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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 110234-TP

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.

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PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONER  
PARTICIPATING: COMMISSIONER EDUARDO E. BALBIS  
PREHEARING OFFICER

DATE: Wednesday, June 20, 2012

TIME: Commenced at 9:30 a.m.  
Concluded at 9:52 a.m.

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: LINDA BOLES, CRR, RPR  
Official FPSC Reporter  
(850) 413-6734

DOCUMENT NUMBER-DATE  
04161 JUN 22 2012  
FPSC-COMMISSION CLERK

## 1 APPEARANCES:

2 TRACY HATCH, ESQUIRE, AT&T Florida, c/o  
3 Gregory R. Follensbee, 150 South Monroe Street, Suite  
4 400, Tallahassee, Florida 32301, and DENNIS G. FRIEDMAN,  
5 Mayer, Brown, 71 South Wacker, Suite 3200, Chicago, IL  
6 60606, appearing on behalf of AT&T Florida.

7 GARY V. PERKO, ESQUIRE, Hopping, Green & Sams,  
8 P.A., 119 South Monroe Street, Suite 300, Tallahassee,  
9 Florida 32314, and TROY P. MAJOUÉ and JENNIFER M.  
10 LARSON, ESQUIRES, McGuire, Craddock & Strother, P.C.,  
11 2501 North Harwood, Suite 1800, Dallas, TX 75201, and W.  
12 SCOTT McCOLLOUGH, ESQUIRE, McCollough Henry PC, 1250  
13 South Capital of Texas Highway, Building 2-235, West  
14 Lake Hills, TX 78746, appearing on behalf of Halo  
15 Wireless, Inc.

16 LARRY D. HARRIS, ESQUIRE, FPSC General  
17 Counsel's Office, 2540 Shumard Oak Boulevard,  
18 Tallahassee, Florida 32399-0850, appearing on behalf of  
19 the Florida Public Service Commission Staff.

20 SAMANTHA CIBULA, ESQUIRE, Deputy General  
21 Counsel, Florida Public Service Commission, 2540 Shumard  
22 Oak Boulevard, Tallahassee, Florida 32399-0850, Advisor  
23 to the Florida Public Service Commission.

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## P R O C E E D I N G S

1  
2           **COMMISSIONER BALBIS:** Good morning.

3           **SPEAKER:** Good morning.

4           **COMMISSIONER BALBIS:** I'd like to call this  
5 Prehearing Conference to order for Docket No. 110234.  
6 Staff, would you please read the notice.

7           **MR. HARRIS:** I'm sorry, Commissioner. By  
8 notice issued or published June 1st, 2012, this time and  
9 place has been set for a Prehearing Conference in Docket  
10 No. 110234-TP, Complaint and Petition for Relief Against  
11 Halo Wireless by BellSouth Telecommunications doing  
12 business as AT&T Florida.

13           **COMMISSIONER BALBIS:** Okay. Thank you.

14           I'd now like to take appearances, and let's  
15 start with taking appearances with those in the room and  
16 for AT&T.

17           **MR. HATCH:** Good morning, Commissioner. Tracy  
18 Hatch appearing on behalf of AT&T Florida. Also  
19 appearing with me is Dennis Friedman from the law firm  
20 of Mayer Brown.

21           **MR. PERKO:** Good morning, Commissioner  
22 Balbis. This is Gary Perko of the Hopping, Green &  
23 Sam's Law Firm here on behalf of Halo Wireless, Inc.  
24 And I believe there are some co-counsel in Texas on the  
25 phone for Halo.

1                   **COMMISSIONER BALBIS:** Okay. Then we'll go to  
2 those who are joining us by phone.

3                   **MR. FRIEDMAN:** Good morning. This is Dennis  
4 Friedman. Tracy Hatch identified me.

5                   **MS. LARSON:** And also for Halo Wireless, Inc.,  
6 Jennifer Larson.

7                   **MR. MAJOUÉ:** And this is Troy Majoue for Halo  
8 Wireless, Inc.

9                   **MR. MCCOLLOUGH:** W. Scott McCollough for Halo  
10 Wireless, Inc.

11                   **COMMISSIONER BALBIS:** Okay. Are there any  
12 others on the phone? Hearing none, and from staff.

13                   **MR. HARRIS:** Larry Harris on behalf of staff.

14                   **MS. CIBULA:** Samantha Cibula, advisor to the  
15 Commission.

16                   **COMMISSIONER BALBIS:** Okay. Moving on to  
17 preliminary matters. Mr. Harris, are there any  
18 preliminary matters that we must address at this time?

19                   **MR. HARRIS:** I'm not aware of any,  
20 Commissioner. I don't know if the parties have any they  
21 want to mention.

22                   **MR. HATCH:** AT&T doesn't have any at the  
23 moment.

24                   **MR. PERKO:** Nor does Halo.

25                   **COMMISSIONER BALBIS:** Okay. So now we can

1 proceed through the draft Prehearing Order. I do  
2 understand that we will have some discussions on  
3 Sections VIII and XI, but if we could go through section  
4 by section of the Prehearing Order. And if any of the  
5 parties have something to bring up, and especially on  
6 the phone since I cannot see you to recognize you, just  
7 go ahead and speak up as we go through there.

8           Again, proceeding through the Prehearing  
9 Order, Section I, the case background, are there any  
10 issues?

11           **MR. HATCH:** Commissioner Balbis, there are no  
12 issues. There's one minor edit that we had provided  
13 already to staff, so they should already have that.

14           **MR. HARRIS:** Yes, Commissioner. We got it and  
15 we made that change.

16           **COMMISSIONER BALBIS:** Okay. Thank you.

17           Are there any other issues with Section I?  
18 Seeing and hearing none, let's go to Section II, conduct  
19 of proceedings.

20           Section III, jurisdiction.

21           Section IV, procedure for handling  
22 confidential information.

23           Section V, prefiled testimony and exhibits.

24           Section VI, order of witnesses.

25           **MR. HARRIS:** Commissioner, this is Larry

1 Harris, if I might. We have this identified as the  
2 direct witnesses going first and then the rebuttal  
3 witnesses. That's usually the way things go. But given  
4 that AT&T had filed direct and rebuttal for two of the  
5 witnesses, I don't know if they wanted them to go  
6 together, have their direct and rebuttal together, or if  
7 they wanted them to be separate.

8 **MR. HATCH:** I guess our preference is to keep  
9 them separate. But at this point it doesn't really -- I  
10 mean, it's not earth shattering either way.

11 **MR. HARRIS:** That's fine. I just wanted to  
12 point that out that it would be their call as to --  
13 well, your ultimate ruling, Commissioner, but they would  
14 be able to ask for whichever they wanted.

15 **COMMISSIONER BALBIS:** Okay. I mean, at this  
16 time I'm inclined to just keep it separate as requested  
17 by AT&T.

18 Moving on to Section VII, basic positions.

19 Okay. Now Section VIII, issues and positions.

20 **MR. PERKO:** Commissioner Balbis, Gary Perko on  
21 behalf of Halo Wireless. Due to oversight and  
22 miscommunication there are a couple of instances where  
23 no position is stated for Halo Wireless, and that's on  
24 Issues 4, 6A, 6B, 6C, and 7. We, we do plan on  
25 providing position statements for that and would do so

1 by the end of the day, if that's acceptable to the  
2 Commission.

3 **COMMISSIONER BALBIS:** Any objections by Halo?  
4 I mean, I'm sorry, by AT&T for this?

5 **MR. HATCH:** No, I don't have any objection to  
6 them providing their positions by the end of the day.  
7 That's fine.

8 With respect to that section, I didn't know if  
9 you were going to go issue by issue, but when you get to  
10 the end, Halo has added three new proposed issues that  
11 had not been previously identified at the Issue ID and  
12 AT&T does have objections to those, to those issues and  
13 the inclusion of those issues. We can address that at  
14 your leisure.

15 **COMMISSIONER BALBIS:** Okay. Well, then let's  
16 start off with the first request. I mean, seeing that  
17 there are no objections from the other party and staff  
18 remains silent, I don't have an issue with allowing  
19 positions to be filed by the end of the day on those  
20 issues that were overlooked.

21 **MR. PERKO:** Thank you.

22 **COMMISSIONER BALBIS:** Okay. So we'll get to  
23 the proposed issues that were not identified in the,  
24 during the issue identification meeting. So we can  
25 start off with, with -- let me -- let's just start off

1 with Issue 1 as we go through this section.

2 Are there any questions or comments concerning  
3 that issue?

4 Okay. Issue 2. Issue 3. Issue 4. Issue 5.  
5 Issue 6A, 6B, 6C, and 7.

6 Okay. Since there are no questions or  
7 comments concerning those issues, we can go into Halo's  
8 proposed issue and we can start with maybe a -- I'd like  
9 to provide an opportunity for Halo to present, you know,  
10 why these issues should be added since they were not  
11 identified during the issue identification meeting.

12 **MR. PERKO:** I believe that they may have been,  
13 but I would defer to co-counsel in Texas.

14 **MS. LARSON:** This is Jennifer Larson for Halo,  
15 and it's been our contention from the beginning that  
16 these issues are integral to the seven issues that have  
17 been previously identified and are -- to provide our  
18 statement on those issues in our Prehearing Conference,  
19 in our prehearing statement is basically because in our  
20 view they are integral to determining the seven issues  
21 that have been previously identified.

22 **COMMISSIONER BALBIS:** Okay. And I'd like to  
23 offer AT&T a response.

24 **MR. HATCH:** Thank you, Commissioner Balbis.

25 These issues as they are stated here were not



1 raised during the issue identification process. If you  
2 go back and look at the original Halo list that was  
3 proffered, there's some overlap, but none of these  
4 issues specifically the way they're formatted or the  
5 specific text of them were raised during the issue  
6 identification process.

7           These are clearly not new issues for Halo.  
8 All of these issues, both 8, 9, and 10, and the subject  
9 matter of those issues were raised and discussed  
10 extensively in Halo's initial partial motion to dismiss,  
11 and they have extensive arguments about what those  
12 things are and why they're relevant to the case.

13           Since they have been issues in the very  
14 beginning, I think it was incumbent upon Halo to at  
15 least pursue those at the issue identification process  
16 in the meeting that we held. They did not do so. Even  
17 after the issue list was published by staff that  
18 basically reflected what had been discussed and more or  
19 less agreed to at the issue identification meeting, they  
20 did not raise these issues. Moreover, they did not seek  
21 to seek reconsideration by you of the issue  
22 identification list, and I think it was incumbent upon  
23 them to do that.

24           I will concede and acknowledge that the  
25 procedural order allows for people to raise new issues

1 up to and including the Prehearing Conference. However,  
2 that's usually for issues that arise and are discovered  
3 and become issues during the course of the proceeding up  
4 to and during the prehearing.

5 But if you have an issue that's prior to the  
6 issue identification meeting, I think it's incumbent on  
7 all the parties to produce whatever they think is going  
8 to be at issue and then we'll resolve it. And if  
9 there's controversy, then you as the Prehearing Officer  
10 can resolve that.

11 I think it's very clear that these are not  
12 really issues, these are arguments of Halo. And if you  
13 will look at just their basic position statement in the  
14 Prehearing Order draft, you will see starting at the  
15 very beginning, the first sentence talks about their  
16 CMRS status or their alleged CMRS status. The same  
17 paragraph they talk about their enhanced service  
18 provider status. The same paragraph they talk about  
19 whether Transcom is a carrier. These are clearly the  
20 arguments that they want to put on, and we don't dispute  
21 that they have an argument and they're clearly allowed  
22 to put on the arguments that they wish in support of  
23 their case.

24 And, frankly, as topics these issues are  
25 subsumed in all of the other issues, and those issues

1 were drafted relatively broadly in order to give  
2 everybody the opportunity to make their arguments within  
3 the issue frame. I mean, I don't think that there is  
4 any of these issues that they can't and won't argue  
5 under the existing issues list. So I think basically  
6 they're unneeded.

7 Secondly -- or, again, one more issue I'd add  
8 is that all of these issues are ultimately irrelevant to  
9 the complaint that AT&T filed. The central core issue  
10 in this proceeding is whether they've, Halo has violated  
11 its interconnection agreement with AT&T Florida. The  
12 core of that complaint is did they terminate or hand off  
13 to AT&T Florida traffic that was not wirelessly  
14 originated? That's the question.

15 Each one of these issues, whether they're a  
16 CMRS provider, an ESP, or the Transcom as a carrier,  
17 those issues are all irrelevant to whether there was  
18 other-than-wireless-originated traffic delivered to  
19 AT&T. And so we see those, while they may be arguments,  
20 they're clearly not issues. I think that what they are  
21 designed to do is distract and obfuscate what the real  
22 core issue is in this proceeding. Halo seems to wave  
23 the labels of CMRS and ESP and carrier around as  
24 talismans to protect them from their otherwise behavior  
25 that is afoul, in our opinion, of the interconnection

1 agreement. We don't think these issues are well-taken  
2 and should not be allowed.

3 COMMISSIONER BALBIS: Okay. Thank you. And,  
4 you know, obviously the final issue list is not  
5 finalized until the Prehearing Order is, is executed or  
6 signed. And I understand there are situations where  
7 additional information through discovery, you know,  
8 allows or identifies issues that were not identified  
9 during the issue identification meeting.

10 So I want to make sure that these three  
11 proposed issues, if I were to deny their inclusion, that  
12 they are covered or subsumed in the other ones. And it  
13 seems to me that these issues deal with overall  
14 jurisdiction of this Commission over the issue or the  
15 overall dispute and whether or not there's a breach of  
16 the interconnection agreement.

17 And in reviewing the existing issues that were  
18 agreed upon, especially Issue 1, which is deal with the  
19 overall jurisdiction that this Commission has, I do  
20 believe that, that those three proposed issues are  
21 subsumed in existing issues.

22 But the question, the final question I have  
23 for each party is it's my understanding that testimony  
24 has already been filed on all of the other seven issues.  
25 Are these three subjects discussed in the testimony?

1 And so I will start, I will start with Halo, pose that  
2 question to Halo.

3 **MR. PERKO:** Yes, Commissioner. I believe all  
4 those issues are discussed in our testimony.

5 **MR. HATCH:** As well as us.

6 **COMMISSIONER BALBIS:** Okay. Well, then at  
7 this time I'm prepared to rule that those three proposed  
8 issues are not needed as they're subsumed in the  
9 previous seven issues, and the Prehearing Order will  
10 reflect that.

11 So are there any other questions or comments  
12 concerning Section VIII for issues and positions?

13 Okay. We're moving on to Section IX, the  
14 exhibit list.

15 **MR. HARRIS:** Commissioner, Larry Harris for  
16 staff. One thing. I contacted the parties by e-mail a  
17 couple of weeks ago. We're interested in pursuing a  
18 staff composite exhibit or actually two staff composite  
19 exhibits that would consist of all of the discovery  
20 that's been filed in this case, and we believe it would  
21 be two exhibits. One that's confidential, you know,  
22 obviously we would treat those separately, and then a  
23 second that would be the nonconfidential responses. And  
24 we would intend to include all responses, both, you  
25 know, the AT&T and Halo's response to the staff's

1 discovery, AT&T's responses to Halo, and Halo's  
2 responses to AT&T. I have not yet heard back from the  
3 parties as to whether they're amenable to this or they  
4 want it to go through. So at this point we have them  
5 sort of broken out in a composite exhibit list that I'm  
6 going to work with the parties on. But I wanted to put  
7 that out there that I'm going to be working with them  
8 and attempting to get a stipulation that we could admit  
9 that discovery. I wanted to mention that today.

10 **MR. HATCH:** AT&T has no objection.

11 **MR. HARRIS:** Okay.

12 **MR. PERKO:** We'd be happy to work with staff  
13 on that.

14 **COMMISSIONER BALBIS:** Okay. Great.

15 All right. With that, any other comments on  
16 Section IX, exhibit list?

17 Hearing none, let's move on, let's move on to  
18 Section X, proposed stipulations. It's my understanding  
19 there are no proposed stipulations at this time.

20 **MR. HARRIS:** That is correct, Commissioner.

21 **COMMISSIONER BALBIS:** Okay. Section XI,  
22 pending motions. My office has received several motions  
23 that were filed late yesterday, which I am in the  
24 process of reviewing and I'm sure staff is as well. I  
25 would like to, you know, obviously offer AT&T time to

1 respond to those motions, and so the question for AT&T  
2 is how much time would you feel is sufficient to  
3 adequately respond to those motions?

4 **MR. HATCH:** We would certainly be ready to  
5 respond in the normal time period, which is a week,  
6 which is still well prior to the hearing.

7 **COMMISSIONER BALBIS:** Okay.

8 **MR. HARRIS:** I think that would be sufficient,  
9 Commissioner.

10 So would that mean you'd be responding next  
11 Wednesday, a week from today, the 27th of June?

12 **MR. HATCH:** I believe that's correct, although  
13 I believe Tuesday is the response date since it was  
14 served and we received it on Tuesday.

15 **MR. HARRIS:** So close of business Tuesday?

16 **MR. HATCH:** I think that's correct.

17 But if you want to give us an extra day,  
18 that's okay too.

19 **MR. HARRIS:** No.

20 **COMMISSIONER BALBIS:** I'll then allow the  
21 traditional seven days from the filing date, which it  
22 was yesterday, I believe, at 4:00.

23 **MR. HATCH:** And one of those motions is a  
24 motion to compel. And I discussed this with counsel for  
25 Halo, and, you know, to the extent we can work all this

1 out, then we will do so.

2 **COMMISSIONER BALBIS:** Okay. Other than those  
3 recently filed motions, are there any other pending  
4 motions that need to be discussed?

5 Okay. Moving on to Section XII, pending  
6 confidentiality motions.

7 **MR. HARRIS:** Commissioner, this is Larry  
8 Harris with staff. Halo had indicated they were  
9 intending to file two requests for confidential  
10 classification. We haven't received those yet. I would  
11 anticipate those would be filed and would be reflected  
12 in the Prehearing Order, but Mr. Perko can speak to  
13 that.

14 **MR. PERKO:** Yes. We're currently working on  
15 those. One relates to some discovery that was submitted  
16 to staff by AT&T under a Notice of Intent to Request  
17 Confidential Classification. We're working on that.

18 We also have one that we'll be filing for our  
19 responses to AT&T's discovery request, and we're in the  
20 process of going through the, you know, identification  
21 and justification of the confidential material and get  
22 those in hopefully within the, within this week.

23 **COMMISSIONER BALBIS:** Okay. Thank you.

24 **MR. HARRIS:** If I could ask, do you have any  
25 idea when you intend to file the motions or expect to?



1           **MR. PERKO:** The request for confidential  
2 classification?

3           **MR. HARRIS:** Yes.

4           **MR. PERKO:** I was hoping to have it early this  
5 week. It may be Thursday.

6           **MR. HARRIS:** Okay.

7           **COMMISSIONER BALBIS:** So we can move on to  
8 Section XIII, post-hearing procedures. I understand  
9 staff has some recommendations.

10          **MR. HARRIS:** Yes, Commissioner. We, we're  
11 recommending 40 pages for a post-hearing brief. Given  
12 that a number of the issues in this case are in fact  
13 legal issues, we believe that post-hearing briefs should  
14 be allowed. We suggest 40 pages.

15          **COMMISSIONER BALBIS:** Okay. Do any of the  
16 parties have an objection to that recommendation?

17          **MR. HATCH:** We think 40 should be sufficient  
18 at this point.

19          **COMMISSIONER BALBIS:** Okay.

20          **MR. HATCH:** At the end of the hearing we may  
21 ask for more, depending on how it shapes up. But for  
22 now that's fine.

23          **MR. PERKO:** I would ask for input from Texas  
24 counsel who have worked on a number of these different  
25 cases across the state to see if that's a reasonable

1 page limit.

2 **MS. LARSON:** Yeah. I think that's reasonable.  
3 Jennifer Larson for Halo. But like AT&T, we would  
4 reserve the right to ask for more at the conclusion of  
5 the hearing.

6 **COMMISSIONER BALBIS:** Okay. I'm okay with  
7 that. And then the Prehearing Order will reflect the 40  
8 pages, and, again, we'll see what happens at the  
9 hearing.

10 Okay. Moving on to Section XIV, rulings. I  
11 understand staff has a suggestion for limitations for  
12 opening statements.

13 **MR. HARRIS:** Yes, Commissioner. Given the  
14 case and the legal issues and the complexity, we're  
15 suggesting that if the parties want to make opening  
16 statements, that those should be limited to ten minutes  
17 as opposed to five.

18 **COMMISSIONER BALBIS:** Okay. Again, any  
19 objections to ten minutes from the parties?

20 **MR. HATCH:** No objection.

21 **MR. PERKO:** No objection.

22 **COMMISSIONER BALBIS:** Okay. Are there any  
23 other matters to address at this conference?

24 **MR. PERKO:** I'd just ask if there's going to  
25 be a time limitation on the witness summaries? It's

1 varied in different hearings that I've been in.

2 **MR. HARRIS:** Commissioner, I think it's  
3 standard or it's at least customary to allow witnesses  
4 five minutes to present a summary of their testimony.  
5 We certainly have no objection to that and can include  
6 that if that's your ruling.

7 **COMMISSIONER BALBIS:** Yeah. I was trying to  
8 recall the last time we did it what we limited it to.  
9 But we will be consistent, and if it's five minutes,  
10 that will be reflected in the Prehearing Order as well.

11 **MR. PERKO:** That's fine. Thank you.

12 **COMMISSIONER BALBIS:** Okay. Seeing no  
13 additional matters, this prehearing is adjourned.

14 (Prehearing Conference adjourned at 9:52 a.m.)  
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1 STATE OF FLORIDA )  
2 : CERTIFICATE OF REPORTER  
3 COUNTY OF LEON )

4 I, LINDA BOLES, RPR, CRR, Official Commission  
5 Reporter, do hereby certify that the foregoing  
6 proceeding was heard at the time and place herein  
7 stated.

8 IT IS FURTHER CERTIFIED that I  
9 stenographically reported the said proceedings; that the  
10 same has been transcribed under my direct supervision;  
11 and that this transcript constitutes a true  
12 transcription of my notes of said proceedings.

13 I FURTHER CERTIFY that I am not a relative,  
14 employee, attorney or counsel of any of the parties, nor  
15 am I a relative or employee of any of the parties'  
16 attorneys or counsel connected with the action, nor am I  
17 financially interested in the action.

18 DATED THIS 22<sup>nd</sup> day of June,  
19 2012.

20 Linda Boles  
21 LINDA BOLES, RPR, CRR  
22 FPSC Official Commission Reporter  
23 (850) 413-6734  
24  
25