.S.C. § 1331 because the ICAs arise under federal law. As stated in *Verizon Maryland*, ICAs are federally mandated agreements and to the extent the ICA imposes a duty consistent with the Act, that duty is a federal requirement. *Verizon Maryland, Inc. v. Global NAPS, Inc.*, 377 F.3d 355, 364 (4th Cir. 2004).

The fact that this Court has jurisdiction does not end the matter, however. The fact that the Court *could* hear this action does not necessarily mean the Court *should* hear this action. Although the Act details how parties, states and federal courts can draft and approve ICAs, it is silent on how and in what fora parties can enforce ICAs. *Global NAPS, Inc. v. Verizon New England Inc.*, 603 F.3d 71, 83 (1st Cir. 2010). Because the Act does not specifically mandate exhaustion of state action, whether to construe the Act as prescribing an exhaustion requirement is a matter for the Court's discretionary judgment. *Ohio Bell Tel. Co., Inc. v. Global NAPS Ohio, Inc.*, 540 F.Supp.2d 914, 919 (S.D. Ohio 2008).

The Third Circuit Court of Appeals has held that interpretation and enforcement actions that arise after a state commission has approved an ICA must be litigated in the first instance before the relevant state commission. *Core Communications, Inc. v. Verizon Pennsylvania, Inc.*, 493 F.3d 333, 344 (3d Cir. 2007). A party may then proceed to federal court to seek review of the commission's decision. *Id.* Citing *Core,* a district court in Ohio has also held that a complainant is required to first litigate its breach-of-ICA claims before the state commission in order to seek review in the district court. *Ohio Bell,* 540 F.Supp.2d at 919-920 (citing cases from numerous district courts).

On the other hand, in *Central Telephone,* the court held that a party to an ICA is not required to exhaust administrative remedies by bringing claims for breach of an ICA first to a state commission. *Central Telephone,* 759 F.Supp.2d at 778 and 786.

> The Court agrees with the reasoning of the *Core* and *Ohio Bell* opinions. The Act provides for judicial review of a "determination" by the state commission. Until such determination is made, the Court cannot exercise this judicial review. *See Ohio Bell,* 540 F.Supp.2d at 919. As the *Core* court stated: "a state commission's authority to approve or reject an interconnection agreement would itself be undermined if it lacked authority to determine in the first instance the meaning of an agreement that it has approved." *Core,* 493 F.3d at 343 (citing *BellSouth Telecommunications,* 317 F.3d at 1278, n.9).[63]

The Authority is mindful, however, of the restrictions placed upon these proceedings by the Order of the Bankruptcy Court. In an Order issued on October 26, 2011, the Bankruptcy Court ruled that "pursuant to 11 U.S.C. § 362(b)(4), the automatic stay imposed by 11 U.S.C. § 362 . . . is not applicable to currently pending State Commission Proceedings," including proceedings brought by AT&T.[64] However, the Bankruptcy Court further stated that

> any regulatory proceedings . . . may be advanced to a conclusion and a decision in respect of such matters may be rendered; provided however, that nothing herein shall permit, as part of such proceedings:
>
> A. liquidation of the amount of any claim against the Debtor; or
>
> B. any action which affects the debtor-creditor relationship between the Debtor and any creditor or potential creditor.[65]

Therefore, nothing in this Order is intended to permit as part of these proceedings the liquidation of the amount of any claim against Halo or to affect the debtor-creditor relationship between the Parties beyond that permitted in the Bankruptcy Court's October 26, 2011 Order.

AT&T's *Complaint* - Count 1

Count 1 of the *Complaint* alleges that Halo has breached the ICA by impermissibly sending traffic originating from wireline telephones to AT&T, although the interconnection agreement only

[63] *BellSouth Telecommunications, Inc. v. Halo Wireless, Inc,* Case No. 3-11-0795, M.D. Tenn., *Memorandum*, pp. 4-6 (November 1, 2011).
[64] *In re: Halo Wireless, Inc.*, Case No. 11-42464, Bkrtcy. E. D. Tex., *Order Granting Motion of the AT&T Companies to Determine Automatic Stay Inapplicable and for Relief from the Automatic Stay*, p. 1 (October 26, 2011).
[65] *In re: Halo Wireless, Inc.*, Case No. 11-42464, Bkrtcy. E. D. Tex., *Order Granting Motion of the AT&T Companies to Determine Automatic Stay Inapplicable and for Relief from the Automatic Stay*, p. 2.

permits Halo to send AT&T traffic that originates from wireless networks. The applicable language from the interconnection agreement reads:

> Whereas, the Parties have agreed that this Agreement will apply only to (1) traffic that originates on AT&T's network or is transited through AT&T's network and is routed to Carrier's wireless network for wireless termination by Carrier; and (2) traffic that originates through wireless transmitting and receiving facilities before [Halo] delivers traffic to AT&T for termination by AT&T or for transit to another network.[66]

The Authority interprets the language of the ICA to require Halo only to deliver traffic that has originated through wireless transmitting and receiving facilities. Thus, evidence that Halo has delivered wireline-originated traffic will result in a finding that Halo has breached the ICA.

The Authority has reviewed Halo's *ex parte* filings with the FCC in the *Connect America Fund* docket, where the description of Halo and Transcom's operations is the same as that which has been presented to the TRA in this proceeding. Indeed, reviewing the *ex parte* filings made by Halo makes it clear that the FCC was aware of Halo's assertion that it provided service to ESPs and used wireless technology. In the resulting *Connect America Fund Order,* the FCC addressed and rejected Halo's assertion that traffic from its customer Transcom is wirelessly originated. The *Connect America Fund Order* states:

> We first address a dispute regarding the interpretation of the intraMTA rule. Halo Wireless (Halo) asserts that it offers "Common Carrier wireless exchange services to ESP and enterprise customers" in which the customer "connects wirelessly to Halo base stations in each MTA." It further asserts that its "high volume" service is CMRS because "the customer connects to Halo's base station using wireless equipment which is capable of operation while in motion." Halo argues that, for purposes of applying the intraMTA rule, "[t]he origination point for Halo traffic is the base station to which Halo's customers connect wirelessly." On the other hand, ERTA claims that Halo's traffic is not from its own retail customers but is instead from a number of other LECs, CLECs, and CMRS providers. NTCA further submitted an analysis of call records for calls received by some of its member rural LECs from Halo indicating that most of the calls either did not originate on a CMRS line or were not intraMTA, and that even if CMRS might be used "in the middle,"

[66] J. Scott McPhee, Pre-filed Direct Testimony, pp. 6-7 (December 19, 2011).

> this does not affect the categorization of the call for intercarrier compensation purposes. These parties thus assert that by characterizing access traffic as intraMTA reciprocal compensation traffic, Halo is failing to pay the requisite compensation to terminating rural LECs for a very large amount of traffic. Responding to this dispute, CTIA asserts that "it is unclear whether the intraMTA rules would even apply in that case."[67]

After clearly describing the operations of Halo, including its use of wireless technology and relationship with Transcom, the FCC found that calls are not originated by Transcom and that wireline originated calls are not reclassified as wireless calls because of a wireless link in the middle of the call path. The FCC in the *Connect America Fund Order* continues:

> We clarify that a call is considered to be originated by a CMRS provider for purposes of the intraMTA rule only if the calling party initiating the call has done so through a CMRS provider. Where a provider is merely providing a transiting service, it is well established that a transiting carrier is not considered the originating carrier for purposes of the reciprocal compensation rules. Thus, we agree with NECA that the "re-origination" of a call over a wireless link in the middle of the call path does not convert a wireline-originated call into a CMRS-originated call for purposes of reciprocal compensation and we disagree with Halo's contrary position.[68]

The Authority agrees with the FCC's rejection of Halo's assertions and finds that the "re-origination" of a call over a wireless link in the middle of the call path does not convert a wireline-originated call into a wireless-originated call for purposes of reciprocal compensation.

Nor does Halo deny that it is sending traffic that originated on the wireline PSTN.[69] In response to the question, "Do you admit that some of the communications in issue actually started on other networks?" Halo's witness Mr. Wiseman responds "Most of the calls probably did start on other networks before they came to Transcom for processing. It would not surprise me if some of them started on the PSTN."[70]

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[67] *Connect America Fund Order*, ¶ 1005 *(footnotes omitted)*. The term "CLEC" refers to Competitive Local Exchange Carrier.
[68] *Connect America Fund Order*, ¶ 1006 *(footnotes omitted)*.
[69] The term "PSTN" refers to the Public Switched Telephone Network, which means the calls were originated on the landline network.
[70] Russ Wiseman, Pre-filed Direct Testimony, p. 14 (December 19, 2011).

AT&T's traffic study also demonstrates that Halo has delivered wireline traffic to AT&T. AT&T estimates that about 74% of the traffic Halo sends to AT&T originates on the networks of landline carriers.[71] Even though Halo does not deny it has likely sent wireline traffic to AT&T, it contests the accuracy of AT&T's traffic study. Halo's arguments against AT&T's traffic study are: (1) that telephone numbers are an unreliable indictor of who originates a call, if wireless technology is used for the call and where the call originates and (2) calls that originate using IP technology are not landline calls.

The Authority acknowledges that a certain degree of imprecision can occur when analyzing the origin to individual telephone calls, due to factors such as the advent of number portability and the growth of wireless and IP telephony. However, because of these technical issues, the industry has developed conventions and practices to evaluate calls for the purpose of intercarrier compensation. The Authority finds that the methodology used to collect the data and the interpretation of the data in the AT&T study are based upon common industry practices to classify whether traffic is originated on wireline or wireless networks. In addition, the Authority finds that the convention of collecting data for a single week is sufficient to demonstrate whether wireline traffic was sent to AT&T by Halo. Further, Halo identifies several calls included in AT&T's traffic study as likely being IP-originated,[72] which is considered by the industry to be wireline-originated for the purpose of intercarrier compensation rules.[73]

Based upon the Authority's agreement with the FCC's dispositive decision in the *Connect America Fund Order*, Halo's admission that it has delivered wireline-originated and IP-originated traffic to AT&T, and the information contained in AT&T's traffic study, the Authority finds that Halo has materially breached its interconnection agreement with AT&T.

[71] Mark Neinast, Pre-filed Direct Testimony, pp. 3, 11 and Attachment MN-3 (December 19, 2011).
[72] Russ Wiseman, Pre-filed Rebuttal Testimony, pp. 8-9 (January 3, 2012).
[73] Mark Neinast, Pre-filed Rebuttal Testimony, p. 6 (January 3, 2012).

AT&T's *Complaint* - Count 2

Count 2 of the *Complaint* alleges that Halo breached its interconnection agreement with AT&T by improperly altering call detail information that allows AT&T to properly classify calls for the purpose of intercarrier compensation. Section XIV.G of the ICA requires:

> The parties will provide each other with the proper call information, including all proper translations for routing between networks and any information necessary for billing where BellSouth provides recording capabilities. This exchange of information is required to enable each party to bill properly.[74]

In addition, Section XIV.E of the ICA also requires Halo to provide many types of call detail information, including the Charge Number.

In most cases, industry members use the Calling Party Number ("CPN") to determine whether a call is jurisdictionally long-distance or local. In rare cases a CN is included in the call detail record to indicate the number that will actually be financially responsible for the call. For example, some businesses want all calls made by its employees in a particular office to be billed to single number. Halo admits that it uses Transcom's BTN to populate the CN fields on traffic since February 2011.[75]

As with Count 1, the Authority finds that the FCC's *Connect America Fund Order* dispositively resolves this issue. Because the FCC dismisses "re-origination" by Transcom, Transcom clearly cannot be the originating entity and thus inserting Transcom's number as the Charge Number is inappropriate. Therefore, because Halo has improperly altered call detail information, the Authority finds that Halo has materially breached its interconnection agreement with AT&T.

[74] *Complaint*, p. 4 (July 26, 2011).
[75] Russ Wiseman, Pre-filed Direct Testimony, pp. 29-30 (December 19, 2011).

AT&T's *Complaint* – Count 3

Count 3 of the *Complaint* alleges that Halo has not properly compensated AT&T for the traffic it has delivered. Halo has been paying AT&T reciprocal compensation, which is only appropriate if the end-user initiated the call wirelessly within the MTA in which it is terminated, instead of switched access charges, which are appropriate for wireline-originated calls. The FCC's decision in the *Connect America Fund Order*, with which the Authority concurs, is that Halo's traffic does not originate within an MTA with its customer Transcom. In addition, AT&T's traffic study demonstrates that AT&T terminated calls that originated outside the MTA where it was terminated. Further, Halo's use of MTA specific numbers to assert a 100% intra-MTA factor necessarily implies that switched access charges were avoided since Transcom was not the true originating party.

The Authority's findings on Counts 1 and 2 of the *Complaint* concerning the wireline and IP-origination of Halo's traffic necessarily lead to the conclusion that Halo has not been properly compensating AT&T for the traffic it has delivered. The payment of reciprocal compensation is only appropriate if the end-user, which is not Transcom, initiated the call wirelessly within the MTA where it is terminated. Thus, Halo has failed to compensate AT&T for calls where it was due switched access charges. Therefore, the Authority finds that Halo is liable to AT&T Tennessee for access charges on the interstate and intrastate interLATA and intraLATA landline traffic it has sent to AT&T Tennessee.

AT&T's *Complaint* - Count 4

Count 4 of the *Complaint* alleges that Halo has refused to pay AT&T for transport facilities. Section V.B, page 10 of the ICA states:

> BellSouth will bear the cost of the two-way trunk group for the proportion of the facility utilized for the delivery of BellSouth originated Local traffic to Carrier's POI within BellSouth's service territory and within the LATA (calculated based on the number of minutes of traffic identified as BellSouth's divided by the total minutes of use on the facility), and Carrier will provide or bear the cost of the two-way trunk group for all other traffic, including Intermediary traffic.[76]

Halo does not dispute that it terminates all of its traffic on AT&T's network, but it does dispute AT&T's charges for the two-way trunk groups that connect the Parties. Halo details the arrangement of facilities with which it connects to AT&T in various locations, and it cites from FCC rules to argue that AT&T cannot charge Halo for facilities on AT&T's side of the POI.[77] This line of reasoning might be appropriate if Halo were a CLEC. However, Halo is not a CLEC but rather a CMRS provider, and under the ICA it signed with AT&T, each party is required to pay its share of the facilities cost. The Authority finds that Halo owes AT&T for the proportionate share of the facilities that connect Halo's Point of Presence ("POP") to AT&T's network as required by the ICA. The ICA allocates the costs of facilities based on the proportion of traffic each party sends to the other party, and since Halo sends 100 % of its traffic to AT&T, the Authority finds that Halo should pay 100% of the cost for these facilities as required by the ICA.

Transcom Is Not an Enhanced Service Provider

The FCC has established a bright-line rule that the "enhanced" service designation does not apply to services that merely "facilitate establishment of a basic transmission path over which a telephone call may be completed, without altering the fundamental character of the telephone service," and that a service is not "enhanced" when the service does not alter the fundamental character of the service *from the end-user's perspective*.[78] Thus, for example, the FCC has held that

[76] Mark Neinast, Pre-filed Direct Testimony, p.19 (December 19, 2011).
[77] Russ Wiseman, Pre-filed Direct Testimony, p. 41 (December 19, 2011).
[78] *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934*, 11 FCC Rcd. 21905, ¶ 107 (1996).

services are not "enhanced" when customers use the same dialing method for allegedly "enhanced" calls that they would for any other call,[79] or where the alleged "enhancement" was made "without the advance knowledge or consent of the customer" that placed the call and the customer is not "provided with the 'capability' to do anything other than make a telephone call."[80]

The Authority finds that Transcom's services fail to meet the FCC's bright-line rule, since the record in this proceeding indicates that Transcom provides no services to actual end-users and does not offer any enhancements discernable to the person that actually places the call.[81] The record also supports the conclusion that end-users are completely unaware that Transcom is even involved in call delivery.[82] Nor does Halo's testimony prove that Transcom is an ESP. Halo asserts that Transcom

> ... employs computer processing applications that act on the format, content, code, protocol or similar aspects of the received information. The platform will provide the customer additional, different, or restructured information. This is done by generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information via telecommunications.[83]

However, despite the claim of computer processing of data, Transcom only reduces background noise and inserts "comfort noise" in periods of silence so that those periods of silence are not mistaken for the end of a call.[84] The Pennsylvania Public Utility Commission rejected a similar claim relating to Transcom's services, finding that "the removal of background noise" and

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[79] *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, 19 FCC Rcd. 7457, ¶ 15 (2004) ("*IP-in-the-Middle Order*").
[80] *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, 20 FCC Rcd. 4826, ¶ 16, n. 28 (2005) ("*AT&T Calling Card Decision*").
[81] Mark Neinast, Pre-filed Rebuttal Testimony, p. 5 (January 3, 2012).
[82] *Id.*
[83] Robert Johnson, Pre-filed Rebuttal Testimony, p. 12 (January 3, 2012).
[84] *Id.* at 12-13.

"the insertion of white noise" do not make Transcom an ESP.[85] The alleged "enhancements" that Transcom claims it makes to calls that transit its network are simply processes to improve the quality of the call. Telecommunications networks have been routinely making those types of improvements for years and, in some cases, decades. Carriers have routinely incorporated equipment into networks that have, for example, expanded the dynamic range of a voice call to improve clarity. The conversion from analog to digital and back to analog has significantly improved call quality, yet none of these processes are deemed "enhancements" in the sense of an ESP.[86] For the reasons above, the Authority finds that Transcom is not an ESP for this particular traffic.

IT IS THEREFORE ORDERED THAT:

1. Halo Wireless Inc.'s *Motion to Dismiss Complaint With Prejudice* is denied.

2. BellSouth Telecommunications, LLC d/b/a AT&T Tennessee is authorized to terminate the interconnection agreement previously approved by the Authority in TRA Docket No. 10-00063 and to stop accepting traffic from Halo Wireless, Inc.

3. Halo Wireless, Inc. is liable to BellSouth Telecommunications, LLC d/b/a AT&T Tennessee for access charges on the interstate and intrastate interLATA and intraLATA landline traffic it has sent to AT&T Tennessee thus far and for the interconnection facilities it has obtained from AT&T Tennessee. However, nothing in this Order is intended to permit as part of these proceedings the liquidation of the amount of any claim against Halo or to affect the debtor-creditor relationship between the Parties beyond that permitted in the *Order Granting Motion of the AT&T*

[85] *Palmerton Tel. Co. v. Global NAPS South, Inc., et al.*, PA PUC Docket No. C-2009-2093336, 2011 WL 1259661, at 16-17 (Penn. PUC, March 16, 2010). ("We find that Transcom does not supply GNAPS with 'enhanced' traffic under applicable federal rules"). Note that the Pennsylvania Public Utility Commission specifically rejected the Transcom Bankruptcy Court's April 28, 2005 Memorandum Opinion finding Transcom to be an ESP on the basis that Transcom had indicated in that proceeding that it provided "data communications services over private IP networks (VoIP)." *Id.* The Authority is not persuaded by the Transcom bankruptcy court rulings regarding Transcom's status as an ESP, either.

[86] *Id.*

Companies to Determine Automatic Stay Inapplicable and for Relief From the Automatic Stay [Dkt. No. 13], issued by the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division, in Case No. 11-42464-btr-11 on October 26, 2011. AT&T Tennessee may pursue further action for the collection of access charges or facilities charges in the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division, or other appropriate fora as permitted by that Court.

4. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen days from the date of this Order.

5. Any party aggrieved by the Authority's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty days from the date of this Order.

Kenneth C. Hill, Chairman

Sara Kyle, Director

Mary W. Freeman, Director

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 18
PARTY Bellsouth Tel., LLC d/b/a AT&T Florida (AT&T) - Direct
DESCRIPTION Mark Neinast (MN-2)
DATE 07/12/12

THE OFFICE OF REGULATORY STAFF

DIRECT TESTIMONY

OF

CHRISTOPHER J. ROZYCKI

March 9, 2012

2011-304-C

COMPLAINT AND PETITION FOR RELIEF OF BELLSOUTH TELECOMMUNICATIONS, LLC D/B/A AT&T SOUTHEAST D/B/A AT&T SOUTH CAROLINA V. HALO WIRELESS, INCORPORATED FOR BREACH OF THE PARTIES' INTERCONNECTION AGREEMENT

DIRECT TESTIMONY OF
CHRISTOPHER J. ROZYCKI
FOR
THE OFFICE OF REGULATORY STAFF
DOCKET NO. 2011-304-C

IN RE: COMPLAINT AND PETITION FOR RELIEF OF BELLSOUTH TELECOMMUNICATIONS, LLC D/B/A AT&T SOUTHEAST D/B/A AT&T SOUTH CAROLINA V. HALO WIRELESS, INCORPORATED FOR BREACH OF THE PARTIES' INTERCONNECTION AGREEMENT

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION.

A. My name is Christopher J. Rozycki and my business address is 1401 Main Street, Suite 900, Columbia, South Carolina 29201. I am employed by the State of South Carolina Office of Regulatory Staff ("ORS") as a Program Manager in the Telecommunications Department.

Q. PLEASE DESCRIBE YOUR BUSINESS EXPERIENCE AND BACKGROUND.

A. I have over thirty (30) years of experience. I have more than twenty (20) years in telecommunications business and regulation and nearly ten (10) years in the regulation of energy industries.

In the telecommunications industry I worked for a major interexchange company, AT&T (before it remerged with Southwestern Bell Telephone Company ("SBC") and BellSouth Telecommunications, Inc.), two competitive local exchange companies, a competitive broadband/cable TV company, and a telecommunications consulting firm.

As my experience grew, I took on roles of increasing responsibility and leadership, often crafting the regulatory policy for my company and presenting that position in meetings, presentations, formal comments, and testimony.

My testimony and advocacy covered issues involving finance, economics, rate-of-return, competitive entry, inter-carrier compensation and access. I have also been involved with the startup, development, and funding of telecommunications companies and other businesses.

Additionally, I have worked for the federal government in an energy regulatory organization (U.S. Department of Energy), and as a public utility consumer advocate for a county government in Virginia.

I hold a master's degree in Economics from George Mason University in Fairfax, Virginia and a bachelor's degree in Economics from Georgetown University in Washington, DC.

Q. WHAT ARE YOUR RESPONSIBILITIES AT THE OFFICE OF REGULATORY STAFF?

A. As Telecommunications Program Manager, I am responsible for all telecommunications activities of ORS including the certification of new telecommunications entrants, regulation and oversight of existing telecommunications companies, management of the state universal service and Interim LEC funds, and administration of the Lifeline Program.

Q. HAVE YOU PROVIDED TESTIMONY IN OTHER REGULATORY PROCEEDINGS?

A. Yes. I have provided testimony on a variety of issues in Alabama, Delaware, Florida, Georgia, Louisiana, Mississippi, New York, North Carolina, Pennsylvania, South Carolina, Tennessee, Vermont, and Virginia.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

A. The purpose of my testimony is to provide the Commission with ORS' position regarding the telecommunications services being offered by Halo Wireless, Incorporated ("Halo") in South Carolina and our review of the interconnection agreement ("ICA") between Halo and Bellsouth Telecommunications, LLC d/b/a AT&T South Carolina ("AT&T"). More specifically, whether telecommunications traffic (telephone calls) delivered by Halo to AT&T for termination to South Carolina residents or businesses are wireless calls or are these telephone calls classified as wireline calls.

Q. CAN YOU SUMMARIZE AT&T'S POSITION IN THIS CASE?

A. Yes. Simply stated, AT&T alleges that Halo is delivering wireline originated interstate and intrastate, interLATA calls to AT&T and refusing to pay terminating access for these calls. Halo has a wireless ICA with AT&T. AT&T, however, claims that much of Halo's traffic originates on traditional wireline phones, and that Halo is using an access charge avoidance scheme to make these wireline calls appear to be wireless and intraMTA.

More specifically, AT&T has identified four specific complaints against Halo in its Complaint and Petition.

Count I – Breach of ICA: Sending wireline-originated traffic to AT&T South Carolina.

Count II – Breach of ICA: Alteration or deletion of call detail.

Count III – Payment for termination of wireline-originated traffic.

Count IV – Breach of ICA: Non-Payment for facilities.

Q. CAN YOU SUMMARIZE HALO'S POSITION IN THIS CASE?

A. Yes. Halo states it is a wireless carrier; it receives wireless traffic from Transcom; and it delivers wireless traffic to AT&T in accordance with its ICA.

Q. IS HALO A WIRELESS CARRIER?

A. Halo does have a wireless license for the Orangeburg, SC area, issued by the Federal Communications Commission ("FCC").

Q. DOES THE FACT THAT HALO HAS A WIRELESS LICENSE INDICATE THAT ALL TRAFFIC IT HANDLES MUST BE DEFINED AS WIRELESS?

A. No, it does not. Other telecommunications companies operating in South Carolina carry both wireless and wireline traffic in the state. Sprint, for example, provides wireless service in South Carolina, while also operating as an interexchange carrier ("IXC") and providing wholesale telecommunications service to other carriers.

Q. IN HALO'S PARTIAL MOTION TO DISMISS, THE COMPANY CLAIMS THE COMMISSION LACKS THE JURISDICTION TO "DECIDE WHETHER HALO IS ACTING WITHIN AND CONSISTENT WITH ITS FEDERAL LICENSE." IS HALO CORRECT?

A. No. Pursuant to S.C. Code Ann. § 58-11-100 (D) the Commission retains jurisdiction to address and resolve issues relating to arrangements and compensation between telecommunications carriers and commercial mobile service providers, pursuant to 47 U.S.C. Sections 251 and 252.

Furthermore, the Commission has jurisdiction over intrastate telecommunications traffic, and the authority to regulate those companies offering retail or wholesale intrastate wireline telecommunications services. While not an issue raised in AT&T's complaint, it is ORS's position that Halo appears to be providing wholesale intrastate wireline telecommunications services in South Carolina without a certificate of public convenience and necessity ("CPCN").

Q. IS TRANSCOM AN END USER?

A. No, not in the opinion of ORS. For traffic originated by end users and delivered to Transcom by another carrier for delivery to a third carrier, or even an end user, Transcom cannot be classified as an originating or terminating end user.

Q. YOU USE SPRINT AS AN EXAMPLE OF A WIRELESS CARRIER WHICH OPERATES AS AN IXC AND WHOLESALE CARRIER. WHAT THREE TYPES OF SERVICES DOES SPRINT PROVIDE IN SOUTH CAROLINA? WHAT

APPROVALS OR LICENSES IS SPRINT REQUIRED TO HAVE FOR THOSE SERVICES IN SOUTH CAROLINA?

A. The first service Sprint offers is wireless service. Companies providing wireless service obtain a license from the FCC for a specified geographic area. Most wireless traffic is generated by end-user customers of the wireless license holder with mobile wireless devices (e.g. cell phones or tablets). The key here is that the traffic is end-user generated, and the end-user is a customer of the wireless company.

The second service Sprint offers is wireline IXC service. This is traditional wireline-based long distance service. Companies providing this service in South Carolina are required to obtain a CPCN from the Commission. Traffic here is again generated by end-users who are the customers of the IXC.

The third service Sprint offers is wholesale telecommunications service. This service is provided by one carrier to another carrier or multiple carriers. The wholesale carrier has no contract or direct relationship with the end-user. Wholesale telecommunications carriers are required to obtain a CPCN to operate in South Carolina.

Q. IS HALO OPERATING SOLELY AS A WIRELESS SERVICE PROVIDER IN SOUTH CAROLINA?

A. No. According to the information filed in this proceeding, Halo has an FCC license to operate in South Carolina as a wireless carrier, but it does not appear to ORS that Halo is providing end-users with wireless service that the end-user accesses through

a mobile wireless device, and nearly all of its South Carolina traffic is wholesale (provided to another carrier).

Q. IF HALO IS NOT OPERATING AS A WIRELESS SERVICE PROVIDER, HOW DOES ORS CLASSIFY THE SERVICE HALO IS PROVIDING?

A. Halo apparently has one customer in South Carolina - Transcom. Halo has informed ORS that it has no retail customers in South Carolina. Transcom appears to aggregate wireline traffic from other carriers and delivers it to Halo over a wireless connection. As I stated earlier, in this scenario, Halo appears to be a wholesale carrier or a carrier's carrier operating without the necessary CPCN to sell wholesale intrastate telecommunications services.

Q. ACCORDING TO HALO, TRAFFIC IS RECEIVED FROM ITS CUSTOMERS VIA A WIRELESS CONNECTION. BECAUSE HALO HAS A WIRELESS LICENSE DOES THAT CLASSIFY HALO AS A WIRELESS CARRIER?

A. No. Much of the traffic Halo transports originated as wireline telephone calls. AT&T and Halo dispute the amount of traffic that originated as wireline telephone calls. Halo then transports these calls to AT&T for termination to wireline customers of AT&T and other South Carolina ILECs. Calls that originate on a wireline phone and terminate on a wireline phone in South Carolina are intrastate wireline calls.

As for Halo's claim that it is a wireless carrier, based on the information I have reviewed, Halo and Transcom have constructed a wireless facility for the exchange of traffic.

Finally, the FCC in its recent Order (FCC 11-161) states in paragraph 1006:

> We clarify that a call is considered to be originated by a CMRS provider for purposes of the intraMTA rule **only if the calling party initiating the call has done so through a CMRS provider**. Where a provider is merely providing a transiting service, it is well established that a transiting carrier is not considered the originating carrier for purposes of the reciprocal compensation rules. Thus, we agree with NECA that the "re-origination" of a call over a wireless link in the middle of the call path does not convert a wireline-originated call into a CMRS-originated call for purposes of reciprocal compensation and we disagree with HALO's contrary position. (Emphasis Added)

Thus, a call that originates on a wireline and terminates on a wireline is a wireline call for purposes of inter-carrier compensation. For example, a call originating on a wireline phone in North Carolina and terminating on an AT&T wireline phone in South Carolina, is an interstate call, subject to interstate access charges, regardless of the means of transport. A call originating on a wireline phone in Charleston, SC and terminating on an AT&T wireline phone in Greenville, SC, is an intrastate interLATA call, subject to intrastate access charges, regardless of the means of transport. A call originating on a wireline phone in Charleston, SC and terminating on an AT&T wireline phone in Charleston, SC, is a local call, subject to reciprocal compensation charges, regardless of the means of transport. The FCC has reviewed other requests for exemption of access charges where the means of transporting the call was altered but did not change the fundamental nature of the call. See, *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges,* WC Docket No. 02-361, FCC 04-97, 19 FCC Rcd 7457 (rel. April 21, 2004) ("AT&T Declaratory Ruling" or "IP-in-the-Middle"). Importantly, the FCC held that there is "no

benefit in promoting one party's use of a specific technology to engage in arbitrage at the cost of what other parties are entitled to under the statute and our rules, particularly where, based on the record before us, end users have received no benefit in terms of additional functionality or reduced prices." *Id.* at. ¶ 17 ORS agrees with the FCC's position on this issue and sees no benefit to end users in the construction of the call flow at issue in this proceeding.

Q. IN PARAGRAPHS 14 AND 15 OF HALO'S PARTIAL MOTION TO DISMISS, THE COMPANY COMPARES TELEPHONE TRAFFIC AT ISSUE IN THIS CASE TO INTERNET TRAFFIC. IS THIS A PROPER COMPARISON?

A. No, it is not. The ISP traffic being referred to by Halo in 2000 was dial-up data/IP traffic being directed to the Internet that could be sent to multiple locations all over the world simultaneously. Many of Transcom's so-called wireless/ESP transmissions first originated as traditional telephone calls and were directed to one and only one terminating telephone number. When the receiving party answered, one individual spoke with another individual, a voice communication occurred. As the FCC has stated in its recent Order (FCC 11-161, paragraph 1006), "the "re-origination" of a call over a wireless link in the middle of the call path does not convert a wireline-originated call into a CMRS-originated call for purposes of reciprocal compensation and we disagree with Halo's contrary position." It is very clear that the FCC does not consider the Transcom to Halo transmission to be a re-origination of the call, therefore, the wireline-originated call and all of its IXC and network transiting components are

jurisdictionally identified by the true originating and terminating points of the telephone call.

Q. ARE THERE ANY BENEFITS TO THE ROUTING OF THIS TRAFFIC THROUGH TRANSCOM AND HALO?

A. I can think of one – avoidance of the higher priced switched access charges. It is significant that Halo inserted a Charge Number ("CN") on calls it sent AT&T in a given MTA thereby ensuring that every call appeared to be wireless and intraMTA (Direct Testimony of Neinast at p. 34, lines 3-8).

Q. HAS HALO BREACHED ITS INTERCONNECTION AGREEMENT WITH AT&T, BY SENDING WIRELINE-ORIGINATED TRAFFIC TO AT&T?

A. Yes. It appears the AT&T and Halo ICA is specific to wireless traffic only, and a significant amount of Halo's traffic appears to be wireline-originated.

Q. WHAT ARE YOUR RECOMMENDATIONS IN THIS CASE?

A. ORS recommends the Commission do the following:

1. Authorize AT&T South Carolina to stop accepting traffic from Halo Wireless, Inc.
2. Require Halo, within ten (10) days, to identify all affiliated companies operating in South Carolina, and for Halo and each of these affiliated companies to identify the following:
   a. Whether the affiliate is offering local, long distance, or wholesale telecommunications service in the state;

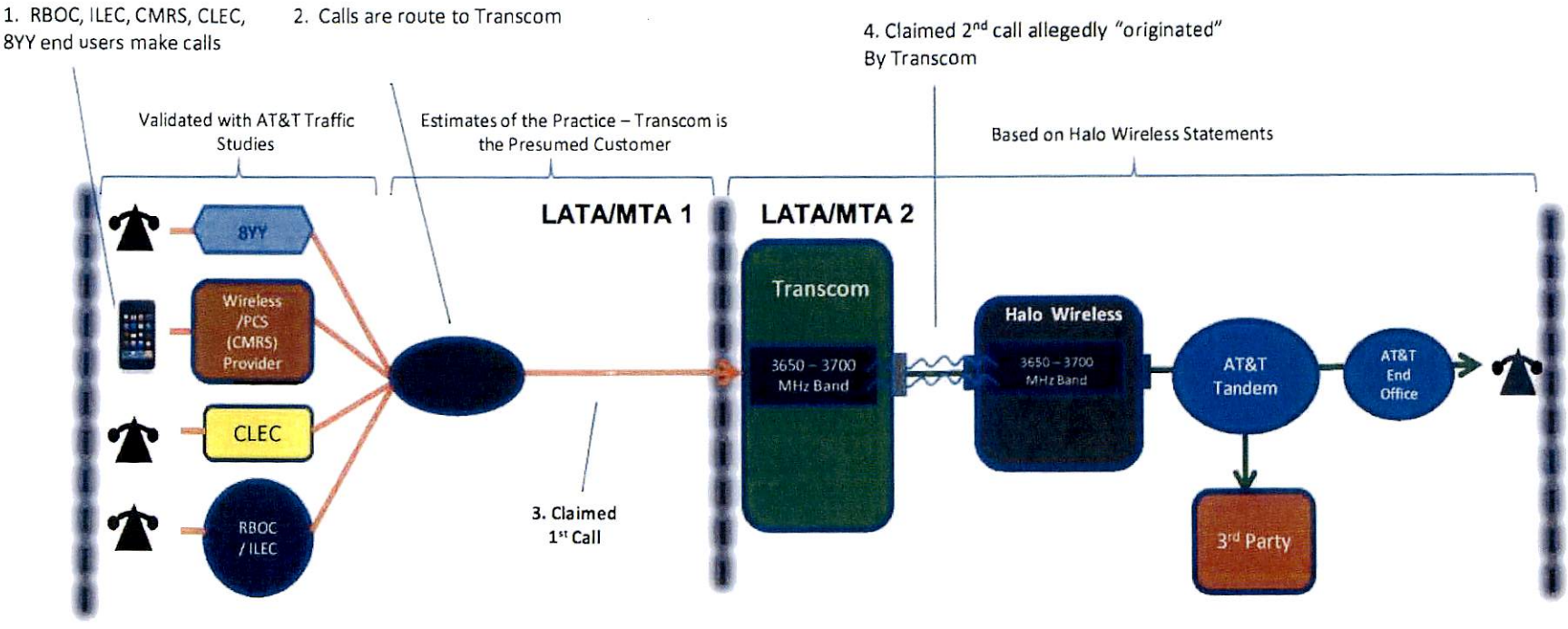
b. In which areas or communities Halo or the affiliate is providing telecommunications service; and

c. The number of residential, business, and carrier customers Halo and each affiliate is serving.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes it does.

Diagram of How Halo Sends Traffic To AT&T



FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 19
PARTY Bellsouth Tel., LLC d/b/a AT&T Florida (AT&T) - Direct
DESCRIPTION Mark Neinast (MN-3)
DATE 07/12/12

State	Traffic Termination	Traffic Type	Jurisdiction	Percent by State	Landline vs. Wireless Orig %	Traffic Study Date	Percent by State	Landline vs. Wireless Orig %	Traffic Study Date	Percent by State	Landline vs. Wireless Orig %	Traffic Study Date
FL SS7	Grand Total	Wireless Originated	InterMTA Interstate	7%			9%			13%		
			InterMTA Intrastate	12%	33%		16%	46%		19%	55%	
			IntraMTA	14%		6/14/11 - 6/20/11	21%		9/26/11 - 10/02/11	22%		1/18/12 - 2/14/12
		Landline Originated	Interstate	38%	67%		25%	54%		21%	45%	
			Intrastate	29%			29%			24%		
Total				100%	100%		100%	100%		100%	100%	
FL SS7	Terminating to 3rd Parties	Wireless Originated										
			InterMTA Interstate	2%	13%		9%	31%		21%	47%	
			InterMTA Intrastate	7%		6/14/11 - 6/20/11	12%		9/26/11 - 10/02/11	14%		1/18/12 - 2/14/12
			IntraMTA	5%			11%			12%		
		Landline Originated	Interstate	23%	87%		22%	69%		22%	53%	
			Intrastate	64%			47%			31%		
Total				100%	100%		100%	100%		100%	100%	
FL SS7	Terminating to AT&T RBOC	Wireless Originated										
			InterMTA Interstate	8%	36%		9%	48%		13%	56%	
			InterMTA Intrastate	13%		6/14/11 - 6/20/11	17%		9/26/11 - 10/02/11	20%		1/18/12 - 2/14/12
			IntraMTA	15%			22%			23%		
		Landline Originated	Interstate	41%	64%		25%	52%		21%	44%	
			Intrastate	24%			27%			24%		
Total				100%	100%		100%	100%		100%	100%	

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 20
PARTY Bellsouth Tel., LLC d/b/a AT&T Florida (AT&T) - Direct
DESCRIPTION Mark Neinast (MN-4)
DATE 07/12/12

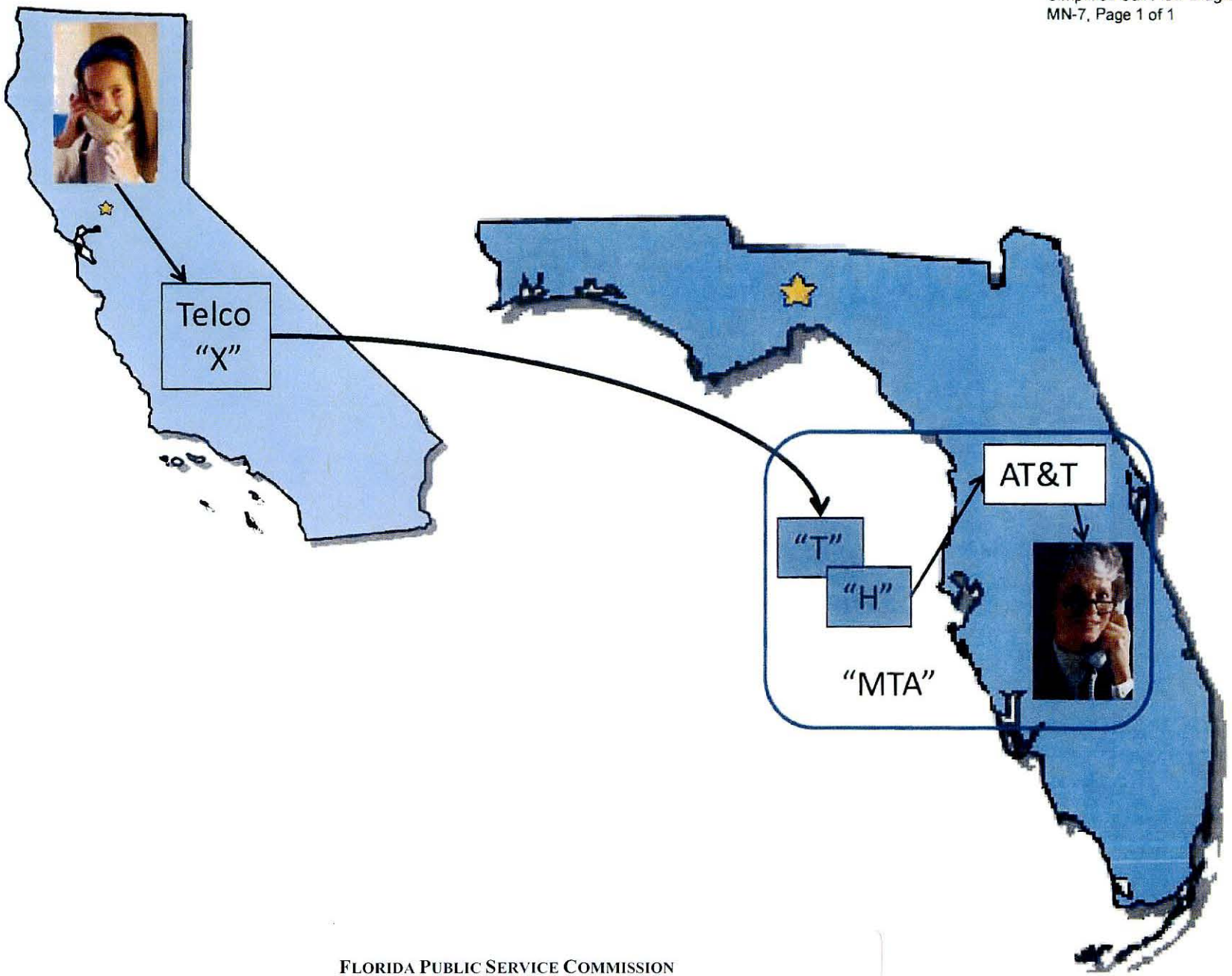
Example of Halo Calls Terminating to BellSouth Telecomm Inc. (AT&T FL) with 50 State LNP and Split Number Range Look up
Date of Call Study (9/28/2011)

CARRIER CODE	CALLING PARTY NUMBER (CPN) OWNER	LANDLINE CARRIER BASED ON LERG	CALLING PARTY NUMBER	CALLING PARTY NUMBER STATE	CALLED NUMBER OWNER	CALLED NUMBER	CALLED NUMBER STATE
429F	WINDSTREAM ALABAMA, INC.	ILEC	205-467-2XXX	AL	AT&T FL	386-672-3XXX	FL
429F	CENTURYTEL TEL AL LLC (NORTHERN) DBA CENTURYLINK	ILEC	205-661-5XXX	AL	AT&T FL	954-731-2XXX	FL
429F	TELUS COMMUNICATIONS (B.C.) INC.	ILEC	250-382-1XXX	BC	AT&T FL	954-538-4XXX	FL
429F	GLOBAL VALLEY NETWORKS	ILEC	209-894-3XXX	CA	AT&T FL	305-232-5XXX	FL
429F	CITIZENS TELECOM DBA FRONTIER COMM OF TOULUMNE	ILEC	209-928-3XXX	CA	AT&T FL	305-666-1XXX	FL
429F	SOUTHERN NEW ENGLAND TELEPHONE CO.	RBOC	203-281-4XXX	CT	AT&T FL	352-465-5XXX	FL
429F	VERIZON WASHINGTON, DC INC.	RBOC	202-234-3XXX	DC	AT&T FL	954-698-0XXX	FL
429F	GLOBAL CROSSING TELEMANAGEMENT, INC.-DC	CLEC	301-933-8XXX	DC	AT&T FL	386-447-1XXX	FL
429F	CTC COMMUNICATIONS CORP. - DC	CLEC	301-498-7XXX	DC	AT&T FL	954-363-4XXX	FL
429F	CBEYOND COMMUNICATIONS, LLC - DC	CLEC	301-373-1XXX	DC	AT&T FL	305-575-3XXX	FL
429F	LEVEL 3 COMMUNICATIONS, LLC - DE	CLEC	302-525-4XXX	DE	AT&T FL	352-379-2XXX	FL
429F	CAVALIER TELEPHONE, LLC (MID-ATLANTIC) - DE	CLEC	302-483-1XXX	DE	AT&T FL	386-760-1XXX	FL
429F	PEERLESS NETWORK OF DELAWARE, LLC - DE	CLEC	302-394-9XXX	DE	AT&T FL	407-851-2XXX	FL
429F	BROADWING COMMUNICATIONS, LLC - DE	CLEC	302-294-9XXX	DE	AT&T FL	305-646-0XXX	FL
429F	WINDSTREAM GEORGIA COMMUNICATIONS CORP.	ILEC	229-324-3XXX	GA	AT&T FL	954-941-8XXX	FL
429F	PLANT TELEPHONE CO.	ILEC	229-528-4XXX	GA	AT&T FL	305-592-7XXX	FL
429F	QWEST CORPORATION	RBOC	208-322-8XXX	ID	AT&T FL	386-673-4XXX	FL
429F	ALBION TELEPHONE CO. DBA ATC COMMUNICATIONS	ILEC	208-349-7XXX	ID	AT&T FL	352-378-4XXX	FL
429F	FRONTIER COMMUNICATIONS OF THE CAROLINAS, INC - IL	ILEC	217-215-0XXX	IL	AT&T FL	407-275-9XXX	FL
429F	ILLINOIS CONSOLIDATED TELEPHONE CO.	ILEC	217-325-3XXX	IL	AT&T FL	954-341-2XXX	FL
429F	AMERITECH INDIANA	RBOC	260-359-9XXX	IN	AT&T FL	305-866-2XXX	FL
429F	FRONTIER NORTH, INC. - IN	ILEC	260-455-6XXX	IN	AT&T FL	954-762-9XXX	FL
429F	WEST KENTUCKY RURAL TELEPHONE COOP. CORP., INC.	ILEC	270-328-8XXX	KY	AT&T FL	954-363-4XXX	FL
429F	BALLARD RURAL TELEPHONE COOP. CORP., INC.	ILEC	270-335-3XXX	KY	AT&T FL	850-936-4XXX	FL
429F	MANITOBA TELEPHONE SYSTEM	ILEC	204-233-5XXX	MB	AT&T FL	352-683-2XXX	FL
429F	VERIZON MARYLAND, INC.	RBOC	240-582-2XXX	MD	AT&T FL	850-994-1XXX	FL
429F	ALLEGIANCE TELECOM, INC. - MD	CLEC	301-294-7XXX	MD	AT&T FL	386-677-0XXX	FL
429F	NO NEW ENGLAND TEL OP DBA FAIRPOINT COMM - ME	RBOC	207-623-9XXX	ME	AT&T FL	954-346-5XXX	FL
429F	PINE TREE TELEPHONE & TELEGRAPH CO.	ILEC	207-657-3XXX	ME	AT&T FL	850-932-0XXX	FL
429F	FRONTIER NORTH, INC. - MI	ILEC	231-798-1XXX	MI	AT&T FL	954-718-4XXX	FL
429F	CITIZENS TELECOM CO MN-FRONTIER CITIZENS COM-MN	ILEC	218-278-4XXX	MN	AT&T FL	321-725-2XXX	FL
429F	ARVIG TELEPHONE CO.	ILEC	218-675-5XXX	MN	AT&T FL	386-676-1XXX	FL
429F	BELLSOUTH TELECOMM INC DBA SOUTH CENTRAL BELL TEL	RBOC	228-255-3XXX	MS	AT&T FL	850-434-3XXX	FL
429F	CAROLINA TEL AND TEL CO., LLC DBA CENTURYLINK	ILEC	252-239-0XXX	NC	AT&T FL	305-246-9XXX	FL
429F	VERIZON NEW JERSEY, INC.	RBOC	201-337-7XXX	NJ	AT&T FL	954-733-2XXX	FL
429F	BROADWING COMMUNICATIONS, LLC - NJ	CLEC	201-216-1XXX	NJ	AT&T FL	305-376-2XXX	FL
429F	BROADWING COMMUNICATIONS, LLC - NJ	CLEC	201-216-1XXX	NJ	AT&T FL	305-376-2XXX	FL
429F	XCHANGE TELECOM CORP. - NJ	CLEC	201-645-1XXX	NJ	AT&T FL	305-935-8XXX	FL
429F	VERIZON NEW YORK, INC.	RBOC	212-219-1XXX	NY	AT&T FL	954-920-5XXX	FL
429F	BELL ONTARIO	ILEC	289-313-5XXX	ON	AT&T FL	407-487-5XXX	FL
429F	ROGERS COMMUNICATIONS PARTNERSHIP (CABLE)	CLEC	289-752-1XXX	ON	AT&T FL	407-363-8XXX	FL
429F	VERIZON PENNSYLVANIA, INC.	RBOC	215-233-5XXX	PA	AT&T FL	954-942-3XXX	FL
429F	PAETEC COMMUNICATIONS, INC. - PA	CLEC	302-631-2XXX	PA	AT&T FL	386-677-7XXX	FL
429F	ETS TELEPHONE COMPANY, INC.	ILEC	281-225-4XXX	TX	AT&T FL	954-538-7XXX	FL
429F	CENTRAL TEL. CO. OF TEXAS DBA CENTURYLINK	ILEC	281-359-5XXX	TX	AT&T FL	954-420-4XXX	FL
429F	GTE-SW DBA VERIZON SW INC.-TX	RBOC	281-421-7XXX	TX	AT&T FL	305-477-1XXX	FL
429F	LOGIX COMMUNICATIONS CORPORATION - TX	CLEC	281-987-7XXX	TX	AT&T FL	305-373-4XXX	FL
429F	QWEST CORPORATION	RBOC	206-329-5XXX	WA	AT&T FL	305-381-6XXX	FL
429F	CENTURYTEL MIDWEST-WI LLC NW DBA CENTURYLINK - NW	ILEC	262-392-2XXX	WI	AT&T FL	954-972-7XXX	FL
429F	STATE LONG DISTANCE TELEPHONE CO.	ILEC	262-723-8XXX	WI	AT&T FL	407-245-4XXX	FL

Florida Traffic Analysis Comparison

Study Description	Termination	Traffic Type	Landline vs. Wireless Orig %	Traffic Study Date	Landline vs. Wireless Orig %	Traffic Study Date	Landline vs. Wireless Orig %	Traffic Study Date
Non-Altered Study Percents	Total Terminating	Wireless Originated	33%	6/14/11 - 6/20/11	46%	9/26/12 - 10/02/12	55%	1/18/12 - 2/14/12
		Landline Originated	67%		54%		45%	
Bandwith and Level 3 removed from Landline and moved to the Wireless bucket	Total Terminating	Wireless Originated	36%	6/14/11 - 6/20/11	53%	9/26/12 - 10/02/12	59%	1/18/12 - 2/14/12
		Landline Originated	64%		47%		41%	

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 22
PARTY Bellsouth Tel., LLC d/b/a AT&T Florida (AT&T) - Direct
DESCRIPTION Mark Neinast (MN-6)
DATE 07/12/12



FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP **EXHIBIT** 23
PARTY Bellsouth Tel., LLC d/b/a AT&T Florida (AT&T) - Direct
DESCRIPTION Mark Neinast (MN-7)
DATE 07/12/12

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 24
PARTY Bellsouth Tel., LLC d/b/a AT&T Florida (AT&T) - Direct
DESCRIPTION Mark Neinast (MN-8)
DATE 07/12/12

Sample Call Records Showing Halo's Improper Sending of Landline-Originated Traffic and Improper Insertion of a Halo Charge Number to Make Toll Calls Appear Local

CARRIER CODE	DIRECTION	DATE	CALLING PARTY NUMBER (CPN)	CALLING PARTY STATE	CHARGE NUMBER (CN)	CHARGE NUMBER STATE	CALLED PARTY NUMBER	CALLED PARTY STATE
429F	T	9/28/2011	212-596-3XXX	NY	850-730-1901	FL	850-767-3XXX	FL
429F	T	9/28/2011	251-368-3XXX	AL	850-730-1901	FL	850-263-6XXX	FL
429F	T	9/28/2011	301-428-9XXX	MD	850-730-1901	FL	850-230-7XXX	FL
429F	T	9/28/2011	302-322-1XXX	DE	850-730-1901	FL	850-392-0XXX	FL
429F	T	9/28/2011	218-365-6XXX	MN	850-730-1901	FL	850-233-1XXX	FL

Halo-Populated Charge Number which is always local to the Called Number. If you look up the Halo-Populated Charge Number in the LERG, it belongs to Halo. Note that the Charge Number is always the same, even though calls originated in different states and from different NPA-NXXs.

True originating Customer Number. All calls in this sample originated from non-Halo carriers as verified in the LERG and LNP database. All of the calls in this sample originated from landline carriers.

CARRIER CODE	DIRECTION	DATE	CALLING PARTY NUMBER (CPN)	CALLING PARTY STATE	CHARGE NUMBER (CN)	CHARGE NUMBER STATE	CALLED PARTY NUMBER	CALLED PARTY STATE
XXXX	T	9/25/2011	404-918-7XXX	GA	-	-	404-287-4XXX	GA
XXXX	T	9/25/2011	404-431-2XXX	GA	-	-	404-200-1XXX	GA
XXXX	T	9/25/2011	478-397-6XXX	GA	-	-	404-259-4XXX	GA
XXXX	T	9/25/2011	678-938-2XXX	GA	-	-	404-241-5XXX	GA
XXXX	T	9/25/2011	678-325-9XXX	GA	-	-	404-271-7XXX	GA

For a Typical Wireless Originated IntraMTA call, the Calling Party Number (CPN) is local to the Called Number

Typical Wireless Call does not contain a Charge Number, but if a Charge Number exists, it is located in the same jurisdiction of the Calling Party Number.

LEGEND

- Carrier Code is the OCN of the carrier sending the traffic and is determined based on the NPA-NXX assignment in the LERG.
- Calling Party Number is the CPN of the originator of the call.
- Charge Number is the CN and indicates which number should be billed for the call.

Note: The last four digits of the Calling Party Number (CPN) and Called Number are withheld for CPNI considerations. The originating party is unaware that its call is being routed through the Transcom/Halo routing scheme. The NPA-NXX digits are sufficient to determine whether a call is landline-originated and the jurisdiction of the call (the CPN was verified against the LNP database to insure the number was not ported to another provider).

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 25
PARTY Halo Wireless, Inc. (Halo) - Direct
DESCRIPTION Russ Wiseman (RW-1)
DATE 07/12/12

EXHIBIT 1

McCOLLOUGH|HENRY PC

dotLAW.biz
W. Scott McCollough
1250 South Capital of Texas Highway, Bldg 2-235
West Lake Hills, Texas 78746
Phone: 512.888.1112
Fax: 512.692.2522
wsmc@dotlaw.biz

BOARD CERTIFIED Administrative Law

August 12, 2011

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Room TWB-204
Washington, DC 20554

Ex Parte Notice

RE: *Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-State Board on Universal Service*, CC Docket No. 96-45

Dear Ms. Dortch:

Halo Wireless, Inc. hereby gives notice that it met with the Commission persons identified below on August 10, 2011. The Halo representatives were Russ Wiseman, Halo's President and Chief Operating Officer, counsel Steven Thomas of McGuire, Craddock & Strother, P.C and counsel W. Scott McCollough of McCollough|Henry, P.C. The Commission participants were:

Wireline Competition Bureau: Randy Clarke, Travis Litman, John Hunter, Al Lewis, Richard Hovey, Rebekah Goodheart and Marcus Maher

Wireless Telecommunications Bureau: Joseph Levin

Enforcement Bureau: Margaret Dailey

The purpose of the meeting was to introduce Halo to the Commission, describe Halo's operations and to respond to certain assertions made by various RLECs in recent filings and meetings with the Commission in the context of the above-cited proceedings. Halo distributed the attached document that served as the basis for discussion during the meeting.

Sincerely,

W. Scott McCollough
Counsel for Halo Wireless, Inc.

EXHIBIT 1

Halo wireless

FCC Meeting

Wireline Competition Bureau and Wireless Telecommunications Bureau

Halo Wireless, Inc.

Connect America Fund, WC Docket No. 10-90
A National Broadband Plan for Our Future, GN Docket No. 09-51
Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135
High-Cost Universal Service Support, WC Docket No. 05-337
Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92
Federal-State Board on Universal Service, CC Docket No. 96-45

August 10, 2011

Halo wireless

FCC Meeting August 10, 2011

Agenda

- Introduce Halo representatives
- Provide FCC staff an overview of Halo Wireless, Inc.
- Address questions and allegations raised by ILECs in state complaints
- Q&A

EXHIBIT 1

Halo wireless

FCC Meeting August 10, 2011

Halo Wireless has built an all IP network, presently in 28 markets across the U.S., using 3.65 Ghz spectrum and 802.16(e) Wi-Max wireless access technology

MTA	Tower Locations
LA	Amargosa Valley, NM
San Francisco	Tulare, CA
Chicago	Danville, IL
Detroit	Britton, MI
Charlotte	Orangeburg, SC
Dallas-Fort Worth	Tyler, TX
Atlanta	Cartersville, GA
Tampa-Orlando	Palm Coast, FL
Houston	Brenham, TX
Southeast FL	Bonita Springs, FL
New Orleans	Hammond, LA
Cleveland	Huntsburg, OH
Cincinnati-Dayton	Wilmington, OH
St Louis	Wentzville, MO

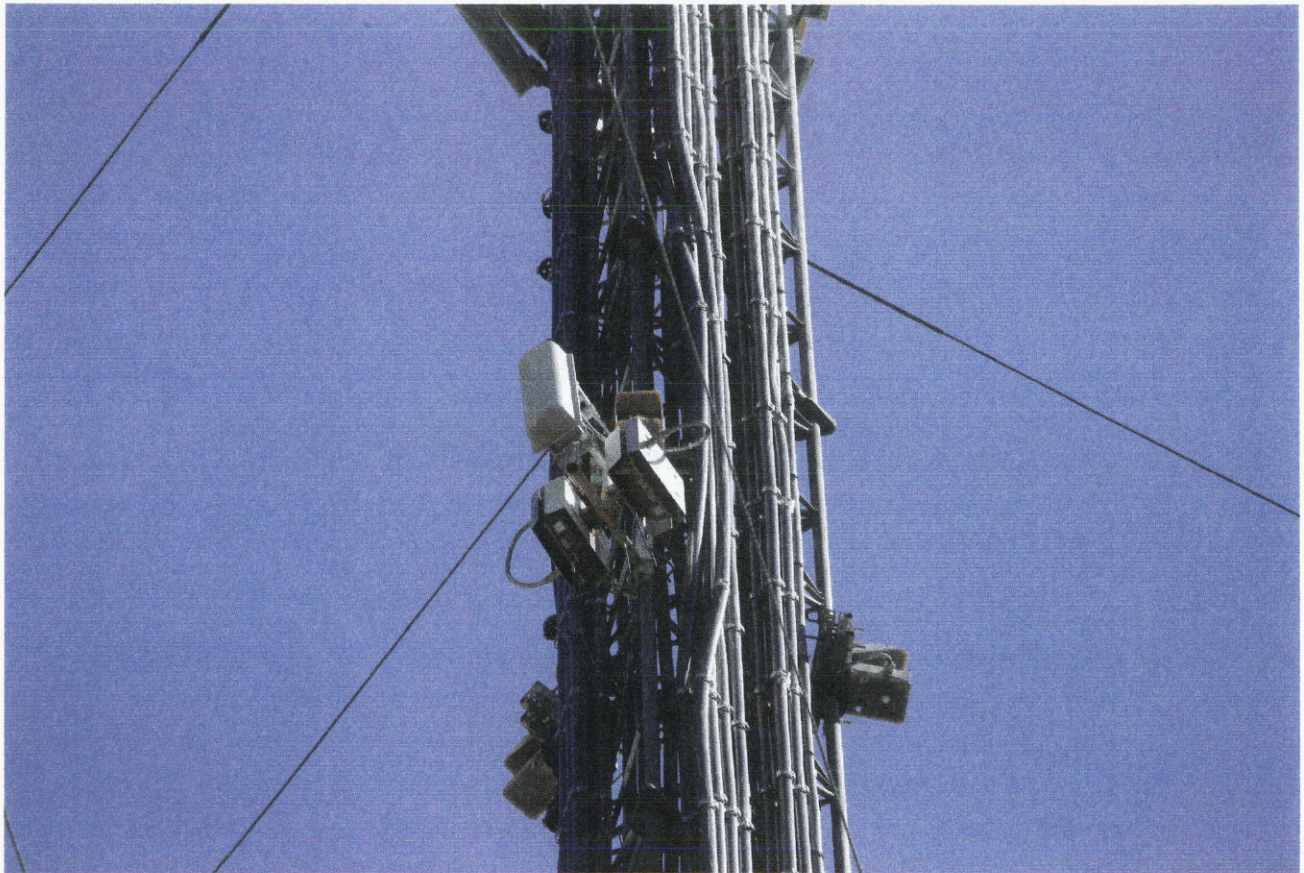
MTA	Tower Locations
Milwaukee	New Glarus, WI
Louisville	Paducah, KY
Memphis-Jackson	Greenville, MS
Birmingham	Graysville, AL
Indianapolis	Portland, IN
San Antonio	Pleasanton, TX
Kansas City	Junction City, KS
Jacksonville	Green Cove Springs, FL
Columbus	Carroll, OH
Little Rock	Van Buren, AR
OKC	Henryetta, OK
Nashville	Gainesboro, TN
Knoxville	Amherst, TN
Tulsa	Enid, OK

Docket No. 110234-TP
Halo Wireless, Inc.
Witness: Russ Wiseman
Exhibit RW-1
Page 4 of 16

Halo wireless

FCC Meeting August 10, 2011

Halo Wireless has invested substantial capital in its 3.65 Ghz WiMax 802.16(e) wireless network.

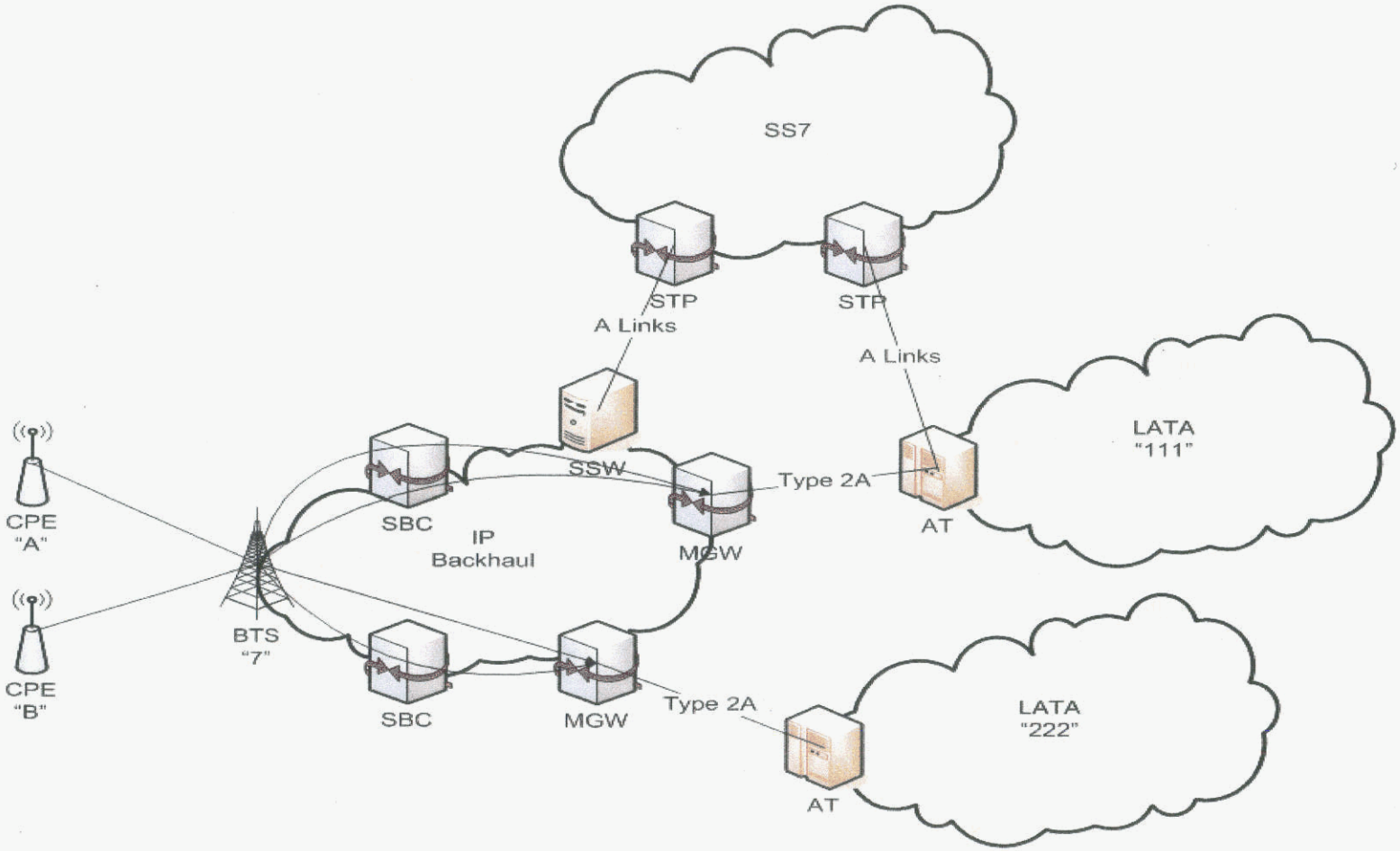


Docket No. 110234-TP
Halo Wireless, Inc.
Witness: Russ Wiseman
Exhibit RW-1
Page 5 of 16

Halo wireless

FCC Meeting August 10, 2011

Halo Wireless's core network is all IP from customer wireless access points up through the IP-TDM conversion for ILEC traffic exchange.*



Halo wireless

FCC Meeting August 10, 2011

Halo is a legitimate, independent business with a novel, legal business strategy.

Leverage the availability of 3.65Ghz spectrum and WiMax mobile access technology to offer two sets of services in rural areas:

① Broadband wireless mobile voice and data services to retail consumers and small businesses in under served rural communities throughout the U.S.

- Voice service currently requires soft client running on laptop.
  - Awaiting FCC certification on Airpsan USB device.
  - Testing integrated 3.65/WiFi access points for enhanced mobility.
  - Evaluating iPhone/Android smart phone clients.

- Hundreds of thousands of marketing dollars spent to date; small base of retail customers acquired, with continued efforts to expand base underway.

Halo is a legitimate, independent business with a novel, legal business strategy.

Leverage the availability of 3.65Ghz spectrum and WiMax mobile access technology to offer two sets of services in rural areas:

② Common Carrier wireless exchange services to ESP and enterprise customers.

- One primary customer; other arrangements under development
- Customer connects wirelessly to Halo base stations in each MTA. All traffic traversing interconnection arrangements originates from customer with wireless link to base station in same MTA.
- Halo transmits intelligence of the customer's choosing.

- Operating Rules and Requirements:
  - Must obtain interconnection agreements with ILECs to enable traffic exchange across wide footprint, starting with principal ILEC that operates primary tandems.
  - Only traffic destined to telephone exchange in the same MTA in which the tower resides is accepted for termination over this link; all other traffic is routed to an IXC for handling, and exchange access charges are paid.

Halo's detractors are railing at the rules, but blaming Halo.

Are Halo's services CMRS?

- Halo's small volume customers can make and receive calls using soft clients on laptop computers or tablets connected to mobile/nomadic CPE. While not as elegant as a mobile phone, these services are functionally equivalent to that where traditional handset is used.
- Halo's high volume service offering is also CMRS, as the customer connects to Halo's base station using wireless equipment which is capable of operation while in motion.
- The customer is originating calls to Halo by virtue of its exercise of the right to attach to the network and use telecommunications. *See , In Re Atlantic Richfield Co., 3 FCC Rd. 3089 (1988), aff'd PUC of Texas v. FCC, 886 F.2d 1325 (D.C. Cir. 1989).*

Halo wireless

FCC Meeting August 10, 2011

Halo's detractors are railing at the rules, but blaming Halo.

Is Halo's traffic local IntraMTA?

- The origination point for Halo traffic is the base station to which Halo's customers connect wirelessly.
- Halo is transmitting, between or among points specified by the user, information of the user's choosing.
- The customer is originating calls to Halo by virtue of its exercise of the right to attach to the network and use telecommunications. *See , In Re Atlantic Richfield Co., 3 FCC Rd. 3089 (1988), aff'd PUC of Texas v. FCC, 886 F.2d 1325 (D.C. Cir. 1989).*
- Halo's voice service is entirely within the MTA, and is therefore telephone exchange service, not telephone toll.
- Halo does not provide roaming.

Halo wireless

FCC Meeting August 10, 2011

Halo's detractors are railing at the rules, but blaming Halo

Halo's signaling practices follow industry standards and comply with the FCC's proposed "Phantom Traffic" rules

- Halo connects to the customer using WiMax, an IP-based technology fully capable of supporting native SIP communications.
- Halo locates the SIP header information corresponding to the Calling Party Number and populates the address in the SS7 ISUP IAM CPN parameter address signal location. Halo does not change or manipulate this information in any way; it is protocol converted and populated without change.
- Since Halo's customer is the responsible party, Halo also populates the SS7 Charge Number parameter with a Halo number corresponding to the customer's BTN for that MTA.
- The FCC's proposed phantom traffic rules would require precisely the practices Halo has adopted.

Halo wireless

FCC Meeting August 10, 2011

Halo's detractors are railing at the rules, but blaming Halo.

RLEC Interconnection Activities

- Halo has accepted proper requests for interconnection from almost 50 RLECs, and the parties are currently in § 252 negotiations. Halo is paying interim compensation to those carriers.
- The RLECs where we have disputes:
  - Do not like the "no compensation if no contract or request for interconnection" result prescribed in *T-Mobile*, and criticize Halo for relying on that result.
  - Refuse to follow rule 20.11(e) requiring them to both "request interconnection" and "invoke the negotiation and arbitration procedures contained in section 252 of the Act." We believe they are motivated by desire to receive very high non-TELRIC prices for termination and are concerned that if they "request interconnection" they may have to interconnect via IP.
  - Are misusing the " § 252 process" to challenge and limit Halo's activities pursuant to federal permissions.
- Their desired result is to deem Halo's traffic as subject to access charges, not § 251(b)(5), and classify Halo as an IXC rather than a CMRS provider.
  - Statutory service definitions and FCC precedent do not support these outcomes.

Halo wireless

FCC Meeting August 10, 2011

The issues raised by the RLECs fall exclusively within the FCC's jurisdiction, and are not suitable for state commissions

- Neither Congress nor the Commission have delegated enforcement of § 332 and rule 20.11 to the states.
  - The states have delegated power to conduct arbitrations, but only for topics covered by § 251 (unless the parties voluntarily consent to negotiate without regard to standards in the Act).
- Halo continues to be prepared to negotiate, and if necessary arbitrate, for interconnection agreements implementing the mandatory topics.
  - The debate is not about how to implement the RLECs' § 251(a), (b) and/or (c) duties. Rather, the RLECs are challenging CMRS' right to enter the market with a new business model and compete directly with the incumbents for telephone exchange and exchange access service.
- Only the FCC can decide whether an activity is or is not "wireless" or "CMRS"; and the FCC has already decided when a CMRS service constitutes "telephone exchange service" vs. "telephone toll."
  - The scope and nature of "permitted activities" under a nationwide FCC license is not a proper topic for state-level arbitration.
  - One nationwide license cannot have 50 variations, and cannot be subjected to 50 state-level cases and 50 state-level re-hearings of FCC decisions.

Thank you for your time.

EXHIBIT 1

Your submission has been accepted

ECFS Filing Receipt - Confirmation number: 2011812370485

Proceedings

Name	Subject
10-90	In the Matter of Connect America Fund A National Brooadband Plan for Our Future High-Cost Universal Service Support. .
09-51	In the matter of a National Broadband Plan for Our Future.
07-135	In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers. .
05-337	In the Matter of Federal -State Joint Board on Universal Service High-Cost Universal Service Support. .. .
01-92	Developing a Unified Intercarrier Compensation Regime.
96-45	FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE

Contact Info

Name of Filer: Halo Wireless, Inc.
Email Address: wsmc@dotlaw.biz
Attorney/Author Name: W. Scott McCollough
Lawfirm Name (required if represented by counsel): McCollough Henry PC

Address

Address For: Law Firm
Address Line 1: 1250 S Capital of Texas Hwy Bldg. 2-235
City: West Lake Hills
State: TEXAS
Zip: 78746

Details

exparte: YES
Type of Filing: NOTICE OF EXPARTE

Document(s)

File Name	Custom Description	Size
Halo ex parte notice w_ attachment 8-12-11.pdf	Notice of 8/10/2011 Ex Parte	1 MB

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EXHIBIT 1

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 26
PARTY Halo Wireless, Inc. (Halo) - Direct
DESCRIPTION Russ Wiseman (RW-2)
DATE 07/12/12

HALO WIRELESS, INC.
3437 W. 7TH Street, #127
Fort Worth, Texas 76107
817-338-3708 fax 817-338-3777

September 30, 2010

Mr. Randy Ham
Lead Negotiator
AT&T
600 North 19th Street – 8th Floor
Birmingham, AL 35203

Subject: InterMTA Rates for Halo Wireless, Inc. Interconnection Agreements (ICAs)

Mr. Ham:

I am following up on the email exchange between you and Russ Wiseman from today where you discussed the applicable InterMTA traffic factors in Halo Wireless' ICAs.

As background, nearly all of the ICAs between AT&T and Halo Wireless specify a default InterMTA traffic percentage that AT&T will apply to Halo traffic prior to Halo Wireless establishing actual traffic patterns with AT&T. With the exception of the ICA for the state of Illinois, which does not mention an InterMTA traffic factor, these current default traffic percentages range from 0% for the ICAs in MO and CA, up to 12% for the state of OH.

I understand that Mr. Wiseman has informed you that Halo Wireless has made alternate arrangements for the termination of InterMTA traffic, and as such, does not anticipate terminating InterMTA traffic with AT&T. In light of these arrangements, I understand that AT&T has agreed to use a default InterMTA traffic percentage of 1% during the initial 3 month period in each state, after which the percentage will be changed to reflect the actual amount of InterMTA traffic, if any. Our understanding is that this 1% traffic factor will apply to all AT&T states where Halo Wirelss has an ICA with AT&T, except in states where the current default InterMTA traffic percentage is less than 1%, which is the case in NV (0.6%), and as previously mentioned, CA, IL and MO, which do not have a default percentage, and where actual InterMTA traffic presumably applies.

Furthermore, our understanding is that these new default InterMTA percentages will take effect immediately, and will be reflected in future invoices. We understand that this new traffic factors will not be applied retroactively to invoices already received by us.

If you believe any of the above to be incorrect or inaccurate, we would appreciate it if you would kindly correct our understanding.

We appreciate AT&T's flexibility on these traffic factors, and thank you for your attention to this matter.

Sincerely,

Carolyn Malone
Secretary/Treasurer

From: Russell Wiseman <rwiseman@halowireless.com>
Subject: Re: Halo billing/ICA questions
Date: September 30, 2010 4:07:17 PM CDT
To: "HAM, RANDY J (ATTOPS)" <rh8556@att.com>



1 Attachment, 59 KB

Randy, I hope this accurately captures our understanding. We've mailed hard copy as well.

Russ

HALO WIRELESS, INC.
3437 W. 7TH Street, #127
Fort Worth, Texas 76107
817-338-3708 fax 817-338-3777

September 30, 2010

Mr. Randy Ham
Lead Negotiator
AT&T
600 North 19th Street – 8th Floor
Birmingham, AL 35203

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If you believe any of the above to be incorrect or inaccurate, we would appreciate it if you would kindly correct our understanding.

We appreciate AT&T's flexibility on these traffic factors, and thank you for your attention to this matter.

Sincerely,

Carolyn Malone
Secretary/Treasurer

On Sep 30, 2010, at 10:22 AM, HAM, RANDY J (ATTOPS) wrote:

> You can send it to me, I'll copy the AT&T folks that need it.
>
> My title and address are:
> Randy J. Ham
> Lead Negotiator
> AT&T
> 8th Floor
> 600 North 19th Street
> Birmingham, AL 35203
>
> ---
>
> **From:** Russell Wiseman [mailto:rwiseman@halowireless.com]
> **Sent:** Thursday, September 30, 2010 10:12 AM
> **To:** HAM, RANDY J (ATTOPS)
> **Subject:** Re: Halo billing/ICA questions
>
> Great Randy. Should we send letter to you? Can you provide complete contact info...your official title, address?
>
> On Sep 30, 2010, at 10:04 AM, HAM, RANDY J (ATTOPS) wrote:
>
> Russell,
> Our folks that are in charge of verifications and billing are willing to use 1% as the default in all the states until there is enough traffic in each state to determine the

InterMTA on a going forward basis. What they have found is that even though CMRS companies plan on not sending us InterMTA traffic, in reality there is always some that is sent, we haven't seen anyone that has been zero. They would want the letter you mention stating your plans as you offered.

Randy

From: Russell Wiseman [mailto:rwiseman@halowireless.com]
Sent: Wednesday, September 29, 2010 11:02 AM
To: HAM, RANDY J (ATTOPS)
Subject: Fwd: Halo billing/ICA questions

Sorry, Randy. I forgot to mention all the BLS states. The default InterMTA % in these ICAs is 1%. Would like to have this reduced to 0 if possible.

Begin forwarded message:

From: Russell Wiseman <rwiseman@halowireless.com>
Date: September 29, 2010 10:55:54 AM CDT
To: "HAM, RANDY J (ATTOPS)" <rh8556@att.com>
Subject: Re: Halo billing/ICA questions

Yes, I understand. If we exceed the 1%, I would expect you to bill and set traffic % accordingly.

I'm reading through all the ICAs on this topic now. So far, I've found OK and WI both have 2% default rates. I'm not sure if I can get these reduced to 0, but I'd like to do this if ICA allows. Can you add these two states to the list for follow up below?

We're launching markets in OH and WI as we speak. Input on these two states today or tomorrow would be much appreciated.

I'll continue my great fun reading through the other ICAs today and let you know if I need to add any more states to the list.

Thanks Randy.

On Sep 29, 2010, at 10:46 AM, HAM, RANDY J (ATTOPS) wrote:

Let me run that by the folks that do the verifications and make sure they are ok with doing it initially via a letter. Of course that same group will continue to measure actual InterMTA traffic using the process we have in place to verify InterMTA traffic.
Randy

From: Russell Wiseman [mailto:rwiseman@halowireless.com]
Sent: Wednesday, September 29, 2010 10:39 AM
To: HAM, RANDY J (ATTOPS)
Subject: Fwd: Halo billing/ICA questions

Randy, please see below. Would a letter from Halo to you simply stating that we have made other arrangements for InterMTA traffic ad requesting that the default InterMTA rates be set to 1% suffice on this? Please advise what we need to do to make this adjustment ASAP. Thx.

Begin forwarded message:

From: "CHARBA, DEANA G (ATTSWBT)" <dc9629@att.com>
Date: September 29, 2010 10:36:25 AM CDT
To: "Russell Wiseman" <rwiseman@halowireless.com>
Subject: RE: Halo billing/ICA questions

You would need to send a letter to the negotiations group to renegotiate the factor. This would result in an amendment to the ICA.

Deana Charba - Sr. Project Manager
AT&T Wholesale Customer Care
Four AT&T Plaza, 20th Flr

Dallas, TX 75202
214 858-0708
Fax 214 858-0772
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-----Original Message-----
From: Russell Wiseman [mailto:rwiseman@halowireless.com]
Sent: Wednesday, September 29, 2010 10:32 AM
To: CHARBA, DEANA G (ATTSWBT)
Cc: PAGE, JOYCE (ATTOPS)
Subject: Re: Halo billing/ICA questions

Deana, I was just reading through the OH ICA and I noticed the default InterMTA % is 12%. Halo will not be terminating InterMTA traffic to AT&T. We are making other arrangements for this traffic. I would like to have this % reduce to the 1% default rate, which I understand is the lowest % possible in our ICA. How do I go about doing this? Who do I need to work with and what information do we need to provide? I'm turning Cleveland back up today, so this info is my new "most urgent" item. Thx.

On Sep 29, 2010, at 10:07 AM, CHARBA, DEANA G (ATTSWBT) wrote:

Nothing further on this issue except to issue your disputes to the ASC. Thanks

Deana Charba - Sr. Project Manager
AT&T Wholesale Customer Care

Four AT&T Plaza, 20th Flr

Dallas, TX 75202

214 858-0708

Fax 214 858-0772

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-----Original Message-----

From: Russell Wiseman [mailto:rwiseman@halowireless.com]

Sent: Wednesday, September 29, 2010 10:02 AM

To: CHARBA, DEANA G (ATTSWBT)

Subject: Re: Halo billing/ICA questions

Thanks Deanna. I didn't recall if we needed to do anything further on this. Sounds like we don't. Thanks for clarification.

On Sep 29, 2010, at 8:45 AM, CHARBA, DEANA G (ATTSWBT) wrote:

> As I advised yesterday I would and have already advised the ASC to make the necessary changes. So that once that is done as of the date of the change the billing would be correct. I talked with her this morning and she was already making her necessary changes.

Will talk with you soon on the other issues.

Thanks

Deana Charba - Sr. Project Manager
AT&T Wholesale Customer Care
Four AT&T Plaza, 20th Flr
Dallas, TX 75202
214 858-0708
Fax 214 858-0772

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-----Original Message-----

From: Russell Wiseman
[mailto:rwiseman@halowireless.com]

Sent: Wednesday, September 29, 2010 8:34 AM

To: CHARBA, DEANA G (ATTSWBT)

Cc: PAGE, JOYCE (ATTOPS)

Subject: Halo billing/ICA questions

Deanna and Joyce, I appreciate the time you spent with me yesterday to discuss my questions. Deanna, I look forward to receiving your feedback on these questions over the next day or two. I did want to ask you about the TX InterMTA charges. We are going to submit a billing dispute as you've advised. Can we assume that future bills will reflect the correct 2% default mix? Thx.

Russ

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 27
PARTY Halo Wireless, Inc. (Halo) - Direct
DESCRIPTION Robert Johnson (RJ-1)
DATE 07/12/12

EXHIBIT 1

NOTE: This opinion was later vacated on grounds of mootness.

Westlaw.

427 B.R. 585
(Cite as: 427 B.R. 585)

C

United States Bankruptcy Court,
N.D. Texas,
Dallas Division.
In re TRANSCOM ENHANCED SERVICES, LLC,
Debtor.

No. 05–31929–HDH–11.
April 29, 2005.

Background: Bankrupt telecommunications provider that had filed for Chapter 11 relief moved for leave to assume master agreement between itself and telephone company.

Holdings: The Bankruptcy Court, Harlin D. Hale, J., held that:
(1) bankruptcy court had jurisdiction, in connection with motion by bankrupt telecommunications provider to assume master agreement between itself and telephone company, to decide whether Chapter 11 debtor qualified as enhanced service provider (ESP), so as to be exempt from payment of certain access charges, and
(2) debtor fit squarely within definition of "enhanced service provider" and was exempt from payment of access charges, as required for it to comply with terms of master agreement that it was moving to assume, and as required for court to approve this motion as proper exercise of business judgment.

So ordered.

West Headnotes

[1] Bankruptcy 51 ⇐2048.2

51 Bankruptcy
51I In General
51I(C) Jurisdiction
51k2048 Actions or Proceedings by Trustee or Debtor
51k2048.2 k. Core or related proceedings. Most Cited Cases

Bankruptcy court had jurisdiction, in connection with motion by bankrupt telecommunications provider to assume master agreement between itself and telephone company, to decide whether Chapter 11 debtor qualified as enhanced service provider (ESP), so as to be exempt from payment of certain access charges, where debtor's status as ESP bore directly upon whether it could satisfy terms of master agreement and whether its decision to assume this agreement was proper exercise of its business judgment; forum selection clause in master agreement, while it might have validity in other contexts and require that any litigation over debtor's status as ESP take place in New York, did not deprive court of jurisdiction to decide issue bearing directly on propriety of allowing debtor to assume master agreement. 11 U.S.C.A. § 365.

[2] Bankruptcy 51 ⇐3111

51 Bankruptcy
51IX Administration
51IX(C) Debtor's Contracts and Leases
51k3110 Grounds for and Objections to Assumption, Rejection, or Assignment
51k3111 k. "Business judgment" test in general. Most Cited Cases

In deciding whether to grant debtor's motion to assume executory contract, bankruptcy court must ascertain whether or not debtor is exercising proper business judgment. 11 U.S.C.A. § 365.

[3] Bankruptcy 51 ⇐3111

51 Bankruptcy
51IX Administration
51IX(C) Debtor's Contracts and Leases
51k3110 Grounds for and Objections to Assumption, Rejection, or Assignment
51k3111 k. "Business judgment" test in general. Most Cited Cases

Telecommunications 372 ⇐866

372 Telecommunications

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372III Telephones
372III(F) Telephone Service
372k854 Competition, Agreements and Connections Between Companies
372k866 k. Pricing, rates and access charges. Most Cited Cases

Bankrupt telecommunications provider whose communications system resulted in non-trivial changes to user-supplied information for every communication processed fit squarely within definition of "enhanced service provider" and was exempt from payment of access charges, as required for it to comply with terms of master agreement that it was moving to assume, and as required for court to approve this motion as proper exercise of business judgment. 11 U.S.C.A. § 365; Communications Act of 1934, § 3 (43, 46), 47 U.S.C.A. § 153(43, 46); 47 C.F.R. § 64.702(a), 69.5.

*585 *MEMORANDUM OPINION*

HARLIN D. HALE, Bankruptcy Judge.

On April 14, 2005, this Court considered Transcom Enhanced Services, LLC's (the "Debtor's") Motion To Assume AT & T *586 Master Agreement MA Reference No. 120783 Pursuant To 11 U.S.C. § 365 ("Motion").[FN1] At the hearing, the Debtor, AT & T, and Southwestern Bell Telephone, L.P., et al ("SBC Telcos") appeared, offered evidence, and argued. These parties also submitted post-hearing briefs and proposed findings of fact and conclusions of law supporting their positions. This memorandum opinion constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rules of Bankruptcy Procedure 7052 and 9014. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 151, and the standing order of reference in this district. This matter is a core proceeding, pursuant to 28 U.S.C. § 157(b)(2)(A) & (O).

FN1. Debtor's Exhibit 1, admitted during the hearing, is a true, correct and complete copy of the Master Agreement between Debtor and AT & T.

I. Background Facts

This case was commenced by the filing of a voluntary Bankruptcy Petition for relief under Chapter 11 of the Bankruptcy Code on February 18, 2005. The Debtor is a wholesale provider of transmission services providing its customers an Internet Protocol ("IP") based network to transmit long-distance calls for its customers, most of which are long-distance carriers of voice and data.

In 2002, a company called DataVoN, Inc. invested in technology from Veraz Networks designed to modify the aural signal of telephone calls and thereby make available a wide variety of potential new services to consumers in the area of VoIP. The FCC had long supported such new technologies, and the opportunity to change the form and content of the telephone calls made it possible for DataVoN to take advantage of the FCC's exemption provided for Enhanced Service Providers ("ESP's"), significantly reducing DataVoN's cost of telecommunications service.

On September 20, 2002, DataVoN and its affiliated companies filed for protection under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas, before Judge Steven A. Felsenthal. Southwestern Bell was a claimant in the DataVoN bankruptcy case. On May 19, 2003, the Debtor was formed for purposes of acquiring the operating assets of DataVoN. The Debtor was the winning bidder for the assets of DataVoN and on May 28, 2003, the bankruptcy court approved the sale of substantially all of the assets of DataVoN to the Debtor. Included in the order approving the sale, were findings by Judge Felsenthal that DataVoN provided "enhanced information services".

On July 11, 2003, AT & T and the Debtor entered into the AT & T Master Agreement MA Reference No. 120783 (the "Master Agreement"). In an addendum to the Master Agreement, executed on the same date, the Debtor states that it is an "enhanced information services" provider, providing data communications services over private IP networks (VoIP), such VoIP services are exempt from the access charges applicable to circuit switched interexchange calls, and such services would be provided over end user local services (such as the SBC Telcos).

AT & T is both a local-exchange carrier and a long-distance carrier of voice and data. The SBC Telcos are local exchange carriers that both originate and terminate long distance voice calls for carriers that do not have their own direct, "last mile" connections to end users. For this service, SBC Telcos charge an access charge. Enhanced service providers ("ESP's")

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are exempt from paying these access charges, and the SBC Telcos had been in litigation *587 with DataVoN during its bankruptcy, and has recently been in litigation with the Debtor, AT & T and others over whether certain services they provide are entitled to this exemption to access charges.

On April 21, 2004, the FCC released an order in a declaratory proceeding between AT & T and SBC (the "AT & T Order") that found that a certain type of telephone service provided by AT & T using IP technology was not an enhanced service and was therefore not exempt from the payment of access charges. Based on the AT & T Order, before the instant bankruptcy case was filed, AT & T suspended Debtor's services under the Master Agreement on the grounds that the Debtor was in default under the Master Agreement. Importantly, the alleged default of the Debtor is not a payment default, but rather pursuant to Section 3.2 of the Master Agreement, which, according to AT & T, gives AT & T the right to immediately terminate any service that AT & T has reason to believe is being used in violation of laws or regulations.

AT & T asserts that the services that the Debtor provides over its IP network are substantially the same as were being provided by AT & T, and therefore, the Debtor is also not exempt from paying these access charges. At the point that the bankruptcy case was filed, service had been suspended by AT & T pending a determination that the Debtor is an ESP, but AT & T had not yet assessed the access charges that it asserts are owed by the Debtor.

II. Issues

The issues before the Court are:

(1) Whether the Debtor has met the requirements of § 365 in order to assume the Master Agreement; and

(2) Whether the Debtor is an enhanced service provider ("ESP"), and is thus exempt from the payment of certain access charges in compliance with the Master Agreement.[FN2]

FN2. AT & T has stated in its Objection to the Motion that since it does not object to the Debtor's assumption of the Master Agreement provided the amount of the cure payment can be worked out, the Court need not reach the issue of whether the Debtor is an ESP. However, this argument appears disingenuous to the Court. AT & T argues that the entire argument over cure amounts is a difference of about $28,000.00 that AT & T is willing to forgo for now. However, AT & T later states in its objection (and argued at the hearing):

> "To be sure, this is not the total which ultimately Transcom may owe. It is also possible that ... Transcom will owe additional amounts if it is determined that it should have been paying access charges. But at this point, AT & T has not billed for the access charges, so under the terms of the Addendum, they are not currently due.... AT & T is not requiring Transcom to provide adequate assurance of its ability to pay those charges should they be assessed, but will rely on the fact that post-assumption, these charges will be administrative claims.... Although Transcom's failure to pay access charges with respect to prepetition traffic was a breach, the Addendum requires, as a matter of contract, that those pre-petition charges be paid when billed. This contractual provision will be binding on Transcom post-assumption, and accordingly, is not the subject of a damage award now."

AT & T Objection p. 3–4. As will be discussed below, in evaluating the Debtor's business judgment in approving its assumption Motion, the Court must determine whether or not its approval of the Motion will result in a potentially large administrative expense to be borne by the estate.

AT & T argues against the Court's jurisdiction to determine this question as part of an assumption motion. However, the Court wonders if AT & T will make the same argument with regard to its post-assumption administrative claims it plans on asserting for past and future access charges that it states it will rely on for payment instead of asking for them to be included as cure payments under the pre-

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sent Motion.

*588 III. Analysis

Under § 365(b)(1), a debtor-in-possession that has previously defaulted on an executory contract [FN3] may not assume that contract unless it: (A) cures, or provides adequate assurance that it will promptly cure, the default; (B) compensates the non-debtor party for any actual pecuniary loss resulting from the default; and (C) provides adequate assurance of future performance under such contract. *See* 11 U.S.C. § 365(b)(1).

FN3. The parties agree that the Master Agreement is an executory contract.

In its objection, briefing and arguments made at the hearing, AT & T does not object to the Debtor's assumption of the Master Agreement, provided the Debtor pays the cure amount, as determined by the Court. It does not expect the Debtor to cure any non-monetary defaults, including payment or proof of the ability to pay the access charges that have been incurred, as alleged by the SBC Telcos, as a prerequisite to assumption. *See In re BankVest Capital Corp.*, 360 F.3d 291, 300–301 (1st Cir.2004), *cert. denied*, 542 U.S. 919, 124 S.Ct. 2874, 159 L.Ed.2d 776 (2004) ("Congress meant § 365(b)(2)(D) to excuse debtors from the obligation to cure nonmonetary defaults as a condition of assumption.").

Only the Debtor offered evidence of the cure amounts due at the hearing totaling $103,262.55. Therefore, based on this record, the current outstanding balance due from Debtor to AT & T is $103,262.55 (the "Cure Amount"). Thus, upon payment of the Cure Amount Debtor's Motion should be approved by the Court, provided the Debtor can show adequate assurance of future performance.

[1][2] AT & T argues that this is where the Court's inquiry should cease. Since AT & T has suspended service under the Master Agreement, whether or not the Debtor is an ESP, and thus exempt from payment of the disputed access charges is irrelevant, because no future charges will be incurred, access or otherwise. This is because no service will be given by AT & T until the proper court makes a determination as to the Debtor's ESP status. However, in its argument, AT & T ignores the fact that part of the Court's necessary determination in approving the Debtor's motion to assume the Master Agreement is to ascertain whether or not the Debtor is exercising proper business judgment. *See In re Lifjeberg Enter., Inc.*, 304 F.3d 410, 438 (5th Cir.2002); *In re Richmond Leasing Co.*, 762 F.2d 1303, 1309 (5th Cir.1985).

If by assuming the Master Agreement the Debtor would be liable for the large potential administrative claim, to which AT & T argues that it will be entitled,[FN4] or if the Debtor cannot show that it can perform under the Master Agreement, which states that the Debtor is an enhanced information services provider exempt from the access charges applicable to circuit switched interexchange calls, and the Debtor would loose money going forward under the Master Agreement should it be determined that the Debtor is not an ESP, then the Court should deny the Motion. On this record, the Debtor has established that it cannot perform under the Master Agreement, and indeed cannot continue its day-to-day operations or successfully reorganize, unless it qualifies as an Enhanced Service Provider.

FN4. See n.2 above.

AT & T and SBC Telcos argue that a forum selection clause in the Master Agreement should be enforced and that any determination as to whether the Debtor*589 is an ESP, and thus exempt from access charges, must be tried in New York. While this argument may have validity in other contexts, the Court concludes that it has jurisdiction to decide this issue as it arises in the context of a motion to assume under § 365. *See In re Mirant Corp.*, 378 F.3d 511, 518 (5th Cir.2004) (finding that district court may authorize the rejection of an executory contract for the purchase of electricity as part of a bankruptcy reorganization and that the Federal Energy Regulatory Commission did not have exclusive jurisdiction in this context); *see also, Ins. Co. of N. Am. v. NGC Settlement Trust & Asbestos Claims Mgmt. Corp. (In re Nat'l Gypsum Co.)*, 118 F.3d 1056 (5th Cir.1997) (Bankruptcy Court possessed discretion to refuse to enforce an otherwise applicable arbitration provision where enforcement would conflict with the purpose or provisions of the Bankruptcy Code).

In re Orion, which is heavily relied upon by AT & T, is inapplicable in this proceeding. *See In re Orion Pictures Corp.*, 4 F.3d 1095 (2d Cir.1993). On its face, *Orion* is distinguishable from this case in that in

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Orion, the debtor sought damages in an adversary proceeding at the same time it was seeking to assume the contract in question under Section 365. The bankruptcy court decided the Debtor's request for damages as a part of the assumption proceedings awarding the Debtor substantial damages. Here, the Debtor is not seeking a recovery from AT & T under the contract which would augment the estate. Rather the Debtor is only seeking to assume the contract within the parameters of Section 365. Similar issues to the one before this Court have been advanced by another bankruptcy court in this district.

The court in *In re Lorax Corp.*, 307 B.R. 560 (Bankr.N.D.Tex.2004), succinctly pointed out that a broad reading of the Orion opinion runs counter to the statutory scheme designed by Congress. *Lorax*, 307 B.R. at 566 n. 13. The *Lorax* court noted that *Orion* should not be read to limit a bankruptcy court's authority to decide a disputed contract issue as part of hearing an assumption motion. *Id.* To hold otherwise would severely limit a bankruptcy court's inherent equitable power to oversee the debtor's attempt at reorganization and would diffuse the bankruptcy court's power among a number of courts. The *Lorax* court found such a result to be at odds with the Supreme Court's command that reorganization proceed efficiently and expeditiously. *Id.* at 567 (citing *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 376, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988)). This Court agrees. The determination of the Debtors status as an ESP is an important part of the assumption motion.

Since the Second Circuit's 1993 *Orion* opinion, the Second Circuit has further distinguished non-core and core jurisdiction proceedings involving contract disputes. In particular, if a contract dispute would have a "much more direct impact on the core administrative functions of the bankruptcy court" versus a dispute that would merely involve "augmentation of the estate," it is a core proceeding. *In re United States Lines, Inc.*, 197 F.3d 631, 638 (2d Cir.1999) (allowing the bankruptcy court to resolve disputes over major insurance policies, and recognizing that the debtor's indemnity contracts could be the most important asset of the estate). Accordingly, the Second Circuit would reach the same conclusion of core jurisdiction here since the dispute addressed by the Motion "directly affect[s]" the bankruptcy court's "core administrative function." *United States Lines*, at 639 (citations omitted).

Determination, for purposes of the motion to assume, of whether the Debtor *590 qualifies as an ESP and is exempt from paying access charges (the "ESP Issue") requires the Court to examine and take into account certain definitions under the Telecommunications Act of 1996 (the "Telecom Act"), and certain regulations and rulings of the Federal Communications Commission ("FCC"). None of the parties have demonstrated, however, that this is a matter of first impression or that any conflict exists between the Bankruptcy Code and non-Code cases. Thus, the Court may decide the ESP issues for purposes of the motion to assume.

[3] Several witnesses testified on the issues before the Court. Mr. Birdwell and the other representatives of the Debtor were credible in their testimony about the Debtor's business operations and services. **The record establishes by a preponderance of the evidence that the service provided by Debtor is distinguishable from AT & T's specific service in a number of material ways, including, but not limited to, the following:**

(a) Debtor is not an interexchange (long-distance) carrier.

(b) Debtor does not hold itself out as a long-distance carrier.

(c) Debtor has no retail long-distance customers.

(d) The efficiencies of Debtor's network result in reduced rates for its customers.

(e) Debtor's system provides its customers with enhanced capabilities.

(f) Debtor's system changes the content of every call that passes through it.

On its face, the AT & T Order is limited to AT & T and its specific services. This Court holds, therefore, that the AT & T Order does not control the determination of the ESP Issue in this case.

The term "enhanced service" is defined at 47 CFR § 67.702(a) as follows:

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> For the purpose of this subpart, the term enhanced service shall refer to services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. Enhanced services are not regulated under title II of the Act.

The term "information service" is defined at 47 USC § 153(20) as follows:

> The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

Dr. Bernard Ku, who testified for SBC was a knowledgeable and impressive witness. However, during cross examination, he agreed that he was not familiar with the legal definition for enhanced service.

The definitions of "enhanced service" and "information service" differ slightly, to the point that all enhanced services are information services, but not all information services are also enhanced services. See First Report And Order, *In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, 11 FCC Rcd 21905 (1996) at ¶ 103.

The Telecom Act defines the terms "telecommunications" and "telecommunications*591 service" in 47 USC § 153(43) and (46), respectively, as follows:

> The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, *without change in the form or content* of the information as sent and received. (emphasis added).

> The term "telecommunications service" means the offering of *telecommunications* for a fee directly to the public, or to such class of users as to be effectively available directly to the public, regardless of the facilities used. (emphasis added).

These definitions make clear that a service that routinely changes either the form or the content of the transmission would fall outside of the definition of "telecommunications" and therefore would not constitute a "telecommunications service."

Whether a service pays access charges or end user charges is determined by 47 C.F.R. § 69.5, which states in relevant part as follows:

> (a) End user charges shall be computed and assessed upon end users ... as defined in this subpart, and as provided in subpart B of this part. (b) Carrier's carrier charges [i.e., access charges] shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities *for the provision of interstate or foreign telecommunications services*, (emphasis added).

As such, only telecommunications services pay access charges. The clear reading of the above provisions leads to the conclusion that a service that routinely changes either the form or the content of the telephone call is an enhanced service and an information service, not a telecommunications service, and therefore is required to pay end user charges, not access charges.

Based on the evidence and testimony presented at the hearing, the Court finds, for purposes of the § 365 motion before it, that the Debtor's system fits squarely within the definitions of "enhanced service" and "information service," as defined above. Moreover, the Court finds that Debtor's system falls outside of the definition of "telecommunications service" because Debtor's system routinely makes non-trivial changes to user-supplied information (content) during the entirety of every communication. Such changes fall outside the scope of the operations of traditional telecommunications networks, and are not necessary for the ordinary management, control or operation of a telecommunications system or the management of a telecommunications service. As such, Debtor's service is not a "telecommunications service" subject to access charges, but rather

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is an information service and an enhanced service that must pay end user charges. Judge Felsenthal made a similar finding in his order approving the sale of the assets of DataVoN to the Debtor, that DataVoN provided "enhanced information services". *See* Order Granting Motion to Sell, 02-38600-SAF-11, no. 465, entered May 29, 2003. The Debtor now uses DataVoN's assets in its business.

Because the Court has determined that the Debtor's service is an "enhanced service" not subject to the payment of access charges, the Debtor has met its burden of demonstrating adequate assurance of future performance under the Master Agreement. The Debtor has demonstrated that it is within Debtor's reasonable business judgment to assume the Master Agreement.

Regardless of the ability of the Debtor to assume this agreement, the Court cannot go further in its ruling, as the Debtor has requested to order AT & T to resume *592 providing service to the Debtor under the Master Agreement. The Court has reached the conclusions stated herein in the context of the § 365 motion before it and on the record made at the hearing. An injunction against AT & T would require an adversary proceeding, a lawsuit. Both the Debtor and AT & T are still bound by the exclusive jurisdiction provision in § 13.6 of the Master Agreement, as found by the United States District Court for the Northern District of Texas, Hon. Terry R. Means. As Judge Means ruled, any suit brought to enforce the provisions of the Master Agreement must be brought in New York.

IV. Conclusion

In conclusion, the Court finds that the provisions of 11 U.S.C. § 365 have been met in this case. Because the Court finds that the Debtor's service is an enhanced service, not subject to payment of access charges, it is therefore within Debtor's reasonable business judgment to assume the Master Agreement with AT & T.

Only the Debtor offered evidence of the cure amounts at the hearing. Based on the record at the hearing, the current outstanding balance due from Debtor to AT & T is $103,262.55. To assume the Master Agreement, the Debtor must pay this Cure Amount to AT & T within ten (10) days of the entry of the Court's order on this opinion.

A separate order will be entered consistent with this memorandum opinion.

Bkrtcy.N.D.Tex.,2005.
In re Transcom Enhanced Services, LLC
427 B.R. 585

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FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 28
PARTY Halo Wireless, Inc. (Halo) - Direct
DESCRIPTION Robert Johnson (RJ-2)
DATE 07/12/12

EXHIBIT 2

NORTHERN DISTRICT OF TEXAS
ENTERED
TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

The following constitutes the order of the Court.

Signed May 16, 2006

Harlin DeWayne Hale
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	**CASE NO. 05-31929-HDH-11**
	§	
TRANSCOM ENHANCED SERVICES, LLC,	§	**CHAPTER 11**
	§	
	§	**CONFIRMATION HEARING:**
DEBTOR.	§	**MAY 16, 2006 @ 10:00 a.m.**

ORDER CONFIRMING DEBTOR'S AND FIRST CAPITAL'S
ORIGINAL JOINT PLAN OF REORGANIZATION AS MODIFIED

Came on for consideration on May 16, 2006 the Original Joint Plan of Reorganization Proposed by Transcom Enhanced Services, LLC (the "Debtor") and First Capital Group of Texas III, L.P. ("First Capital") filed on March 31, 2006 (the "Plan"). The Debtor and First Capital are collectively referred to herein as the "Proponents." All capitalized terms not defined herein have the meanings ascribed to them in the Plan. Just prior to the confirmation hearing, the Proponents filed their Modifications to Plan which relate to the Objections to Confirmation filed by Carrollton-Farmers Branch, Dallas County, Tarrant County and Arlington ISD, as well as the

comments of the United States Trustee and the Objection to Cure Amount in Plan filed by Riverrock Systems, Ltd. ("Riverrock"). The modifications comport with Bankruptcy Code 1127. In addition to the above objections, Broadwing Communications LLC ("Broadwing") and Broadwing Communications Corporation ("BCC") (collectively "Broadwing") filed its Objection to Final Approval of Disclosure Statement and Confirmation of Plan on May 11, 2006. Similar to the objections of Riverrock and the taxing authorities, and based upon an agreement reached between the Debtor and Broadwing, Broadwing withdrew its objection and amended its ballots to accept the Plan at the confirmation hearing. The Bankruptcy Court, having considered the Disclosure Statement, the Plan, the statements of counsel, the evidence presented or proffered, the pleadings, the record in this case, and being otherwise fully advised, makes the following findings of fact and conclusions of law:

Findings of Fact

1. On February 18, 2005 (the "Petition Date"), the Debtor filed its voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court"). Pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor is operating its business and managing its property as debtor in possession.

2. The Debtor was formed in or around May of 2003 for the purpose of purchasing the assets of DataVon, Inc. Since then, the Debtor has continued to provide enhanced information services, including toll quality voice and data communications utilizing converged, Internet Protocol (IP) services over privately managed private IP networks. The Debtor's information services include voice processing and arranged termination utilizing voice over IP technology.

EXHIBIT 2

3. The Debtor's network is comprised of Veraz I-gate and Pro media gateways, a Veraz control switch, miscellaneous servers, routers and equipment, and leased bandwidth. The network, which is completely scalable, is currently capable of processing approximately 600 million minutes of uncompressed, wholesale IP phone calls per month. However, the number of minutes processed may be increased significantly with more efficient use of IP endpoints. The architecture of the network also provides a service creation environment for rapid deployment of new services via XML scripting capabilities and SIP interoperability.

4. Currently, the Debtor is a wholesaler of VoIP processing and termination services to domestic long distance providers. (The Debtor is in the process of expanding its service offerings to include retail services and additional IP applications). The primary asset of the Debtor is a private, nationwide VoIP network utilizing state-of-the-art media gateway and soft switch technology, connected by leased lines. Utilization of this network enables the Debtor to provide toll-quality voice services to its customers at significantly lower rates than comparable services provided by traditional carriers. In contested hearings held on or about April 14, 2005, the Debtor established that its business activities meet the definitions of "enhanced service" (47 C.F.R. § 67.702(a)) and "information service" (47 U.S.C. § 153(20)), and that the services it provides fall outside of the definitions of "telecommunications" and "telecommunications service" (47 U.S.C. § 153(43) and (46), respectively), and therefore, as this Court has previously determined, Debtor's services are not subject to access charges, but rather qualify as information services and enhanced services that must pay end user charges.

5. On March 31, 2006, the Proponents filed their Original Plan of Reorganization (the "Plan") and Disclosure Statement for Plan (the "Disclosure Statement"). On April 3, 2006, the Proponents filed their Joint Motion for Conditional Approval of Disclosure Statement (the

"Motion for Conditional Approval"). On April 12, 2006, and over the objections of Broadwing and EDS Information Services, L.L.C. ("EDIS"), the Court entered its order granting the Motion for Conditional Approval and conditionally approving the Disclosure Statement (the "Conditional Approval Order"). Under the Conditional Approval Order, a final hearing to consider approval of the Disclosure Statement was combined with the confirmation hearing of the Plan, which hearings were set for May 16, 2006 at 10:00 a.m. (the "Combined Hearing"). Thereafter, and in accordance with the Conditional Approval Order, the Disclosure Statement was supplemented to address the concerns raised in the objections of both Broadwing and EDIS, the Plan and Disclosure Statement was distributed to creditors, interest-holders, and other parties-in-interest.

6. On or about April 10, 2006 and May 15, 2006, the Proponents filed non-material Modifications to the Plan pursuant to Bankruptcy Code § 1127 ("Plan Modifications").

7. The objections filed by Dallas County, Tarrant County, Carrollton-Farmers Branch ISD, Arlington ISD, Riverrock and Broadwing have been withdrawn.

8. The Proponents have provided appropriate, due and adequate notice of the Combined Hearing, the Disclosure Statement and Plan Supplements and the Plan Modifications, and such notice is in compliance with Bankruptcy Code § 1127 and Bankruptcy Rules 2002, 3019, 6006 and 9014. Without limiting the foregoing, as evidenced by certificates of service related thereto on file with the Court, and based upon statements of counsel, the Proponents have complied with the notice and solicitation procedures set forth in the April 12, 2006 Conditional Approval Order. No further notice of the May 16, 2006 Combined Hearing, the Plan, the Disclosure Statement or the Plan Modifications is necessary or required.

9. Class 1, consisting of the Pre-Petition Secured Claim on First Capital, is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

10. Class 2, consisting of the Post-Petition Secured Claim on First Capital, is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

11. Class 3, consisting of the Secured Claim on Redwing Equipment Partners Limited as successor-in-interest to Veraz Networks, Inc. ("Redwing"), is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

12. Class 4, consisting of the Secured Tax Claims, is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

13. Class 5, consisting of General Unsecured Claims, is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

14. Classes 6 and 7 of the Plan shall receive nothing under the Plan, and are deemed to reject the Plan.

15. Confirmation of the Plan is in the best interest of the Debtor, the Debtor's Estate, the Creditors of the Estate and other parties in interest.

16. The Court finds that the Debtor has articulated good and sufficient business reasons justifying the assumption of the executory contracts and unexpired leases specifically identified in Article X of the Plan, including the Debtor's Customer Contracts under Plan Section 10.01 and Vendor Agreements under Plan Section 10.02 and specifically listed on Exhibit 1-B of the Plan. No cure payments are owed with respect to the Debtor's Customer Contracts; and the only cure payments owed with respect to the Vendor Agreements are specifically identified in

Exhibit 1-B of the Plan. No other arrearages are owed with respect to the Vendor Agreements. Unless otherwise provided in the Plan Modifications, the proposed cure amounts set forth in Section 10.02 satisfies, in all respects, Bankruptcy Code § 365. Furthermore, the Court finds that the Debtor has articulated good and sufficient business reasons justifying the rejection of all other executory contracts and unexpired leases of the Debtor.

17. The Proponents have solicited the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code.

Conclusions of Law

18. The Court has jurisdiction over this Chapter 11 Case and of the property of the Debtor and its Estate under 28 U.S.C. §§ 157 and 1334.

19. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L).

20. Good and sufficient notice of the Disclosure Statement, the Plan, solicitation thereof, the May 16, 2006 Combined Hearing and the Plan Modifications have been given in accordance with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules for the Northern District of Texas and the April 12, 2006 Conditional Approval Order. The Plan Modifications that were filed with the Bankruptcy Court are non-material and do not require additional disclosure or re-solicitation of Plan acceptances and/or rejections.

21. Adequate and sufficient notice of the Plan Modifications has been provided to the appropriate parties which have agreed to the modifications. Pursuant to Bankruptcy Rule 3019, the Bankruptcy Court finds that the Plan Modifications do not adversely change the treatment of the holder of any Claim under the Plan, who has not accepted in writing the Plan Modifications.

All Creditors who have accepted the Plan without the Plan Modifications, are deemed to accept the Plan with the Plan Modifications.

22. The Plan complies with all applicable requirements of Bankruptcy Code §§ 1122 and 1123. Furthermore, the Plan complies with the applicable requirements of Bankruptcy Code §§ 1129(a) and (b), including, but not limited to the following:

a. the Plan complies with all applicable provisions of the Bankruptcy Code;

b. the Debtor and First Capital, as Proponents of the Plan, have complied with the applicable provisions of the Bankruptcy Code;

c. the Plan has been proposed in good faith and not by any means forbidden by law;

d. any payment made or to be made by the Debtor for services or for costs and expenses in or in connection with the case, has been approved by, or will be subject to the approval of, this Court as reasonable;

e. the Plan does not contain any rate change by the Debtor which requires approval of a governmental or regulatory entity;

f. each holder of a Claim or Equity Security Interest in an Impaired Class has accepted the Plan or will receive or retain under the Plan on account of such Claim or Equity Security Interest property of a value as of the Effective Date that is no less than the amount that such holder would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code as of the Effective Date;

g. Classes 1, 2, 3, 4 and 5 are Impaired under the Plan, and have accepted the Plan;

h. the Plan does not unfairly discriminate against dissenting classes;

i. the Plan is fair and equitable with respect to each class of claims or interests that is impaired, and has not accepted, the Plan;

j. the Plan provides that holders of Claims specified in Bankruptcy Code §§ 507(a)(1)-(6) receive Cash payments of value as of the Effective Date of the Plan equal to the Allowed Amount of such Claims;

k. at least one Class of Creditors that is Impaired under the Plan, not including acceptances by Insiders, has accepted the Plan;

l. confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization by the Debtor;

m. all fees payable under 28 U.S.C. § 1930, have been timely paid or the Plan provides for payment of all such fees;

n. the Debtor is not obligated for the payment of retiree benefits as defined in Bankruptcy Code § 1114.

23. All requirements of Bankruptcy Code § 365 relating to the assumption, rejection, and/or assumption and assignment of executory contracts and unexpired leases of the Debtor have been satisfied. The Debtor has demonstrated adequate assurance of future performance with regard to the assumed executory contracts and unexpired leases of the Debtor.

24. The Redwing Settlement Agreement attached as Exhibit 1-A to the Plan is fair and equitable, and approval of the Redwing Settlement Agreement is in the best interests of the Debtor and its Estate.

25. All releases of claims and causes of action against non-debtor persons or entities that are embodied within Section 15.04 of the Plan are fair, equitable, and in the best interest of the Debtor and its Estate.

26. The Proponents and their members, officers, directors, employees, agents and professionals who participated in the formulation, negotiation, solicitation, approval, and confirmation of the Plan shall be deemed to have acted in good faith and in compliance with the applicable provisions of the Bankruptcy Code with respect thereto and are entitled to the rights, benefits and protections of Bankruptcy Code §§ 1125(d) and (e).

27. The Disclosure Statement contains "adequate information" as defined in 11 U.S.C. § 1125. All creditors, equity interest holders and other parties in interest have received appropriate notice and an opportunity for a hearing of the Plan and the Disclosure Statement.

28. The Plan and Disclosure Statement have been transmitted to all creditors, equity interest holders and parties in interest. Notice and opportunity for hearing have been given.

29. The requirements of §1129 (a) and (b) have been met.

30. The Plan as proposed is feasible.

31. All conclusions of law made or announced by the Court on the record in connection with the May 16, 2006 Combined Hearing are incorporated herein.

32. All conclusions of law which are findings of fact shall be deemed to be findings of fact and vice versa.

It is therefore,

ORDERED that the Disclosure Statement for Original Joint Plan of Reorganization filed by the Debtor and First Capital on March 31, 2006, is hereby APPROVED; it is further

ORDERED that the Original Joint Plan of Reorganization filed by the Debtor and First Capital on March 31, 2006, as modified, is hereby CONFIRMED; it is further

ORDERED that the Debtor and First Capital are authorized to execute any and all documents necessary to effect and consummate the Plan; it is further

ORDERED that pursuant to section 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006, the assumption of the Customer Contracts, as specifically defined in Section 10.01 of the Plan, is hereby approved; it is further

ORDERED that pursuant to section 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006, the assumption of the Vendor Agreements, as specifically defined in Section 10.02 of the Plan, is hereby approved; it is further

ORDERED that unless otherwise agreed to in writing by the Reorganized Debtor and the counter-party to the Vendor Agreement, the Reorganized Debtor shall cure the arrears

specifically listed in Exhibit 1-B of the Plan by tendering six (6) equal consecutive monthly payments to the Vendor Agreement counter-party until the arrears are paid in full; it is further

ORDERED that, except for the Customer Contracts, Vendor Agreements, and executory contracts or leases that were expressly assumed by a separate order, all pre-petition executory contracts and unexpired leases to which the Debtor was a party are hereby REJECTED effective as of the Petition Date; it is further

ORDERED that pursuant to Bankruptcy Rule 9019, the Redwing Settlement Agreement is hereby APPROVED, and the Debtor may execute any and all documents required to carry out the Redwing Settlement, including, but not limited to the Redwing Settlement Agreement, and such agreement shall be in full force and effect; it is further

ORDERED that nothing contained in this Order or the Plan shall effect or control or be deemed to prejudice or impair the rights of the Debtor, the Reorganized Debtor, Veraz Networks, Inc. or Redwing with respect to the dispute over the validity or extent of any license claimed by the Debtor in 15,000 ICE or logical ports currently utilized by the Debtor in connection with the operation of its network and each of the Debtor, the Reorganized Debtor, Veraz Networks, Inc. and Redwing reserve all of their rights with respect to such issue; it is further

ORDERED that except as otherwise provided in Plan Section 15.03, First Capital, the Debtor, the Reorganized Debtor, and the Reorganized Debtor's present or former managers, directors, officers, employees, predecessors, successors, members, agents and representatives (collectively referred to herein as the "Released Party"), shall not have or incur any liability to any person for any claim, obligation, right, cause of action or liability (including, but not limited to, any claims arising out of any alleged fiduciary or other duty) whether known or unknown, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or

omission, transaction or occurrence from the beginning of time through the Effective Date in any way relating to the Debtor's Chapter 11 Case or the Plan; and all claims based upon or arising out of such actions or omissions shall be forever waived and released (other than the right to enforce the Reorganized Debtor's obligations under the Plan).

*** END OF ORDER ***

PREPARED BY:

By /s/ David L. Woods (5.16.06)
J. Mark Chevallier
State Bar No. 04189170
David L. Woods
State Bar No. 24004167
MCGUIRE, CRADDOCK & STROTHER, P.C.
ATTORNEYS FOR DEBTOR and
DEBTOR-IN-POSSESSION

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 29
PARTY Halo Wireless, Inc. (Halo) - Direct
DESCRIPTION Robert Johnson (RJ-3)
DATE 07/12/12

EXHIBIT 3

NORTHERN DISTRICT OF TEXAS
ENTERED
TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Harlin DeWayne Hale

Signed September 20, 2007 **United States Bankruptcy Judge**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
TRANSCOM ENHANCED SERVICES, LLC,	§	**CASE NO. 05-31929-HDH-11**
	§	
DEBTOR.	§	
	§	
TRANSCOM ENHANCED SERVICES, INC.,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	
	§	
GLOBAL CROSSING BANDWIDTH, INC. and GLOBAL CROSSING TELECOMMUNICATIONS, INC.,	§	**ADVERSARY NO. 06-03477-HDH**
	§	
Defendants.	§	
	§	

ORDER GRANTING TRANSCOM'S MOTION FOR PARTIAL SUMMARY JUDGMENT BASED ON THE AFFIRMATIVE DEFENSE THAT TRANSCOM QUALIFIES AS AN ENHANCED SERVICE PROVIDER

GLOBAL CROSSING BANDWIDTH, INC. and GLOBAL CROSSING TELECOMMUNICATIONS, INC.,	§
Third Party Plaintiffs,	§
v.	§
TRANSCOM ENHANCED SERVICES, LLC and TRANSCOM COMMUNICATIONS, INC.,	§
Third Party Defendants.	§

ORDER GRANTING TRANSCOM'S MOTION FOR PARTIAL SUMMARY JUDGMENT BASED ON THE AFFIRMATIVE DEFENSE THAT TRANSCOM QUALIFIES AS AN ENHANCED SERVICE PROVIDER

On this date, came on for consideration the Motion For Partial Summary Judgment On Counterplaintiffs' Sole Remaining Counterclaim Based On The Affirmative Defense That Transcom Qualifies As An Enhanced Service Provider (the "Motion") filed by Transcom Enhanced Services, Inc. ("Transcom" or "Counterdefendant"), in which Transcom seeks summary judgment on the sole remaining counterclaim (the "Counterclaim") asserted by Counterplaintiffs' Global Crossing Bandwidth, Inc. ("GX Bandwidth") and Global Crossing Telecommunications, Inc. ("GX Telecommunications") (collectively, "GX Entities" or "Counterplaintiffs") based on the affirmative defense that Transcom qualifies as an enhanced service provider.

Twice previously, this Court has ruled that Transcom qualifies as an enhanced service provider, and therefore is not obligated to pay access charges, but rather must pay end user charges. In filing the motion, Transcom relied heavily on the evidence previously presented to this Court in contested hearings (the "ESP Hearings") involving the SBC Telcos (collectively, "SBC") and AT&T

Corp. ("AT&T") along with Affidavits from a principal of Transcom and one of Transcom's expert witnesses establishing that Transcom's system has not changed since the time of the ESP Hearings, that the services provided to the GX Entities by Transcom are the same as the services provided to all other Transcom customers, and that Transcom's expert witness is still of the opinion that Transcom's business operations fall within the definitions of "enhanced service provider" and "information service."

In response to the Motion, Counterplaintiffs have asserted that they neither oppose nor consent to the relief sought in the Motion. In their responses to Transcom's interrogatories, however, Counterplaintiffs asserted that Transcom did not qualify as an enhanced service provider because its service is merely an "IP-in-the-middle" service, which Transcom asserts is a reference to the FCC's Order, *In The Matter Of Petition For Declaratory Ruling That AT&T's Phone-to-Phone IP Telephony Services Are Exempt From Access Charges,* 19 FCC Rcd 7457, Release Number FCC 04-97, released April 21, 2004 (the "AT&T Order").

During the ESP Hearings, a number of witnesses testified on the issue of whether Transcom is an enhanced service provider and therefore exempt from payment of access charges. The transcripts and exhibits from those hearings have been introduced as summary judgment evidence in support of the Motion. That record establishes by a preponderance of the evidence that the service provided by Transcom is distinguishable from AT&T's specific service (as described in the AT&T Order) in a number of material ways, including, but not limited to, the following:

(a) Transcom is not an interexchange (long distance) carrier.

(b) Transcom does not hold itself out as a long distance carrier.

(c) Transcom has no retail long distance customers.

(d) The efficiencies of Transcom's network result in reduced rates for its customers.

(e) Transcom's system provides its customers with enhanced capabilities.

(f) Transcom's system changes the content of every call that passes through it.

On its face, the AT&T Order is limited to AT&T and its specific services. This Court therefore holds again, as it did at the conclusion of the ESP hearings, that the AT&T Order does not control the determination of whether Transcom qualifies as an enhanced service provider.

The term "enhanced service" is defined at 47 C.F.R. § 67.702(a) as follows:

> For the purpose of this subpart, the term enhanced service shall refer to services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. Enhanced services are not regulated under title II of the Act.

The term "information service" is defined at 47 USC § 153(20) as follows:

> The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

The definitions of "enhanced service" and "information service" differ slightly, to the point that all enhanced services are information services, but not all information services are also enhanced services. See First Report And Order, *In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934*, as amended, 11 FCC Rcd 21905 (1996) at ¶ 103.

The Telecom Act defines the terms "telecommunications" and "telecommunications service" in 47 USC § 153(43) and (46), respectively, as follows:

> The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, *without change in the form or content* of the information as sent and received. (emphasis added).
>
> The term "telecommunications service" means the offering of *telecommunications* for a fee directly to the public, or to such class of users as to be effectively available directly to the public, regardless of the facilities used. (emphasis added).

These definitions make clear that a service that routinely changes either the form or the content of the transmission would fall outside of the definition of "telecommunications" and therefore would not constitute a "telecommunications service."

Whether a service pays access charges or end user charges is determined by 47 C.F.R. § 69.5, which states in relevant part as follows:

> (a) End user charges shall be computed and assessed upon end users ... as defined in this subpart, and as provided in subpart B of this part. (b) Carrier's carrier charges [i.e., access charges] shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities *for the provision of interstate or foreign telecommunications services.* (emphasis added).

As such, only telecommunications services pay access charges. The clear reading of the above provisions leads to the conclusion that a service that routinely changes either the form or the content of the telephone call is an enhanced service and an information service, not a telecommunications service, and therefore is required to pay end user charges, not access charges.

Based on the summary judgment evidence, the Court finds that Transcom's system fits squarely within the definitions of "enhanced service" and "information service," as defined above. Moreover, the Court finds that Transcom's system falls outside of the definition of "telecommunications service" because Transcom's system routinely makes non-trivial changes to user-supplied information (content) during the entirety of every communication. Such changes fall outside the scope of the operations of traditional telecommunications networks, and are not

necessary for the ordinary management, control or operation of a telecommunications system or the management of a telecommunications service. As such, Transcom's service is not a "telecommunications service" subject to access charges, but rather is an information service and an enhanced service that must pay end user charges. Judge Felsenthal made a similar finding in his order approving the sale of the assets of DataVoN to Transcom, that DataVoN provided "enhanced information services." *See* Order Granting Motion to Sell, 02-38600-SAF-11, no. 465, entered May 29, 2003. Transcom now uses DataVoN's assets in its business.

In the Counterclaim, paragraph 94 makes the following assertion:

> Under the Communications Agreement, the Debtor asserted that it was an enhanced service provider. Not only did the Debtor make this assertion, it agreed to indemnify GX Telecommunications in the event that assertion proved untrue.

The Counterclaim goes on to allege that Transcom failed to pay access charges, and that Transcom is therefore liable under the indemnification provision in the governing agreement to the extent that it does not qualify as an enhanced service provider. In response to the Counterclaim, Transcom asserted the affirmative defense that it does indeed qualify as an enhanced service provider, and therefore has no liability under the indemnification provision. The Motion seeks summary judgment on that specific affirmative defense.

The Court has previously ruled, and rules again today, that Transcom qualifies as an enhanced service provider. As such, it is the opinion of the Court that the Motion should be granted.

It is therefore ORDERED that the Motion is GRANTED, and Transcom is awarded summary judgment that the GX Entities take nothing by their Counterclaim.

###END OF ORDER###

EXHIBIT 3

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FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 30
PARTY Halo Wireless, Inc. (Halo) - Direct
DESCRIPTION Robert Johnson (RJ-4)
DATE 07/12/12

EXHIBIT 4

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
TAWANA C. MARSHAL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

The following constitutes the order of the Court.

Signed May 28, 2003.

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	**CASE NO. 02-38600-SAF-11**
	§	**(Jointly Administered)**
DATAVON, INC., et al.,	§	**CHAPTER 11**
	§	
DEBTORS.	§	
	§	

ORDER GRANTING MOTION FOR ENTRY OF ORDERS (i) AUTHORIZING AND APPROVING SALE OF SUBSTANTIALLY ALL ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, INTERESTS AND EXEMPT FROM ANY STAMP, TRANSFER, RECORDING OR SIMILAR TAX; (ii) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (iii) ESTABLISHING AUCTION DATE, RELATED DEADLINES AND BID PROCEDURES; (iv) APPROVING THE FORM AND MANNER OF SALE NOTICES; AND (v) APPROVING BREAK-UP FEES IN CONNECTION WITH THE SOLICITATION OF HIGHER OR BETTER OFFERS

Upon the motion of DataVoN, Inc. ("DataVoN"), DTVN Holdings, Inc. ("DTVN"), Zydeco Exploration, Inc. ("Zydeco"), and Video Intelligence, Inc. ("VI") (collectively, the "Debtors") dated December 31, 2002, for, among other things, entry of an order under 11 U.S.C. §§ 105(a), 363, 365 and 1146(c), and Fed.R.Bankr.P. 2002, 6004, 6006 and 9014 (i) authorizing

and approving the sale of substantially all of the assets of the estate free and clear of liens, claims, encumbrances, interests and exempt from any stamp, transfer, recording or similar tax; (ii) authorizing the assumption and assignment of various executory contracts and unexpired leases; (iii) establishing an auction date, related deadlines and bid procedures in connection with the asset sale; (iv) approving the form and manner of sale notices to be sent to potential bidders, creditors and parties-in-interest; and (v) approving certain break-up fees in connection with the solicitation of higher or better offers for the assets (the "Sales Motion");[1] and the Court having entered on February 20, 2003 an order with respect to the Sale (i) Establishing Auction Date, Related Deadlines and Bid Procedures; (ii) Approving the Form and Manner of Sales Notices; and (iii) Approving Break-up Fees in Connection with the Solicitation of Higher or Better Offers (the "Bid Procedures Order"), that scheduled a hearing on the Sale Motion (the "Sale Hearing") and set an objection deadline with respect to the Sale; and the Sale Hearing having been commenced on April 1, 2003; and the Court having reviewed and considered the Sales Motion, the objections thereto, if any, and the arguments of counsel made and the evidence proffered or adduced at the Sale Hearing; and it appearing that the relief requested in the Sales Motion is in the best interests of the Debtors, their estates, creditors and other parties in interest; and upon the record of the Sale Hearing and in this case; and after due deliberation thereon; and good cause appearing therefore; it is hereby

FOUND AND DETERMINED THAT:[2]

1. The Court has jurisdiction over the Sales Motion pursuant to 28 U.S.C. § 1334.

---

[1] Unless otherwise defined, capitalized terms used herein shall have the meanings ascribed to them in the Sales Motion.

[2] Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought in the Sales Motion are §§ 105(a), 363(b), (f), (m), and (n), 365, and 1146(c) of the United States Bankruptcy Code (11 U.S.C. §§ 101-1330, as amended (the "Bankruptcy Code")) and Fed.R.Bankr.P. 2002, 6004, 6006 and 9014.

3. As evidenced by the certificates of service and publication previously filed with the Court, and based on the representations of counsel at the Sale Hearing, (i) proper, timely, adequate and sufficient notice of the Sales Motion, the Sale Hearing, and the Sale has been provided in accordance with Bankruptcy Code §§ 105(a), 363, 365 and 1146(c), and Fed.R.Bankr.P. 2002, 6004, 6006 and 9014 and in compliance with the Bidding Procedures Order; (ii) such notice was good and sufficient, and appropriate under the particular circumstances; and (iii) no other or further notice of the Sales Motion, the Sale Hearing, or the Sale is or shall be required.

4. As evidenced by the certificates of service and publication previously filed with the Court, and based on the representations of counsel at the Sale Hearing, (i) proper, timely, adequate and sufficient notice of the assumption and assignment of the Assumed Contracts and the cure payments to be made therefore has been provided in accordance with Bankruptcy Code §§ 105(a) and 365 and Fed.R.Bankr.P. 9014; (ii) such notice was good and sufficient; and (iii) no other or further notice of the assumption and assignment of the Assumed Contracts is or shall be required.

5. As demonstrated by: (i) the testimony and other evidence proffered or adduced at

the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing, the Debtors and the Bid Selection Committee marketed the Assets and conducted the Sale process in compliance with the Bidding Procedures Order.

6. The Debtors: (i) have full corporate power and authority to execute the Agreement and all other documents contemplated thereby, and the sale of the Assets by the Debtors has been duly and validly authorized by all necessary corporate action of the Debtors; (ii) have all of the corporate power and authority necessary to consummate the transactions contemplated by the Agreement; and (iii) have taken all corporate action necessary to authorize and approve the Agreement and the consummation by the Debtors of the transactions contemplated thereby. No consents or approvals other than those expressly provided for in the Agreement are required for the Debtors to consummate such transactions.

7. Approval of the Agreement and consummation of the Sale at this time are in the best interests of the Debtors, their estates, their creditors, and other parties in interest.

8. The Debtors have demonstrated both (i) good, sufficient, and sound business purpose and justification and (ii) compelling circumstances for the Sale pursuant to Bankruptcy Code § 363(b) prior to, and outside of, a plan of reorganization in that, among other things:

a. The Debtors and the Bid Selection Committee diligently and in good faith marketed the Assets to secure the highest and best offer therefore. Further, the Debtors and the Bid Selection Committee published a notice substantially in the form of the Sale Notice in *The Wall Street Journal.* The terms and conditions set forth in the Agreement, and the transfer to Purchaser of the Assets pursuant thereto, represent a fair and reasonable purchase price and constitute the highest and best offer obtainable for the Assets.

b. A sale of the Assets at this time to Purchaser pursuant to Bankruptcy Code § 363(b) is the only viable alternative to preserve the value of the Assets and to maximize the Debtors' estates for the benefit of all constituencies. Delaying approval of the Sale may result in Purchaser's termination of the Agreement and result in an alternative

outcome that will achieve far less value for creditors.

c. Except as otherwise provided in this Sale Order, the cash proceeds of the Sale will be distributed to the Debtors' administrative and pre-petition creditors under the terms of a confirmed liquidating Chapter 11 plan.

d. The highest and best offer received for the purchase of the Assets came from Transcom Communications, Inc. ("Transcom" or "Purchaser").

9. On March 3, 2003, the Debtors filed their Notice of Cure Amounts Under Contracts and Leases that may be Assumed and Assigned to Purchaser of Substantially All of Debtors' Assets, detailing the executory contracts that may be assumed and assigned to the successful purchaser of the Debtors' assets (the "Assumed Contracts"). The Cure Notice not only fixed the Cure Amount for each contract for any non-objecting party, but also constituted a waiver by any non-objecting party to the assumption and assignment of the various contracts to the Purchaser. The Assumed Contracts are unexpired and executory contracts within the meaning of the Bankruptcy Code. Pursuant to the Agreement, the Purchaser shall cure all monetary defaults under the Assumed Contracts as provided for in the Notice or as agreed between the parties to any Assumed Contract. There are no non-monetary defaults requiring cure. The Sale satisfies the requirements of Bankruptcy Code § 365(b). The Debtors are not required to cure any defaults of the kind described in Bankruptcy Code § 365(b)(2). The Purchaser's excellent financial health and own expertise in the telecommunications industry provide adequate assurance of future performance to all non-debtor parties to Assumed Contracts. Pursuant to Bankruptcy Code § 365(f), all restrictions on assignment in any of the Assumed Contracts are unenforceable against the Debtors and all Assumed Contracts may lawfully be assigned to the Purchaser.

10. A reasonable opportunity to object or be heard with respect to the Sale Motion

and the relief requested therein has been afforded to all interested persons and entities, including: (i) each and every holder of a "claim" (as defined in Bankruptcy Code § 101(5)) against the Debtors; (ii) each and every holder of an equity or other interest in the Debtors; (iii) each and every contractor and subcontractor that has performed any services or otherwise dealt with any of the Assets; (iv) each and every Governmental Entity with jurisdiction over the Debtors or any of the Assets; (v) each and every holder of an Encumbrance on any of the Assets; (vi) the Office of the United States Trustee for the Northern District of Texas; (vii) the Official Committee of Unsecured Creditors appointed in the Debtors' cases under the Bankruptcy Code, if any; (viii) any and all other persons and entities upon whom the Debtors are required (pursuant to the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure or any order of the Court) to serve notice; (ix) any and all other persons and entities upon whom Purchaser instructed Seller to serve notice; and (x) any parties who are on the list of prospective purchasers maintained by CRP.

11. The Agreement was negotiated, proposed, and entered into by the Debtors, CRP, members of the Bid Selection Committee, and Purchaser without collusion, in good faith, and from arm's-length bargaining positions. None of the Debtors, CRP, members of the Bid Selection Committee, and the Purchaser has engaged in any conduct that would cause or permit the Agreement to be avoided under Bankruptcy Code § 363(n).

12. Purchaser is a good faith purchaser under Bankruptcy Code § 363(m) and, as such, is entitled to all of the protections afforded thereby. Purchaser will be acting in good faith within the meaning of Bankruptcy Code § 363(m) in closing the transactions contemplated by the Agreement at all times after the entry of this Sale Order.

13. The consideration provided by Purchaser for the Assets pursuant to the

Agreement: (i) is fair and reasonable, (ii) is the highest and best offer for the Assets, (iii) will provide a greater recovery for the Debtors' creditors than would be provided by any other practical, available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code.

14. The Sale must be approved promptly in order to preserve the value of the Assets.

15. The transfer of the Assets to Purchaser will be a legal, valid, and effective transfer of such Assets, and will vest Purchaser with all right, title, and interest of the Debtors to such Assets free and clear of all Interests, including those: (i) that purport to give any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of the Debtors' or Purchaser's interest in such Assets, or any similar rights, or (ii) relating to taxes arising under, out of, in connection with, or in any way relating to the operation of the Debtors' business prior to the date (the "Closing Date") of the consummation of the Agreement (the "Closing").

16. Purchaser would not have entered into the Agreement, and would not have been willing to consummate the transactions contemplated thereby, if the sale of the Assets to Purchaser were not free and clear of all Interests, or if Purchaser would, or in the future could, be liable for any of the Interests. Thus, any ruling that the sale of Assets was not free and clear of all Interests, or that Purchaser would, or in the future could, be liable for any Interests would adversely affect the Debtors, their estates, and their creditors.

17. The Debtors may sell the Assets free and clear of all Interests because, in each case, one or more of the standards set forth in Bankruptcy Code §§ 363(f)(1)-(5) has been satisfied. Those holders of Interests who did not object, or who withdrew their objections, to the Sale or the Sales Motion are deemed to have consented pursuant to Bankruptcy Code § 363(f)(2).

Those holders of Interests who did object fall within one or more of the other subsections of Bankruptcy Code § 363(f) and are adequately protected by having their Interests, if any, attach to the cash proceeds of the Sale.

18. Except with respect to the payment of the Cure Amounts and the Assumed Liabilities, the transfer of the Assets to Purchaser will not subject Purchaser, prior to the Closing Date, to any liability whatsoever with respect to the operation of the Debtors' business or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of law or equity, including, without limitation, any theory of equitable subordination or successor or transferee liability.

19. The valuations placed by the Bid Selection Committee on the Purchaser's bid are fair and reasonable and reflect fair and reasonable consideration for the sale of the Assets.

20. Through DataVoN, the primary operating subsidiary, the Debtors provide enhanced information services, including toll-quality voice and data services utilizing converged, Internet protocol (IP) transmitted over private IP networks. DataVoN, Inc., the primary operating subsidiary of the Debtors is a provider of wholesale enhanced information services. DataVoN provides toll quality voice and data communications services over private IP networks (VoIP) to carrier and enterprise customers. Companies who deploy soft switch equipment on an IP network can provide high quality video, voice, and data services while retaining flexibility, scalability, and cost efficiencies. DTVN is a holding company with no operations of its own. DataVoN's information services include voice origination, voice termination, 8xx origination and termination, utilizing voice over IP technology. VI formerly provided video services. That

EXHIBIT 4

line of business has been withdrawn. Zydeco, once the manager of DTVN's corporate oil and gas holdings, sold most of its assets in the third quarter of 2001 and retains only nominal activity.

21. Objections to the Sales Motion were filed by Cisco Systems, Inc. and Unipoint Holdings, Inc. with respect to certain aspects of the Sales Motion. Those objections were resolved by settlement terms announced on the record as follows: (1) the "Transcom Note" as set forth in section 9.32(g) of the Agreement shall be modified to provide that the original principal amount of the note may not be less than $1,282,539 and that such principal and accrued interest, if any, may be offset only by an allowed secured claim of Transcom as set forth in a final order; (2) the interest accuring on any allowed secured claim of Transcom, if any, will be equal to and shall not exceed an offsetting interest under the Transcom Note; (3) on the Closing Date of the Sale, Transcom shall wire transfer the sum of $100,000 to Unipoint, per Unipoint's instructions, in connection with that certain Reimbursement Agreement executed by and between Unipoint and Transcom; (4) Transcom will, at Closing, pay $440,000.00, to Hughes & Luce, LLC, to be held in Hughes & Luce, L.L.P.'s IOLTA Trust Account, in trust for the payment of Cisco's administrative claim in this case in accordance with the Term Sheet by and between Cisco and the Debtors as approved by the Court in its Order dated March 26, 2003, with such funds to be wire transferred by Hughes & Luce, L.L.P., pursuant to written instructions of Cisco, no later than 72 hours after the date of Closing of the Sale; and (5) Transcom shall amend the Agreement to reflect that Transcom is not acquiring net operating losses of the Debtors. Each of the foregoing terms shall be collectively referred to hereafter as the "Settlement Terms."

22. All cash consideration paid on the date of Closing of the Sale ("Sale Proceeds") shall be delivered to Hughes & Luce, L.L.P. ("H&L") and shall be placed in H&L's IOLTA

EXHIBIT 4

Trust Account. In addition to the Sale Proceeds, pursuant to the Settlement Terms, $440,000.00 shall be delivered to H&L, to be disbursed to Cisco pursuant to written instructions of Cisco, no later than 72 hours after the date of Closing of the Sale. Pursuant to the terms of that certain Order approving employee stay put bonuses, $344,860.54 of the Sale Proceeds, if delivered to H&L, shall be disbursed to the DataVoN, Inc. payroll account pursuant to written instructions from DataVoN, Inc., for the purpose of funding the employee stay put bonuses. After the aforesaid disbursements to Cisco and for the employee stay put bonuses, all remaining Sale Proceeds delivered to H&L shall be held in H&L's IOLTA Trust Account until the earlier to occur of (i) Confirmation of the Plan and creation of the Liquidating Trust, at which time H&L shall transfer such remaining Sale Proceeds to the Liquidating Trust by wire transfer, pursuant to the written instructions of the Liquidating Trustee, (ii) receipt by H&L of written Order of the Court ordering disbursement of the Sale Proceeds if the Plan is not Confirmed, or (iii) June 30, 2003, and petition by H&L to the Court requesting further direction of the Court regarding disbursement of remaining Sale Proceeds.

NOW THEREFORE, IT IS HEREBY:

General Provisions

ORDERED that the Sales Motion is granted, as further described herein; it is further

ORDERED that all objections to the Sales Motion or to the relief requested therein that have not been withdrawn, waived, or settled and all reservations of rights included in any objection to the Sales Motion are hereby overruled on the merits; it is further

ORDERED that the Court's findings and conclusions stated at the Sale Hearing are incorporated herein; it is further

EXHIBIT 4

Approval of the Agreement

ORDERED that the Agreement as modified by the Settlement Terms, and all of the terms and conditions thereof, are hereby approved; it is further

ORDERED that pursuant to Bankruptcy Code § 363(b), the Debtors are authorized and directed to consummate the Sale as modified by the Settlement Terms, pursuant to and in accordance with the terms and conditions of the Agreement as modified by the Settlement Terms; it is further

ORDERED that the Debtors are authorized and directed to execute and deliver, and empowered to perform under, consummate and implement, the Agreement as modified by the Settlement Terms, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Agreement as modified by the Settlement Terms, and to take all further actions as may be requested by Purchaser for the purpose of assigning, transferring, granting, conveying and conferring the Assets to Purchaser or as may be necessary or appropriate to the performance of the obligations as contemplated by the Agreement as modified by the Settlement Terms; it is further

ORDERED that on the Closing Date of the Sale, the Debtors and Hughes & Luce, L.L.P. ("H&L") shall (i) refund the $50,000 deposit paid by Unipoint Holdings, Inc. ("Unipoint") and held by H&L in its IOLTA trust account by wire transfer per written instructions from Unipoint, (ii) refund the $50,000 deposit paid by CNM Network Inc. ("CNM") and held by H&L in its IOLTA trust account by wire transfer per written instructions from CNM, and (iii) provided Transcom substitutes the equivalent sum on the Closing Date of the Sale, refund the $50,000

deposit paid by Transcom and Sowell and held by H&L in its IOLTA trust account by wire transfer per written instructions from Transcom; it is further

Assignment and Assumption of Assumed Contracts

ORDERED that the Debtors are hereby authorized and directed, in accordance with § 365(b) of the Bankruptcy Code: (i) to assume and assign to the Purchaser the Assumed Contracts, with the Purchaser being responsible for the cure amounts specified in Exhibit "A" attached hereto (the "Cure Amounts") and (ii) to execute and deliver to the Purchaser such assignment documents as may be necessary to sell, assign, and transfer the Assumed Contracts. The Purchaser shall provide no adequate assurance of future performance under the Assumed Contracts, other than its promise to perform pursuant to the terms and conditions of the Assumed Contracts. Pursuant to Bankruptcy Code §§ 365(a), (b), (c) and (f), the Purchaser is directed to pay the Cure Amounts on the Closing Date, within a reasonable period of time thereafter, or as agreed by the Purchaser with the non-debtor party or parties to any Assumed Contract; it is further

ORDERED that upon the closing of the Agreement in accordance with this Order, any and all defaults under the Assumed Contracts shall be deemed cured in all respects; it is further

ORDERED that all provisions limiting the assumption and/or assignment of any of the Assumed Contracts are invalid and unenforceable pursuant to Bankruptcy Code § 365(f); it is further

Transfer of Assets

ORDERED that pursuant to Bankruptcy Code §§ 105(a) and 363(f), all Assets shall be transferred to Purchaser as of the Closing Date, and all Assets shall be free and clear of all

Interests, with all such Interests to attach to the net proceeds of the Sale in the order of their priority, with the same validity, force, and effect which they now have as against the Assets, subject to any claims and defenses the Debtors may possess with respect thereto; it is further

ORDERED that except as expressly permitted or otherwise specifically provided by the Agreement as modified by the Settlement Terms or this Sale Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade and other creditors holding Interests against or in the Debtors or the Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under, out of, in connection with, or in any way relating to the Debtors, the Assets, the operation of the Debtors' businesses prior to the Closing Date, or the transfer of the Assets to Purchaser, are hereby forever barred, estopped, and permanently enjoined from asserting against Purchaser or its successors or assigns, their property, or the Assets, such persons' or entities' Interests; it is further

ORDERED that the transfer of the Assets to Purchaser pursuant to the Agreement as modified by the Settlement Terms constitutes a legal, valid, and effective transfer of the Assets and shall vest Purchaser with all right, title, and interest of the Debtors in and to all Assets free and clear of all Interests; it is further

Additional Provisions

ORDERED that the consideration provided by Purchaser for the Assets under the Agreement as modified by the Settlement Terms shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession thereof, or the District of Columbia; it is further

ORDERED that the consideration provided by Purchaser for the Assets under the Agreement as modified by the Settlement Terms is fair and reasonable and may not be avoided under Bankruptcy Code § 363(n); it is further

ORDERED that on the Closing Date of the Sale, each of the Debtors' creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release its Interests in the Assets, if any, as such Interests may have been recorded or may otherwise exist; it is further

ORDERED that this Sale Order (a) shall be effective as a determination that, on the Closing Date, all Interests existing as to the Debtors or the Assets prior to the Closing have been unconditionally released, discharged, and terminated, and that the conveyances described herein have been effected, and (b) shall be binding upon and shall govern the acts of all entities including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Assets; it is further

ORDERED that each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agreement; it is further

ORDERED that if any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens*, or other documents or agreements evidencing Interests in the Debtors or the Assets shall not have delivered to the Debtors prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Interests which the person or entity has with respect to the Debtors or the Assets or otherwise, then (a) the Debtors are hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Assets and (b) Purchaser is hereby authorized to file, register, or otherwise record a certified copy of this Sale Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all Interests in the Assets of any kind or nature whatsoever; it is further

ORDERED that Purchaser shall not have any liability or responsibility for any liability or other obligation of the Debtors arising under or related to the Assets, other than payment of the Cure Amounts, the amounts specified in the Settlement Terms and the Assumed Liabilities and its obligations to perform under the Assumed Contracts after the Closing Date. Without limiting the generality of the foregoing, Purchaser shall not be liable for any claims against the Debtors or any of their predecessors or affiliates, and Purchaser shall not have any successor or vicarious liabilities of any kind or character whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtors or any obligations of the Debtors arising prior to the Closing Date except as specified in the Settlement Terms; it is further

ORDERED that under no circumstances shall Purchaser be deemed a successor of or to the Debtors for any Interest against or in the Debtors or the Assets of any kind or nature whatsoever. The sale, transfer, assignment and delivery of the Assets shall not be subject to any Interests, and Interests of any kind or nature whatsoever shall remain with, and continue to be obligations of, the Debtors. All persons holding Interests against or in the Debtors or the Assets of any kind or nature whatsoever shall be, and hereby are, forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such Interests against Purchaser, its successors and assigns, its properties, or the Assets with respect to any Interest of any kind or nature whatsoever such person or entity had, has, or may have against or in the Debtors, their estates, officers, directors, shareholders, or the Assets. Following the Closing Date no holder of an Interest in the Debtors shall interfere with Purchaser's title to or use and enjoyment of the Assets based on or related to such Interest, or any actions that the Debtors may take in its chapter 11 case; it is further

ORDERED that subject to, and except as otherwise provided in, the Bidding Procedures Order, any amounts that become payable by the Debtors pursuant to the Agreement or any of the documents delivered by the Debtors pursuant to or in connection with the Agreement shall (a) constitute administrative expenses of the Debtors' estate and (b) be paid by the Debtors in the time and manner as provided in the Agreement without further order of this Court; it is further

ORDERED that this Court retains jurisdiction to enforce and implement the terms and provisions of the Agreement, the Settlement Terms, and all amendments thereto, any waivers and consents thereunder, and of each of the documents executed in connection therewith in all respects, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Assets

to Purchaser, (b) resolve any disputes arising under or related to the Agreement except as otherwise provided therein, (c) interpret, implement, and enforce the provisions of this Sale Order, and (d) protect Purchaser against any Interests in the Debtors or the Assets; it is further

ORDERED that nothing contained in any plan of liquidation confirmed in these cases or in any final order of this Court confirming such plan shall conflict with or derogate from the provisions of the Agreement, the Settlement Terms, or the terms of this Sale Order; it is further

ORDERED that the transfer of the Assets pursuant to the Sale shall not subject Purchaser to any liability with respect to the operation of the Debtors' business prior to the Closing Date or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of law or equity, including, without limitation, any theory of equitable subordination or successor or transferee liability; it is further

ORDERED that the transactions contemplated by the Agreement as modified by the Settlement Terms are undertaken by Purchaser in good faith, as that term is used in Bankruptcy Code § 363(m), and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale to Purchaser, unless such authorization is duly stayed pending such appeal. Purchaser is a purchaser in good faith of the Assets and is entitled to all of the protections afforded by Bankruptcy Code § 363(m); it is further

ORDERED that the terms and provisions of the Agreement, the Settlement Terms and this Sale Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, their estates, and their creditors, Purchaser, and their respective affiliates, successors

and assigns, and any affected third parties including, but not limited to, all persons asserting Interests in the Assets, notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code. The terms and provisions of the Agreement and of this Sale Order likewise shall be binding on any such trustee(s); it is further

ORDERED that the failure specifically to include any particular provisions of the Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Agreement as modified by the Settlement Terms be authorized and approved in its entirety; it is further

ORDERED that the Agreement and related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates or impair the Settlement Terms; it is further

ORDERED that the transfer of the Assets pursuant to the Sale is a transfer pursuant to Bankruptcy Code § 1146(c), and accordingly shall not be taxed under any law imposing a stamp tax or a sale, transfer, or any other similar tax; it is further

ORDERED that as provided by Fed.R.Bankr.P. 6004(g), this Sale Order shall not be stayed for 10 days after the entry of the Sale Order and shall be effective and enforceable immediately upon entry; it is further

ORDERED that the provisions of this Sale Order and the Settlement Terms recited herein are non-severable and mutually dependent; and it is further

EXHIBIT 4

ORDERED that in the event that Purchaser fails to close the Sale Agreement as modified by the Settlement Terms on or before June 2, 2003, the Debtors shall close under the next highest bid from Unipoint Holdings, Inc. reflected in its Asset Purchase Agreement of April 25, 2003 (the "Unipoint APA"). In such event, this Order and all of its findings shall be automatically effective as to Unipoint Holdings, Inc. as "Purchaser" and the Unipoint APA as the "Sale Agreement" without further hearing or order of this Court.

END OF ORDER # #

EXHIBIT 4
EXHIBIT A TO SALE ORDER

Non-Debtor Contract Party	Agreement Name/Description	Proposed Cure Amount (as of April 4, 2003)
Broadwing Communication Services, Inc.	Master Service Agreement dated February 28, 2001 as amended and supplemented; Settlement Agreement as approved by Bankruptcy Court Order dated January 28, 2003	$ 60,000.00
Campbell Road Village (Ippolito)	Gross Standard Shopping Center Lease dated May 19, 2000	$ 1,455.17
Dell Financial Services	Lease dated August 1, 2001	$ 10,238.32
Electronic Data Systems Corporation (EDS)	Sublease Agreement September 27, 2002	$ -
Gulfcoast Workstation Corp	Equipment Lease Agreement dated February 2, 2002	$ 20,000.00
Illuminet, Inc.	Connectivity Service Agreement dated October 4, 2000	$ 18,116.95
IpVerse/Nexverse	Software Licenses Agreement dated April 11, 2001	$ 746,144.25
IX-2 Networks	License Agreement for Use of Collocation Space dated March 28, 2000	$ -
Looking Glass Networks	Looking Glass Service Agreement dated December 2001	$ 1,062.00
OneStar Long Distance	Wholesale Service Agreement dated November 12, 2002	$ -
Pae Tec Communications, Inc.	Wholesale Local Service Agreement dated July 2002	$ 27,289.38
RiverRock Systems, Ltd.	Application Service Provider Agreement date May 1, 2001	$ 86,029.48
Sun Microsystems, Inc.	Sun Microsystems, Inc. Customer Agreement dated March 28, 2001	$ 27,687.33
The CIT Group	Lease Agreement dated October 16, 2001	$ 1,076.50

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Focal Communications Corporation	Master Service Agreement dated June 14, 2001, as amended	As Agreed	
Transcom Communication Corporation	Master Service Agreement dated August 15, 2001, as supplemented	$	1,192,229.61
Barr Tel/ColoCentral	Master Services Agreement	$	-
C2C Fiber, Inc. n/k/a Capital Telecommunications, Inc.	Master Services Agreement dated August 31, 2001	$	-
Cytus Communication	Master Services Agreement dated December 20, 2002	$	-
ePhone Telecom, Inc.	Master Services Agreement dated April 3, 2002	$	-
Excel Telecommunications, Inc.	Master Services Agreement dated January 19, 2001	$	-
Florida Digital Network	Master Services Agreement dated September 7, 2001	$	-
Go-Comm, Inc.	Master Services Agreement dated April 1, 2002	$	-
Grande Communications Networks, Inc.	Master Services Agreement dated April 13, 2001	$	-
IDT Telecom LLC	Master Services Agreement dated February 12, 2002	$	-
IONEX Telecommunications, Inc.	Master Services Agreement dated October 28, 2002	$	-
ITC DeltaCom Communications, Inc.	Master Services Agreement dated September 25, 2002	$	-
ITXC Corporation	Master Services Agreement dated September 31, 2002	$	-
Linx Communications, Inc.	Master Services Agreement dated June 5, 2002	$	-
Macro Communications, Inc.	Master Services Agreement dated December 3, 2002	$	-

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Novatel, Inc.	Reciprocal Services Agreement dated January 18, 2002	$	-
Novolink Communications, Inc.	Reciprocal Services Agreement dated January 10, 2002	$	-
Orion Telecommunications Corporation	Master Services Agreement dated August 13, 2001	$	-
TCAST Communications, Inc.	Master Services Agreement dated July 10, 2002	$	-
Telic Communications, Inc.	Master Services Agreement dated September 21, 2001	$	-
Transcom Communications, Inc.	Master Services Agreement dated February 16, 2001	$	-
TXU Communications Telecom Services Company	Master Services Agreement dated April 9, 2002	$	-
Voice Exchange, Inc.	Master Services Agreement dated May 2, 2002	$	-
Webtel Wireless, Inc.	Master Services Agreement dated July 19, 2002	$	-
WorldxChange Corporation	Master Services Agreement dated August 15, 2002	$	-
World Link Telecom, Inc.	Master Services Agreement dated October 9, 2002	$	-
XTEL	Master Services Agreement	$	-
TRC Telecom, Inc.	Master Services Agreement dated December 20, 2001	$	-
Capital Telecommunications, Inc.	Master Services Agreement dated March 19, 2001	$	-
SafeTel, Inc.	Master Services Agreement dated June 27, 2002	$	-
CT Cube LP	Master Services Agreement dated September 25, 2002	$	-

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EXHIBIT 4
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CGKC&H Rural Cellular #2	Master Services Agreement dated September 25, 2002	$	-
Dollar Phone Corporation	Master Services Agreement dated February 4, 2003	$	-
Pae Tec Communications, Inc.	Reciprocal Services Agreement dated July 15, 2002	$	-
MCI Worldcom Network Services, Inc.	Termination Services Agreement dated July 31, 2001	$	-
McGregor Bay Communications, Inc.	Agency Agreement dated March 18, 2002	$	-
Chip Greenberg Studios, Inc.	Agency Agreement dated July 25, 2002	$	-
CallNet, L.L.C.	Agency Agreement dated June 27, 2001	$	-
Barry L. Greenspan	Agency Agreement dated January 10, 2002	$	-
Brandon J. Becicka	Agency Agreement dated May 9, 2002	$	-
		$	2,191,328.99

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FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 31
PARTY AT&T - Rebuttal
DESCRIPTION Raymond W. Drause (RD-1)
DATE 07/12/12

Raymond W. Drause, P.E.

40 Keenan Creek Way ◊ Simpsonville, SC 29680 ◊ (864)-444-7839 ◊ rdrause@charter.net

PROFESSIONAL SUMMARY

Results-driven Engineering Manager with multi-faceted Telecommunications Engineering and Operations experience. Strong general management qualifications in planning, project management, budgeting and human resources. Extensive experience in Network Planning, Engineering, and Operations in both start-up and large-scale companies.

CAREER EXPERIENCE

McCall-Thomas Engineering Company, Inc. — May 2007 - present
Senior Wireless Engineer

Provide engineering support to various Independent Telephone Companies and Electric Co-ops.

- Develop Point-to-Point and Point-to-Multipoint wireless system designs using UHF and Microwave Radio Systems.
- Coordinate installation and testing of wireless systems.
- Coordinate with the Department of Defense Joint Spectrum Center to facilitate installations of Cellular Mobile Radio System equipment on military facilities.
- Develop fiber optic network designs using Passive Optical Networks (PONs).
- Provide training on National Electrical Safety Code, Providing IPTV over ADSL2+, Central Office Grounding (single point grounding), Network Interface/Optical Network Terminal bonding and grounding, Basic Electronics.
- Develop and present instructional technical programs to SC Telephone Assn., Georgia Telephone Assn., NC Tri-State Telephone Assn. and others.

Telecommunications Consulting Service — May 2006 – April 2007
Owner

Establish a telecommunications consulting service to provide engineering and operations support for a client group founding a new telecommunications company.

- Work jointly with client's IT manager to develop, deploy and operate the core network infrastructure needed to support VoIP and data services.
- Evaluate WiMAX systems. Design, deploy and operate point-to-multipoint wireless systems that link subscribers to client's network. Conduct RF spectrum analyses. Design and deploy custom antenna arrays required to serve targeted coverage areas and null designated areas. Develop "best practices" for equipment installations at customer sites. Conduct field trials to confirm system performance levels.
- Design and install point-to-point microwave systems. Conduct path surveys, negotiate tower leases. Acquire Metro-Ethernet circuits for back haul of traffic from main hub.
- Design backup AC and DC power systems for network and operational support systems.

Nuvox Communications, Greenville, SC — May 2004 (merger) – May 2006

Vice President – Network Planning, Engineering & Optimization
November 2005 – May 2006

Senior executive responsible for leading 7 Director organizations in planning, engineering, budgeting and deploying the equipment, facilities and systems making up the Nuvox Network.

- Deploy Voice and Signaling Gateways, Feature Server, Session Border Controller, and Voice Mail platform required for VoIP implementation. Integrate VitalNet and Empirix Network Performance Management systems into VoIP engineering processes.
- Establish Traffic Engineering and Capacity Management processes providing enhanced visibility to VoIP and Core Data Networks performance.
- Support interoperability testing of VoIP elements.
- Develop Transmission Engineering Standards for SONET/ DWDM designs. Deploy DWDM rings utilizing Lucent DMX and Cisco ONS multiplexers.
- Develop interim growth architecture for legacy TDM network, reducing CAPEX requirements by over 27%. Introduce E911 data warehouse plan yielding ongoing annual OPEX savings of over $1.5 million.
- Create and implement Capacity Management initiative to achieve "zero capacity-related held customer orders".

Vice President – Network Optimization
February 2005 – October 2005

Senior executive responsible for development and implementation of initiatives designed to optimize the financial and operational performance of the Nuvox Network.

- Create new multi-state organization. Direct hiring and training of 100+ contractors and integrate them into a base of 52 employees to execute Network Optimization initiatives.
- Manage a diverse array of Operational Excellence initiatives in 15 state area.
- Implement extensive network changes arising from the FCC TRO rulings. Negotiate changes to ILEC Interconnect Agreements. Responsible for MSS circuit designs, switch and router translations, ILEC circuit ordering and physical grooms at collocation sites and customer locations. Produced recurring annual savings of over $1.45 million.
- Integrate network and customer-specific data residing in two legacy MetaSolv TBS Systems and one internally developed OS into one common data repository (MSS).
- Implement conversion of customer facilities to HDSL2, producing ongoing annual savings of over $1.2 million.

Vice President – Network Engineering
May 2004 – February 2005

Senior executive responsible for engineering, deployment, capacity management and budgeting of the equipment and systems making up the Nuvox Network.

- Integrate the Network Engineering organizations of Nuvox Communications and NewSouth Communications following their merger.
- Manage Network Integration projects designed to capture operational synergies and cost benefits resulting from the merger (Migration of circuits from 5ESS/DMS switches to Sonus switch, deployment of Adtran GR303 equipment to collocation sites).
- Manage initial deployment of Sonus and Cisco VoIP equipment to new markets.

NewSouth Communications, Greenville, SC November 1999 – April 2004 (merger)

***Vice President – Network Engineering* & Technical Services**
July 2000 – April 2004

Senior executive responsible for engineering, deployment, capacity management and budgeting of the equipment and systems making up the NewSouth network.

- Lead 4 Director organizations in the construction and ongoing growth of 13 switch sites and 230 collocation sites located across the Company's 10 state area.
- Manage the engineering and installation of Cisco ATM switches, Lucent 5ESS and Siemens EWSD switches, Alcatel and Tadiran DCSs and all ancillary equipment.
- Establish CAPEX and OPEX budgeting processes for Engineering.
- Establish Capacity Management and Network Data Integrity processes.
- Manage engineering-related activities associated with UCI Communications and Nuvox Communications mergers.

Director – Network Engineering
November 1999 - June 2000

Responsible for the design and build-out of Lucent 5ESS switch sites and collocation sites, including all AC/DC power, data networking, transport equipment, and mechanical systems in the NewSouth Network.

Southwestern Bell Telephone Company, Little Rock, AR 1980 – 1999 (retired)

Area Mgr. - Maintenance & Transmission Engineering
1992 – June 1999 (retired)

- Lead a team of 15 Engineers and support personnel located in Arkansas, Kansas and Oklahoma. Provide advanced technical support for ATM , TDM and Electronic switches and associated transport, power and radio systems in over 360 central offices.
- Develop and implement Operational Test & Analysis Review processes for switch, transport and power equipment. Conduct COE Installation Supplier Quality assessment audits and Network Reliability audits. Conduct grounding and bonding audits.
- Create transmission designs for fiber optic cable routes, and SONET, microwave and VHF/UHF mobile radio systems. Responsible for Network Synchronization.
- Conduct Beta testing during SONET and ATM equipment trials.
- Served on SW Bell/Pacific Bell Merger Team - Developed "Seven State Process" which assessed "Best Practices" used by each company, leading to the adoption of uniform Maintenance & Transmission Engineering processes across the combined company.
- Pioneered use of Infrared Scanners for central office power inspections and use of unlicensed spread-spectrum 2.4 GHz radio for emergency restorations and facility relief.

Area Mgr. - Real Estate & Architecture
1980 – 1991

- Manage and coordinate five teams of architectural project managers, engineers and consultants in planning, designing and implementing central office, radio and administrative building projects. Manage annual CAPEX budget of $7,900,000.
- Select and hire contractors and consultants. Establish performance standards. Develop and direct engineering records mechanization process.
- Manage and supervise the planning, negotiating, purchasing and leasing of land, buildings and floor space. Administer $2,400,000 annual leasing budget. Personally negotiate/administer $1,200,000 in annual leasing and brokerage transactions.
- Conduct economic studies. Develop lease documents and investor solicitation packages for build/lease projects. Represent company in zoning/land-use hearings. Acquire microwave and cellular tower sites.

Wisconsin Bell Telephone Company, 1969 – 1979

Engineer – Central Office Equipment Planning ***Milwaukee, Wisconsin***
1978 - 1979

- Conduct Network Planning economic studies involving central office projects.
- As member of Speakers Panel, present company programs to civic clubs and schools.

Assistant Engineer – Central Office Equipment Engineering ***Madison, Wisconsin***
1969 - 1977

- COE Engineering for switching, transport and power equipment.
- Developed first plan in company for reuse of MDF for dial-to-dial conversions.

Education:
Associate in Science - Electronics Engineering Technology
Herzing College - Madison, Wisconsin

Specialized Training:
Numerous technical, management, building and real estate courses from Greenville Technical College, Nortel, Lucent, Fujitsu, Alcatel, Cisco, Telcordia, Southwestern Bell Center for Learning and others. VoIP Analyst Certification – Spirit Telecom. MS Office proficient.

Professional Licenses:
Registered Professional Engineer (Electrical) - Arkansas
FCC Radio License
Real Estate Broker's License (lapsed)

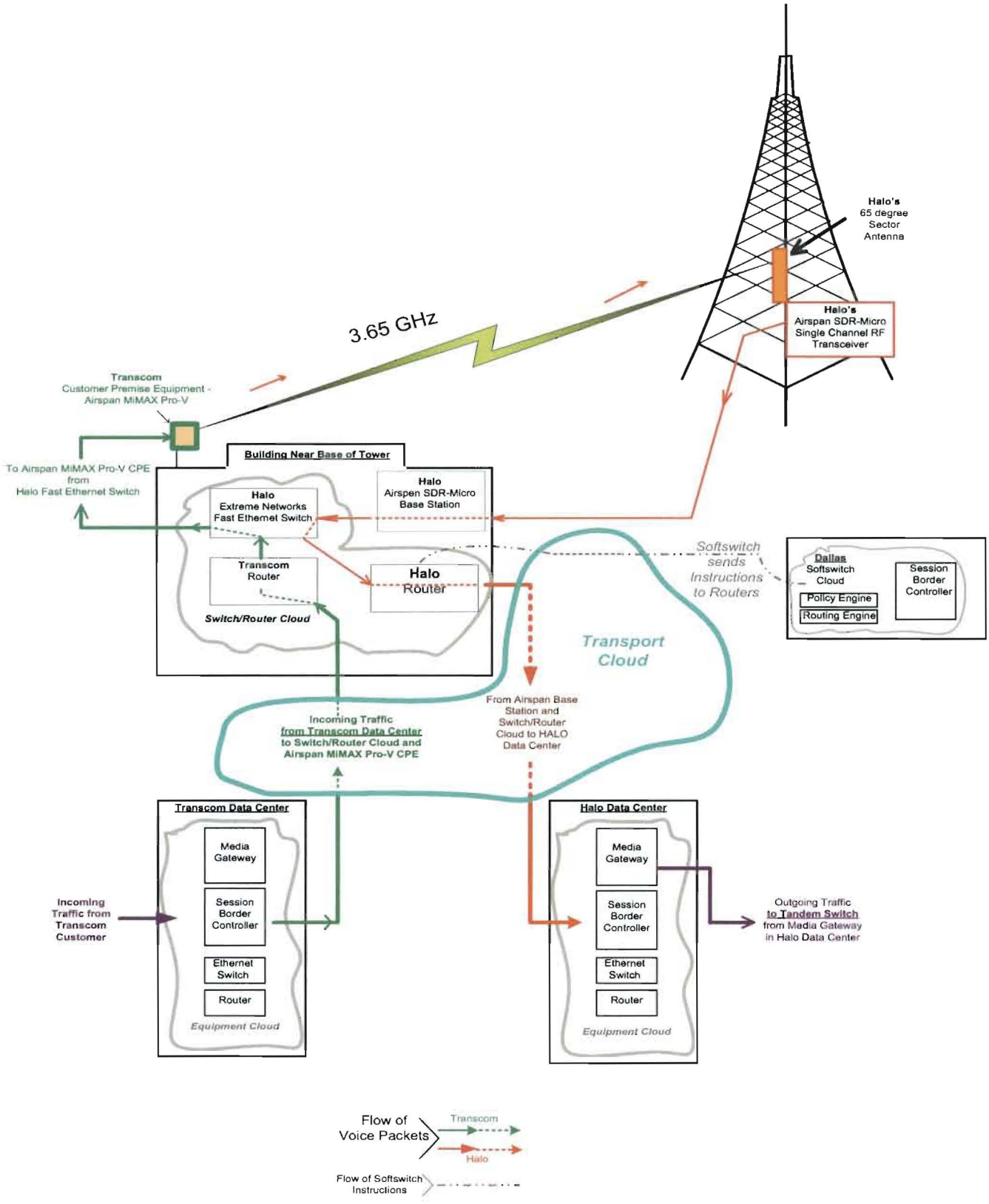
Affiliations:
National Society of Professional Engineers (lapsed)
Institute of Electrical and Electronics Engineers (lapsed)
American Radio Relay League

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 32
PARTY AT&T - Rebuttal
DESCRIPTION Raymond W. Drause (RD-2)
DATE 07/12/12



Typical HALO Tower Site

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 33
PARTY AT&T - Rebuttal
DESCRIPTION Raymond W. Drause (RD-3)
DATE 07/12/12



Call Path for Typical Transcom/Halo Call

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 34
PARTY AT&T - Rebuttal
DESCRIPTION Mark Neinast (MN-9)
DATE 07/12/12

PSC REF#:159682

Public Service Commission of Wisconsin
RECEIVED: 02/14/12, 2:03:02 PM

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Investigation into Practices of Halo Wireless, Inc. and Transcom Enhanced Services, Inc.	9594-TI-100

PRE-FILED REBUTTAL TESTIMONY OF RUSS WISEMAN ON BEHALF OF HALO WIRELESS, INC.

FEBRUARY 8, 2012

We acknowledge that the FCC has now thrown out all of the prior precedent and apparently the FCC now believes ESPs are exchange access customers and do not originate calls. I note that this still does not resolve the "end user" question: merely because ESPs now use exchange access does not mean they are common carriers or provide telecommunications service. The FCC has chosen to not expressly clarify the law on this interesting issue, but it did not change the definition of "end user" which basically says if an entity is not a carrier then it is an end user for access purposes.

But under the FCC's new rules, "origination" is only relevant to whether a CMRS provider's traffic is "intraMTA" and therefore bill and keep. CMRS can provide and support other traffic types. The task at hand is identify what the Halo traffic is under the new rules and then determining the appropriate compensation result.

Halo and Transcom are related companies. But Halo must still operate under the rules applicable to common carriers. We cannot interfere with or discriminate based on what our end user customer is doing on its side before our end user customer ***originates*** (further or otherwise) an end user call in an MTA.[21] We believe all that matters is whether our traffic comes to us from an end user employing a CMRS-based wireless facility in the same MTA.

Q: Putting aside the question of where calls originate, what is your reaction to AT&T's and TDS's assertions that calling party and called numbers are reliable ways to determine where calls actually began, and are appropriate parameters to determine call jurisdiction for call rating purposes?

A: The FCC order says that numbers are unreliable for this purpose and we agree. My reaction is that while the initial location of a call session initiation may be relevant to jurisdiction

[21] An ILEC that is selling a private line to the end user customer might have reason to inquire whether the user is employing a "leaky PBX" in order to determine if the "leaky PBX surcharge" applies, but we are not a LEC.

based on the "end-to-end" theory, we do not believe it is determinative to call rating for our CMRS traffic, with Transcom as an end user ESP customer. We established our business plan to operate according to the prior rules relating to CMRS carriers, where traffic is originated by end users (including ESPs) using wireless stations capable of movement at towers located in MTAs. We also do not believe that the industry can continue to rely on the "calling party number" as some indicator of where and on what network a call started. Numbers are not a reliable proxy for location, nor can you assume that a call from a station associated with a particular number actually started on the network of the exchange carrier that was allocated the number from NANPA. My examples above conclusively demonstrate the folly of doing so.

In Ms. Robinson testimony, she asserts that using telephone numbers are a reliable way to determine the geographic starting point for a call, the network the call originated on, the location of the caller when making the call or whether a call involves "wireless." This might have been true 30 years ago when there were no IP networks and other advanced communication applications that effectively disassociate telephone numbers from physical telephone lines, switches and even networks. But today, the industry knows full well that advanced communications technologies, both IP and wireless, are rendering it impossible to rely on CPN to determine where a call began or the network owner or type of network that was used to initiate the call. Allow me to provide a few more examples by elaborating on what I said earlier.

Carriers like T-Mobile offer services today that allow their wireless users to originate calls using wireless base stations connected to wired broadband networks. Are calls using these devices wireless or wireline orginated? Is this "non-access" traffic or is it "access reciprocal compensation"? Is it transit?

Verizon Wireless offers Home Phone Connect, a service that allows VZW customers to port their home numbers to VZW and use traditional landline phones to make calls over their wireless network. Is this a mobile wireless service? Fixed wireless? Wireline? Is this non-access" traffic or is it "access reciprocal compensation"? Is it transit? Would calls from a ported landline number be viewed by a terminating LEC as a wireless call or a wireline call? We suspect the latter as the CPN would be a landline telephone number. But these calls would all traverse the VZW wireless network.

A growing trend today with smart phones is that wireless users today can use Skype or GoogleVoice service as an application on a smart phone. Skype and GoogleVoice quite often obtain numbers from CLEC "numbering partners" such as Level 3 or Bandwidth.com. Let's assume the numbering partner is Bandwidth.com. An AT&T Wireless customer can originate a call while traveling in California using Skype on an AT&T-provided wireless smart phone. In this example, as before Skype has sub-assigned a number from Level 3 (603-373-6xxx) in the Milwaukee rate center to the AT&T Wireless user. The Skype user's outbound call, let's say to a PSTN user served by a local exchange carrier such as AT&T, probably will not go out over Level 3's network, even though Level 3's number will be signaled. It will be completed over AT&T Wireless's IP network and then go to Skype's network and then be routed to a Skype vendor to start the termination chain. The call, however, will appear to the AT&T LEC as a wireline originated call, since the Calling Party Number is a "wireline" number. The ILECs would claim this call started "on the PSTN" in Milwaukee, and Level 3 was the "originating LEC." However, those inferences would be incorrect. Since a smart phone was used, it would be "wireless." It started in California, not Wisconsin. Level 3 probably never touched the call at all in any way. Finally it would be an IP-originated call and did not "originate on the PSTN."

If the smart phone toting Skype user in California was calling someone in Wisconsin within MTA 20 and LATA 354 (which includes Madison), our ESP end user Transcom could very well receive it from one of its customers that have contracted with Skype. If so, Transcom would process the call and hand it to Halo via Transcom's wireless CPE that is communicating with our New Glarus, WI base station. Halo would hand the call off to AT&T at its MDSNWI1171T tandem. AT&T would then terminate or transit the call to the terminating carrier.

The ILECs would probably "rate" this as an intraMTA, interLATA call, because they would see it as a Milwaukee number calling a user within the same MTA, albeit different LATAs, but they would probably claim it is "wireline" PSTN originated and therefore Halo is not "authorized" to handle it, as the number is a wireline number. We previously would have argued it is intraMTA because we received it from our end user customer at our base station in MTA 20 and it terminated in MTA 20. We would have then and still do strongly disagree that it was "wireline" PSTN originated. Under the new rules is this "non-access" traffic? Is it "access reciprocal compensation"? Is it "transit"?

In the myopic world of the ILECs, these scenarios are fanciful, unlikely and irrelevant. However, their cellular counterparts know differently. The entire telecommunications industry knows differently. And most importantly, consumers know differently. Voice is now, and will ever more further become, an IP "application, where telephone numbers "move" seamlessly across devices and networks, just like music content in the "cloud" can be accessed on any device, anywhere, at any time. Voice is really no different.

Because of these convergence trends, the FCC has supported, and now requires, traffic factors to allocate between different traffic types precisely because of the fact that numbers have

been disassociated from networks and location and thus are not reliable.[22] I think it is worth noting that in proceedings in other states, notably Tennessee, Ms. Robinson admitted that the approach of determining call jurisdiction for billing purposes from telephone numbers is flawed, and does not result in a precise or accurate result. I think she described it as "the best we can do", or words to that effect. In her latest testimony she seems to "double down" on her commitment to this flawed thinking by asserting that CMRS calls are interMTA based on the rate center of the mobile telephone number of the calling party. Apparently roaming, and determining call jurisdiction for rating purposes based on the location of the base station where the call originated, are both unfamiliar concepts to Ms. Robinson.

Thus, TDS's claim to be able to be able to reliably determine the "jurisdiction" of Halo's traffic for billing purposes, whether it is "wireline" or "wireless," "intrastate" or "interstate," "intraMTA" or "interMTA," and as the sole basis for deriving estimates of access charges due, are unreliable at best, and likely skew the financial costs heavily in their favor. Ms. Robinson's approach is based on antiquated industry practices seasoned with healthy doses of self-serving assumptions. However, this did not stop them from deriving impressively precise damages figures based on these assumptions, or attempting to make adjustments to their figures based on actual statistics on caller locations or the actual network or base station locations where calls

[22] *See, e.g.* FCC Order ¶ 934 ("...In addition, given the recognized concerns with the use of telephone numbers and other call detail information to establish the geographic end-points of a call, we decline to mandate their use in that regard, as proposed by some commenters. ..."); ¶ 960 ("...Because telephone numbers and other call detail information do not always reliably establish the geographic end-points of a call, we do not mandate their use. ..."); ¶ 962 ("Contrary to some proposals, however, we do not require the use of particular call detail information to dispositively distinguish toll VoIP-PSTN traffic from other VoIP-PSTN traffic, given the recognized limitations of such information.For example, the Commission has recognized that telephone numbers do not always reflect the actual geographic end points of a call. Further, although our phantom traffic rules are designed to ensure the transmission of accurate information that can help enable proper billing of intercarrier compensation, standing alone, those rules do not ensure the transmission of sufficient information to determine the jurisdiction of calls in all instances. Rather, consistent with the tariffing regime for access charges discussed above, carriers today supplement call detail information as appropriate with the use of jurisdictional factors or the like when the jurisdiction of traffic cannot otherwise be determined. We find this approach appropriate here, as well.")

began. I note that many of their characterizations also suffer from the problem that they do not actually take all of the FCC's new rules into account.

From Halo's perspective, we designed our business plan to operate according to the rules of CMRS carriers, where traffic is originated by end users, using wireless stations capable of movement, at towers located in MTAs. We are prepared to operate under the FCC's new regime (for so long as it is in effect pending appellate review) but we must be given a chance to bring our arrangements and operations into compliance, and the full set of FCC rules must be implemented. The ILECs cannot be allowed to cherry pick the rules they like, and ignore or dismiss those they don't. .Ms. Robinson's assertion that "billing for the entire industry is determined on the basis of the originating and terminating end points of the called and calling parties" is not true for the CMRS industry, and it is quickly dissolving in the entire telecom space in the face of converged wireless-wireline and IP-based services. The "practice" is for carriers to traffic factors instead of call-by-call rating, since numbers-based rating is no longer feasible in today's advanced network and service environment where the starting and ending "locations" of calls is hard to consistently, accurately and efficiently determine and the "number" consistently yields an incorrect answer. The FCC's new regime calls for factors and we are willing to develop and supply them.[23]

Ms. Robinson's testimony makes it clear that the LECs are using the calling party number to identify the "originating network" as well, and using this same information to determine call jurisdiction for call rating, and for the amounts they claim they are due for access charges. She apparently does not accept that the presence of a number in the signaling does not mean the call originated on the network of the carrier that has been assigned that number. The

[23] I hope and trust that the PSC is also willing to implement the FCC's new rules because those rules also require the ILECs to negotiate in good faith to establish IP-based interconnection, and Halo is preparing to seek IP-based interconnection from AT&T and many of the ILECs involved in this proceeding.

inter-carrier compensation regime is not and cannot be founded on the assumption that you can definitively determine the starting point of a call, the type of call, or the initial network based on "the number." I would further observe that reliance on the number as the exclusive rating determinant is subject to the very outcomes the LECs want to avoid: gaming and arbitrage. It was not that long ago that state commissions all over the country had to resolve the inter-carrier compensation issues related to "arbitrage" using Virtual NXXs. The states largely adopted the ILEC position in those cases and ruled that the telephone numbers did not control rating. The ILECs insist on using numbers when it means they can claim access, but they have refused to use numbers when it meant they do not get access. The PSC cannot be so arbitrary.

If the LECs are using the calling party number to identify the "originating network" our position is this is not a reliable way to determine the starting location of a call, or the carrier network that the call started on. Consequently, it seems to me that any inter-carrier compensation regime founded on the assumption that you can definitively determine the starting point of a call is fundamentally flawed and subject to the very outcomes the LECs want to avoid: gaming and arbitrage. The fact of the matter is, wireline and wireless networks and services are converging, rapidly, and in ways that blur the traditional, once clear distinctions of wireless and wireline.

For a converged IP service provider such as Halo, the starting network or the type of number used simply does not matter. And even if it did, there is no way for us to definitively determine where a call started, for the same reasons as mentioned above. Trying to maintain this distinction is fighting a losing battle, and swimming against the strong tide of market, technical and regulatory evolution occurring in the telecommunications industry.

Q: If we assume that Judges Hale and Felsenthal were correct, and if all of the traffic that traverses interconnection is originated by an end user in the MTA, what is your

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 35
PARTY AT&T - Rebuttal
DESCRIPTION Mark Neinast (MN-10)
DATE 07/12/12

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF GEORGIA

IN RE: COMPLAINT OF TDS TELECOM ON BEHALF OF ITS SUBSIDIARIES BLUE RIDGE TELEPHONE COMPANY, CAMDEN TELEPHONE & TELEGRAPH COMPANY, INC., NELSON-BALL GROUND TELEPHONE COMPANY, AND QUINCY TELEPHONE COMPANY, AGAINST HALO WIRELESS, INC., TRANSCOM ENHANCED SERVICES, INC., AND OTHER AFFILIATES FOR FAILURE TO PAY TERMINATING INTRASTATE ACCESS CHARGES FOR TRAFFIC AND FOR EXPEDITED DECLARATORY RELIEF AND AUTHORITY TO CEASE TERMINATION OF TRAFFIC	DOCKET NO. 34219

PRE-FILED DIRECT TESTIMONY OF RUSS WISEMAN ON BEHALF OF HALO WIRELESS, INC.

MARCH 19, 2012

The ILECs, however, want to focus on what the High Volume customer does with the mobile service it receives. They contend that merely because the customer does not actually move the stations around, the service is somehow converted from "mobile" to "fixed." This argument inappropriately categorizes Halo's regulatory status based on whether the customer engages in the ILECs' subjective standard for "sufficient" mobility.

Q: What is your reaction to TDS's and AT&T's assertions that calling party and called numbers are reliable ways to determine where calls actually began, and are appropriate parameters to determine call jurisdiction for call rating purposes?

A: The FCC order says in ¶¶ 934, 960, and 962 that the FCC still believes numbers are unreliable for this purpose and we agree. My reaction is that while the initial location of a call session initiation may be relevant to jurisdiction based on the "end-to-end" theory, we do not believe it is determinative to call rating for our CMRS traffic, with Transcom as an end-user ESP customer. We established our business plan to operate according to the prior rules relating to CMRS carriers, where traffic is originated by end-users (including ESPs) using wireless stations capable of movement at towers located in MTAs. We also do not believe that the industry can continue to rely on the "calling party number" as some indicator of where and on what network a call started. Numbers are not a reliable proxy for location, nor can you assume that a call from a station associated with a particular number actually started on the network of the exchange carrier that was allocated the number from NANPA.

Today, the industry knows full well that advanced communications technologies, both IP and wireless, are rendering it impossible to rely on CPN to determine where a call began or the network owner or type of network that was used to initiate the call. Allow me to provide a few more examples by elaborating on what I said earlier.

Carriers like T-Mobile offer services today that allow their wireless users to originate calls using wireless base stations connected to wired broadband networks. Are calls using these devices wireless or wireline originated? Is this "non-access" traffic or is it "access reciprocal compensation"? Is it transit?

Verizon Wireless offers Home Phone Connect, a service that allows VZW customers to port their home numbers to VZW and use traditional landline phones to make calls over their wireless network. Is this a mobile wireless service? Fixed wireless? Wireline? Is this non-access" traffic or is it "access reciprocal compensation"? Is it transit? Would calls from a ported landline number be viewed by a terminating LEC as a wireless call or a wireline call? We suspect the latter as the CPN would be a landline telephone number. But these calls would all traverse the VZW wireless network.

WZW just introduced a wireless broadband product called "Home Fusion" that is "designed for use in rural and remote homes that can't get DSL or cable."[1] "The service requires the installation of a cylindrical antenna, about the size of a 5-gallon bucket, on an outside wall." "Verizon cites the same speeds for HomeFusion as for LTE data sticks: 5 to 12 megabits per second for downloads, and 2 to 5 megabits for uploads." This is similar in capability to Halo's consumer broadband product, except VZW's product is quite a bit more expensive. I am sure that users can connect some form of soft phone client and make interconnected VoIP calls – just like they can with Halo's product. Does AT&T intend to claim that VZW cannot use interconnection to originate or terminate calls to users employing this product? Is this a mobile wireless service? Fixed wireless? Wireline? Is this "non-access" traffic or is it "access reciprocal compensation"?

[1] *See "Verizon launches faster-than-wired wireless broadband for homes; starts at $60/mo,"* Washington Post Online, Taken from Associated Press, March 5, 2012, available at http://www.washingtonpost.com/national/verizon-launches-faster-than-wired-wireless-broadband-for-homes-starts-at-60mo/2012/03/06/gIQADvYvtR_story.html.

A growing trend today with smart phones is that wireless users today can use Skype or GoogleVoice service as an application on a smart phone. Skype and GoogleVoice quite often obtain numbers from CLEC "numbering partners" such as Level 3 or Bandwidth.com. Let's assume the numbering partner is Bandwidth.com. An AT&T Wireless customer can originate a call while traveling in California using Skype on an AT&T-provided wireless smart phone. In this example, Skype will have sub-assigned a number from Level 3 that is associated with some rate center to the AT&T Wireless user. The Skype user's outbound call, let's say to a PSTN user served by a local exchange carrier such as AT&T, probably will not go out over Level 3's network, even though Level 3's number will be signaled. It will be completed over AT&T Wireless's IP network and then go to Skype's network and then be routed to a Skype vendor to start the termination chain. The call, however, will appear to the AT&T LEC as a wireline originated call, since the Calling Party Number is a "wireline" number. The ILECs would claim this call started "on the PSTN" in the rate center to which the Skype user's "wireline" number is associated and that Level 3 was the "originating LEC." However, those inferences would be incorrect. Since a smart phone was used, it would be "wireless." It started wherever the Skype user happens to be at the moment. Level 3 probably never touched the call at all in any way. Finally it would be an IP-originated call and would not "originate on the PSTN."

If the smart phone toting Skype user was calling someone in Atlanta, Georgia within MTA 11, LATA 438, our ESP end-user Transcom could very well receive it from one of its customers that have contracted with Skype. If so, Transcom would process the call and hand it to Halo via Transcom's wireless CPE that is communicating with our Cartersville, GA base station. Halo would hand the call off to AT&T at its NRCRGAMA02T tandem. AT&T would then terminate or transit the call to the terminating carrier.

AT&T would want to "rate" this call based on the calling and called numbers and their associated rate centers and they would claim it is "wireline" PSTN originated and therefore Halo is not "authorized" to handle it, as the number is a wireline number. We previously would have argued it is intraMTA because we received it from our end-user customer at our base station in MTA 11 and it terminated in MTA 11. We would have then and still do strongly disagree that it was "wireline" PSTN originated. Under the new rules is this "non-access" traffic? Is it "access reciprocal compensation"? Is it "transit"?

In the myopic world of the ILECs, these scenarios are fanciful, unlikely and irrelevant. However, their cellular counterparts know differently. The entire telecommunications industry knows differently. And most importantly, consumers know differently. Voice is now, and will further become, an IP "application," where telephone numbers "move" seamlessly across devices and networks, just like music content in the "cloud" can be accessed on any device, anywhere, at any time. Voice is really no different.

Because of these convergence trends, the FCC has supported, and now requires, traffic factors to allocate between different traffic types precisely because of the fact that numbers have been disassociated from networks and location and thus are not reliable.[2]

[2] *See, e.g.* FCC Order ¶ 934 ("...In addition, given the recognized concerns with the use of telephone numbers and other call detail information to establish the geographic end-points of a call, we decline to mandate their use in that regard, as proposed by some commenters. ..."); ¶ 960 ("...Because telephone numbers and other call detail information do not always reliably establish the geographic end-points of a call, we do not mandate their use. ..."); ¶ 962 ("Contrary to some proposals, however, we do not require the use of particular call detail information to dispositively distinguish toll VoIP-PSTN traffic from other VoIP-PSTN traffic, given the recognized limitations of such information. For example, the Commission has recognized that telephone numbers do not always reflect the actual geographic end points of a call. Further, although our phantom traffic rules are designed to ensure the transmission of accurate information that can help enable proper billing of intercarrier compensation, standing alone, those rules do not ensure the transmission of sufficient information to determine the jurisdiction of calls in all instances. Rather, consistent with the tariffing regime for access charges discussed above, carriers today supplement call detail information as appropriate with the use of jurisdictional factors or the like when the jurisdiction of traffic cannot otherwise be determined. We find this approach appropriate here, as well.")

From Halo's perspective, we designed our business plan to operate according to the rules of CMRS carriers, where traffic is originated by end-users, using wireless stations capable of movement, at towers located in MTAs. We are prepared to operate under the FCC's new regime (for so long as it is in effect pending appellate review) but we must be given a chance to bring our arrangements and operations into compliance, and the full set of FCC rules must be implemented. The ILECs cannot be allowed to cherry pick the rules they like, and ignore or dismiss those they don't. The idea that billing for the entire industry is determined on the basis of the originating and terminating end points of the called and calling parties is not true for the CMRS industry, and it is quickly dissolving in the entire telecom space in the face of converged wireless-wireline and IP-based services. The "practice" is for carriers to traffic factors instead of call-by-call rating, since numbers-based rating is no longer feasible in today's advanced network and service environment where the starting and ending "locations" of calls is hard to consistently, accurately and efficiently determine and the "number" consistently yields an incorrect answer. The FCC's new regime calls for factors and we are willing to develop and supply them.[3]

The inter-carrier compensation regime is not and cannot be founded on the assumption that you can definitively determine the starting point of a call, the type of call, or the initial network based on "the number." I would further observe that reliance on the number as the exclusive rating determinant is subject to the very outcomes the LECs want to avoid: gaming and arbitrage. It was not that long ago that state commissions all over the country had to resolve the inter-carrier compensation issues related to "arbitrage" using Virtual NXXs. The states largely adopted the ILEC position in those cases and ruled that the telephone numbers did not control

[3] I hope and trust that the PSC is also willing to implement the FCC's new rules because those rules also require the ILECs to negotiate in good faith to establish IP-based interconnection, and Halo is preparing to seek IP-based interconnection from AT&T and many of the ILECs involved in this proceeding.

rating. The ILECs insist on using numbers when it means they can claim access, but they have refused to use numbers when it meant they do not get access. The PSC cannot be so arbitrary.

If the LECs are using the calling party number to identify the "originating network," our position is this is not a reliable way to determine the starting location of a call, or the carrier network that the call started on. Consequently, it seems to me that any inter-carrier compensation regime founded on the assumption that you can definitively determine the starting point of a call is fundamentally flawed and subject to the very outcomes the LECs want to avoid: gaming and arbitrage. The fact of the matter is, wireline and wireless networks and services are converging, rapidly, and in ways that blur the traditional, once clear distinctions of wireless and wireline.

For a converged IP service provider such as Halo, the starting network or the type of number used simply does not matter. And even if it did, there is no way for us to definitively determine where a call started, for the same reasons as mentioned above. Trying to maintain this distinction is fighting a losing battle, and swimming against the strong tide of market, technical and regulatory evolution occurring in the telecommunications industry.

The bottom line is that the ILECs' case rests on a host of completely unsupportable assumptions about the nature, type and jurisdiction of calls that are entirely drawn from merely looking at the calling and called telephone numbers. The assumptions they use to form conclusions on the characterization of the call, the type of call, the jurisdiction, the location of the end points, the networks involved and the actual services that are being provided are simply *wrong*. Yet they are asking this Commission to use their assumptions and conclusions to justify finding that Halo has acted inappropriately, owes access charges and as the basis for the amount of access charges due or "damages" they are incurring.

Q: Let's return to the CPE that Halo's customers use. Can you explain a bit more about the units Halo and its customers employ, and how that is changing?

A: Halo had intended to offer what some might see as a more traditional "mobile" CPE device than the devices in use today, but its wireless equipment vendor failed to deliver this CPE as promised at the time Halo was turning up its High Volume services. If it is somehow determined that the current wireless stations do not meet the FCC's test for "mobility" then Halo can now replace the devices presently in use with devices that conform to the rules, as these devices have become available since Halo's service launch.

Q: How do you respond to AT&T and TDS's claims that Halo is not originating wireless traffic, Transcom is not an ESP, and instead all of Halo's traffic is "originating" landline traffic subject to access charges?

A: Our argument regarding the period before the FCC's new rules rests on the status of Transcom as an Enhanced Service Provider. I am not a lawyer, but my layman's interpretation is that ESP status conveys four important attributes that are at the heart of classifying Halo's traffic: ESP's are "end-users", who purchase telephone exchange services, whose traffic is not access traffic, and are users that originate and terminate traffic. In other words, since ESPs are not carriers or IXCs, their traffic cannot be treated as if an IXC is involved. Further, when a company like Halo provides Telephone Exchange Service to an ESP it is not providing a "transit" service since Halo is not switching calls between two carriers.[4]

The ILECs say that Halo is arguing that Transcom's involvement creates a "re-origination." That is a mischaracterization. Our argument is that Transcom – like all ESPs – is a communications-intensive business end-user, that takes communications from Transcom's

[4] I will explain the impact of the FCC order and new rules below, by accepting the FCC's characterizations and applying them to our context.

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 36
PARTY AT&T Florida (AT&T)
DESCRIPTION Robert Johnson - Deposition Excerpts
DATE 07/12/12

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

The Ohio Bell Telephone Company d/b/a AT&T Ohio,	)	
Complainant	)	
v.	)	Case No. 12-1075-TP-CSS
Halo Wireless, Inc.	)	
Respondent	)	

****

ORAL DEPOSITION OF

ROBERT JOHNSON

MAY 22, 2012

****

ORAL DEPOSITION OF ROBERT JOHNSON, produced as a witness at the instance of the Complainant, and duly sworn, was taken in the above-styled and numbered cause on the 22nd day of May, 2012, from 10:20 a.m. to 2:39 p.m., before Amy Davidson-Enberg, CSR in and for the State of Texas, reported stenographically, at the offices of McGuire, Craddock & Strother, P.C., 2501 North Harwood Street, Suite 1800, Dallas, Texas 75201, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

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I N D E X

WITNESS PAGE

ROBERT JOHNSON

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P R O C E E D I N G S

(Exhibit 1 marked)

MR. FRIEDMAN: All right. So before you administer the oath even, I will mention that I believe we have an agreement that the transcript of this deposition may be used in any of the proceedings in which Halo and/or Transcom and various AT&T entities are parties, and then notwithstanding I guess the caption of this transcript will refer to the Ohio proceeding where I think we gave you the notice of deposition.

MR. THOMAS: Right.

MR. FRIEDMAN: And in light of that, we have agreed that the deposition will proceed in accordance with the federal rules of civil procedure.

MR. THOMAS: Right. And, of course, we're not agreeing as to admissibility.

MR. FRIEDMAN: Of course.

MR. THOMAS: We're just agreeing that it's as if you had issued notices from each of the different places where we have cases going in the state commissions.

MR. FRIEDMAN: Right. Will you administer the oath, please.

MR. THOMAS: And are you -- AT&T -- is AT&T limiting this only to the cases where AT&T is -- I

mean where Halo is a party, or are you doing it with Halo and Trans -- I'm not sure if there are any cases where AT&T and Transcom --

MR. FRIEDMAN: That may well be.

MR. THOMAS: Yeah. But your thinking was it's so that AT&T doesn't have to issue notices in each of those --

MR. FRIEDMAN: Right.

MR. THOMAS: -- jurisdictions?

MR. FRIEDMAN: Yeah.

ROBERT JOHNSON,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. FRIEDMAN:

Q. Please state your name and your work address for the record.

A. Robert Johnson. My work address is 307 West 7th Street, Suite 1600, that's in Fort Worth, Texas, and I believe the ZIP code is 76102.

Q. And I take it that you are the same Robert Johnson who has submitted pre-filed testimony supporting the position of Halo Wireless, Inc. in various proceedings to which Halo and various AT&T incumbent local exchange carriers are parties?

A. I am.

pending in that you testified at deposition?

A. I believe it was in Ohio. And I'm not sure if it was court or state utility commission, but I believe it was in Ohio.

Q. Okay. As we go ahead and I ask questions, I'm going to try to be clear, but I will ask you if I ask you a question that isn't clear to you or if I need to define some term that strikes you as ambiguous, if you'll do that, please, all right?

A. Yes, sir.

Q. I'd like to talk with you about the path that a certain call would take through Transcom and Halo, so let me describe for you the call that I'd like to talk with you about and then I'm going to ask you if such a call could occur just so we start out on the right footing.

I have in mind a call that a girl in Los Angeles, California makes to her grandmother in Chicago, Illinois where both the girl and her grandmother are using regular land line phones in their houses, and the call I'd like to talk with you about is processed by Transcom and is delivered by Halo to AT&T Illinois, which is the local exchange carrier for the grandmother in Chicago.

Such a call could occur, could it not?

A. Yes, I believe based on the parameters you've

given me thus far that such a communication is possible.

Q. Okay. So let's imagine the girl in Los Angeles takes the receiver of her land line phone off the hook and dials Grandma's number in Chicago, and I would like you also to assume that the local exchange carrier for the phone that the girl is using is AT&T California. And that is one possibility, right?

A. I believe AT&T does offer land line service in California, so yes.

Q. All right. So the girl -- and let's assume that the girl says how are you, Grandma, and we'll follow the path of that voice communication from beginning to end. The girl's question travels first from the girl's phone to, as you would understand it, I think, an AT&T California and off a switch that serves the girl's house. And then because we want to get Transcom involved, the call somehow gets from AT&T California to Transcom, agreed?

A. I'll -- I'll accept that as a -- as a premise for this.

Q. Right. And that's all I'm trying to do right now.

Now, you say in your testimony that Transcom serves a host of different kinds of providers, different kinds of companies, and you mentioned cable

no Transcom equipment in the meet me room.

Q. (By Mr. Friedman) All right. Can we talk about the Transcom equipment as being in a caged area?

A. Yes.

Q. All right. In that caged area, would I see additional Transcom equipment?

A. There is Transcom equipment other than a media gateway in that caged area.

Q. What would be in that area?

A. In the diagram you have a session border controller. Typically there will be one of those or a pair of those. There will be a router, possibly some extra ethernet switches, all for connectivity, as well as potentially multiple media gateways, the switches and router providing connectivity for those.

Q. How many data centers of the sort that we're talking about does Transcom have in the United States?

A. Four of the kind we're talking about.

Q. One is in Los Angeles, one is in New York City?

A. Yes.

Q. Is it New York City?

A. Yes, there is one in Los Angeles and one in New York City.

Q. Where is the other two?

A. There is one in Dallas and there is one in

Atlanta.

Q. Okay. When Transcom's customer is going to deliver a call to Transcom like this call that we're talking about, who chooses at which of those four data centers the call is handed off?

A. That's a customer choice.

Q. So in theory the customer in this case that we're talking about could choose to hand the call off to any of the four data centers, assuming that the customer had connections to all four?

A. Yes. The customer can choose any of the four data centers.

Q. You would typically expect this particular call, though, I assume, to be handed to Transcom in the Los Angeles data center because that's where the call started or not necessarily?

A. There is not -- there is some association of proximity, but I wouldn't assume that it would come in Los Angeles.

Q. Is there at least one media gateway in each of the four Transcom data centers?

A. Yes.

Q. Do you know how many media gateways there are in each of the four?

A. No.

A. At that point it has left the last piece of Transcom equipment, the CPE, and it is now in the hands of Halo.

Q. Now, of all of the communications that Transcom delivers to Halo everywhere in the United States, are 100 percent of them delivered by Transcom to Halo in that fashion, that is to say by means of a 3.65-gigahertz radio transmission?

A. So in this case the communications -- I guess I'm not understanding your question. It was kind of long.

Q. Okay. I'm simply -- okay. You have told me that Halo -- I'm sorry -- that Transcom delivers this call that we're talking about to Halo, ceases its possession of the call and turns it over to Halo by means of this radio 3.65-gigahertz transmission from the one Airspan piece of equipment to the other, and all I'm really asking you is, is that the way it works for all of the communications that Transcom delivers to Halo as opposed to some subset?

A. So the communications that we were talking about -- because I didn't like the word call -- that are delivered to the Cisco router at the shelter are sent over the air link, and as I had said that there is a possibility that the Halo cloud -- because the Halo SBC

directs that traffic, that the Halo SBC can direct that traffic between the clouds. So those clouds are connected together. Does that make sense?

MR. FRIEDMAN: I'm going to ask you to read that back and then I'll see if I understand it.

(The record was read as requested)

Q. (By Mr. Friedman) When you say that those clouds are connected together, does that mean that voice packets that Transcom is holding -- can I use the word holding?

A. Okay.

Q. Do you understand what I mean? How would you say it?

A. Maybe you could describe what holding means.

Q. Well, let's back up and do it like this. Let's go back to the call we were talking about before we got into this complication that I'm trying to work my way out of. We understand that the girl's question exists in the form of voice packets which at one point are the Pro-V which is Transcom's, correct?

A. Yes.

Q. And that at another point after this radio transmission those same voice packets no longer reside at that Pro-V but rather reside at Halo's Airspan SDR?

A. Yes.

11:23 Q. And I'm looking for a verb. I'm going to ask you what verb would you use to say what it is that Transcom is doing with respect to the voice packets when they are at the Pro-V and that Halo is doing later.

11:24 A. Holding is good.

Q. Holding? Okay.

MR. FRIEDMAN: Did you get him saying holding?

THE REPORTER: Yes, sir.

11:24 Q. (By Mr. Friedman) All right. So we're back to your explanation that the court reporter read back a couple of minutes ago about the Halo and Transcom clouds in drafting. Do I understand correctly, then, that voice packets that Transcom holds can wind up being transferred

11:24 to or delivered to or passing to Halo within that cloud so that Halo then holds them?

A. So Transcom's cloud, to be specific, is a public Internet cloud and Halo's cloud is a private IP cloud. It's not addressed to be part of the public

11:25 Internet. But Halo has public Internet connections which it can use to receive communications from its applications when -- well, like the low volume application when it's not connected to a tower, it can receive that traffic from the Internet. So there is a

11:25 connection there where if traffic left Transcom's public

cloud as part of the Internet could go through the Internet gateway into the private cloud that Halo operates. Does that answer your question?

Q. I'm not sure if it does. Let me try it a different way. Is it possible that the girl's question, how are you, Grandma, contained as it is within this collection of voice packets held by Transcom, could come into the possession of and thus be held by Halo with no radio transmission but rather just by an exchange within the Internet?

A. Well, not with no radio transmission, but if it's -- if the Halo SBC directs any transmitter to send traffic over the Internet, then it would come through that Internet connection into the private cloud, and that Internet connection would be connected to -- I'm sorry -- Transcom's public cloud. So if the Halo SBC directed those -- say, those three packets -- say, three packets, those three packets should come this way, then they can come over the Internet gateway and into the Halo private cloud. So it's possible that the Halo SBC can direct those packets and say those should come in through the Internet connection between the two clouds.

Q. And that would then happen as directed by the SBC?

A. In -- in -- in all cases the far end, the

12:50

Q. (By Mr. Friedman) So we have marked as Johnson Exhibit 2 what appears to be the pre-filed testimony of Robert Johnson on behalf of Halo Wireless, Inc. dated May 15, 2012 in Docket No. 12-0182 in the Illinois Commerce Commission.

12:50

Do you recognize this as testimony that was filed in that case, Mr. Johnson?

A. I do.

Q. Okay. I said we were going to do some routine and we just did it.

12:50

MR. THOMAS: And I would just add that, I mean, you haven't had a chance to look through this -- we haven't had a chance to look through it, but as far as you can tell, it looks like what was done, right?

12:50

THE WITNESS: It does.

MR. THOMAS: Okay.

(Luncheon recess 12:50 to 1:43)

Q. (By Mr. Friedman) Shortly before we broke I understood from you that the telecommunication that the girl in California originates may arrive at the Transcom gateway where it's handed off by Transcom's customer still in the form of a telecommunication, correct?

01:42

A. That's possible.

Q. But if that does happen, it is your view that Transcom then terminates that telecommunication, correct?

01:43

01:43 A. Yes.

Q. And it terminates it at the media gateway. Is that the point of termination?

A. Yes.

01:43 Q. Transcom then originates a further communication?

A. Yes.

Q. At that media gateway?

A. The further communication is originated from a

01:43 piece of equipment that is part of the platform -- enhancers platform. It may or may not be that particular gateway.

Q. If it is not that particular gateway, what would it be? What could it be?

01:43 A. It would be a different gateway or the session border controller.

Q. If it's not the media gateway where the call terminated, would it be another media gateway in the same cage?

01:44 A. It could be a media gateway in the same cage, yes.

Q. Or it could be in an altogether different data center?

A. It could be.

01:44 Q. But it would be a Transcom media gateway?

A. Yes.

Q. And if the call -- I'm sorry -- if the further communication was originated by a session border controller, I take it that it might or might not be a session border controller in the same cage as the media gateway where the telecommunication was terminated?

A. Correct.

Q. All of this depending on direction given by the brains in Dallas?

A. Yes.

Q. So immediately before we broke I had put in front of you what we marked as Johnson Exhibit 2, your pre-filed testimony from the Illinois case, and I did that actually just so that you could -- I could refer you to the definition of telecommunications that you have in the footnote on the bottom of page 9, which I will now do.

A. Okay.

Q. And I'll read it and then ask some questions. The term telecommunications means the transmission between or among points specified by the user of information of user's choosing without change in the form or content of the information as sent and received.

We're still agreed that the girl in California that we've been talking about, when she said

Q. Okay. Now, I think you said that after this IP call hits the session border controller there are some instances where it might hit back-to-back media gateways so that the enhancements could be performed by media gateways, right?

A. Yes.

Q. But not all instances?

A. Not all instances.

Q. Is that to say that there are instances in which Transcom receives traffic from a customer in IP format and Transcom does not enhance the traffic?

A. Yes.

Q. Under what circumstances is that the case?

A. The IP traffic comes to the session border controller, it's not routed to the back-to-back media gateways and it's not egressed via media gateway, it may not have enhancements applied to it.

Q. In the real world today, do you know whether Transcom is receiving and then further transmitting any such traffic?

A. I'm not aware of that personally, no.

Q. Do you have any reason to think it's not happening?

A. I'm sorry. That was a double negative.

Q. Do you have any reason to believe that it is

not happening today?

A. I'm sorry. That was the same question. Could you rephrase it?

Q. We are talking now about a situation where a Transcom customer delivers traffic to Transcom in IP format, the traffic goes through a Transcom session border controller, does not go through a back-to-back media gateway and you've told me is not enhanced. All I'm asking you is do you have any reason to believe that that scenario is not happening in the real world today --

A. I have --

Q. -- that is that it's not merely a theoretical possibility?

A. I have no reason to believe one way or the other.

Q. Do you have any idea of the percentage -- any idea whatsoever of the percentage fraction or portion of traffic that comes to Transcom in IP format that does not get enhanced at Transcom?

A. None whatsoever.

Q. Of all the traffic that Transcom's customers deliver to Transcom, do you have any idea what percentage is delivered in IP format versus TDM?

A. No.

Q. More than half?

A. I don't know.

Q. Could it be more than half?

A. I don't know.

Q. Is any of the traffic of the sort we're talking about that does not get enhanced that Transcom deals with sent -- delivered by Transcom to Halo?

A. I don't know.

Q. Do you have any reason to think it's not?

A. That's one of those questions I don't understand very well.

Q. Well, all right. I'll just do it a different way. I take it that as far as you know, the traffic -- out of the universe of traffic that Transcom delivers to Halo, some of it may not be enhanced?

A. I don't know.

Q. And if it is the case that some of it isn't enhanced, you have no idea how much of it is enhanced, right?

A. Correct.

Q. So for all you know, it could be the case that two-thirds of the traffic that Transcom delivers to Halo is not enhanced by Transcom?

A. I have no idea.

Q. Okay. Is there anyone who would know better than you?

02:28 believe both of those are supported.

Q. Okay. And have you just listed all of the codecs that you can remember that Transcom supports?

A. T-38, which is fax relay, is generally listed with codecs. Transcom supports T-38.

02:28

Q. Does that conclude the list?

A. That will conclude what I can remember right now.

Q. And you believe there may be others that you are not remembering?

02:28

A. Yes.

Q. I'm just checking. I may be done and I will turn you over to the redirect examination by your counsel.

02:29 MR. THOMAS: Do you want to take a break for a couple of minutes?

MR. FRIEDMAN: Sure.

MR. THOMAS: Thanks.

(Recess from 2:29 to 2:38)

02:38 MR. FRIEDMAN: So we're back on the record. I have no more questions for Mr. Johnson at this time.

MR. THOMAS: Okay. We have one follow-up question.

02:38

EXAMINATION

BY MR. THOMAS:

Q. Mr. Johnson, do you recall earlier that there was some discussion about how if a call comes in to Transcom in IP format that there may not be any enhancements? Do you recall that discussion?

A. I do.

Q. And you said that you don't know how often that occurs; isn't that right?

A. That's correct.

Q. Do you know how it would be determined whether a call would be -- coming in on IP would be enhanced or not?

A. The customer can request this capability. In many cases we recommend this capability and the customer would have to refuse the enhancements.

Q. Does Transcom ever unilaterally decide that it wants to not enhance or not do the enhancements on the call?

A. No.

Q. Is there ever a circumstance where the customer doesn't request that the enhancements not occur?

A. That was double negative.

Q. Yeah, it was, wasn't it?

MR. FRIEDMAN: Actually a triple.

02:39 Q. (By Mr. Thomas) I think there were three of them. I'm going to strike that.

MR. MCCOLLOUGH: Well, and the witness objects to my question.

02:39 Q. (By Mr. Thomas) And I probably asked you something -- because you said earlier you don't know whether or not this has occurred and so I'm really asking you to speculate, so I'll just withdraw the question.

A. Okay.

02:39 MR. THOMAS: Okay. Pass the witness.

MR. FRIEDMAN: Nothing further from me.

(Proceedings concluded at 2:39 p.m.)

EXHIBIT NO. 38

DOCKET NO: 110234-TP

WITNESS:

PARTY: Halo Witness, Inc.

DESCRIPTION: Halo's Radio Station Authorization

DOCUMENTS:

PROFFERED BY: Halo Wireless, Inc.

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 110234-TP EXHIBIT 38
PARTY Halo Wireless, Inc. (Halo)
DESCRIPTION Halo's Radio Station Authorization
DATE 07/12/12

38

Federal Communications Commission
Wireless Telecommunications Bureau

RADIO STATION AUTHORIZATION

LICENSEE: HALO WIRELESS

ATTN: CAROLYN MALONE
HALO WIRELESS
3437 W 7TH ST. SUITE 127
FORT WORTH, TX 76107

Call Sign	File Number
WQJW781	0004261278
Radio Service NN - 3650-3700 MHz	
Regulatory Status Common Carrier	

FCC Registration Number (FRN): 0018359711

Grant Date	Effective Date	Expiration Date	Print Date
01-27-2009	05-28-2010	11-30-2018	05-28-2010

Market Name: Nationwide

Channel Block: 003650.00000000 - 003700.00000000 MHz

Waivers/Conditions:

This nationwide, non–exclusive license qualifies the licensee to register individual fixed and base stations for wireless operations in the 3650–3700 MHz band. This license does not authorize any operation of a fixed or base station that is not posted by the FCC as a registered fixed or base station on ULS and mobile and portable stations are authorized to operate only if they can positively receive and decode an enabling signal transmitted by a registered base station. To register individual fixed and base stations the licensee must file FCC Form 601 and Schedule M with the FCC. See Public Notice DA 07–4605 (rel November 15, 2007)

Conditions:
Pursuant to §309(h) of the Communications Act of 1934, as amended, 47 U.S.C. §309(h), this license is subject to the following conditions: This license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized herein. Neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of the Communications Act of 1934, as amended. See 47 U.S.C. § 310(d). This license is subject in terms to the right of use or control conferred by §706 of the Communications Act of 1934, as amended. See 47 U.S.C. §606.

Federal Communications Commission

Wireless Telecommunications Bureau
1270 Fairfield Road
Gettysburg, PA 17325-7245

APPLICATION NOTIFICATION LETTER

ATTN: CAROLYN MALONE
HALO WIRELESS
3437 W 7TH ST, SUITE 127
FORT WORTH, TX 76107

Date: 05/31/2010
Reference Number: 4984148

The Commission is acknowledging receipt of your application(s).

Call Sign	Radio Service	File Number	Purpose
WQJW781	NN	0004261278	AU

If you believe an error has occurred, please call the Commission at (877) 480-3201 (TTY 717-338-2824). To provide quality service and ensure security, all telephone calls are recorded.