

**Eric Fryson**

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**Sent:** Thursday, June 07, 2012 4:56 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** 110234-TP AT&T Florida's Prehearing Statement

**Attachments:** Document.pdf



Document.pdf  
(3 MB)

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- B. 110234-TP Complaint of BellSouth Telecommunications, LLC d/b/a AT&T Florida Against Halo Wireless, Inc.
- C. BellSouth Telecommunications, LLC d/b/a AT&T Florida on behalf of Suzanne L. Montgomery
- D. 11 pages total (includes letter, certificate of service and pleading)
- E. BellSouth Telecommunications, LLC d/b/a AT&T Florida's Prehearing Statement.pdf

DOCUMENT NO. DATE

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June 7, 2012

Ms. Ann Cole  
Commission Clerk  
Office of the Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

**Re: Docket No. 110234-TP  
Complaint of BellSouth Telecommunications, LLC d/b/a AT&T  
Florida Against Halo Wireless, Inc.**

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, LLC d/b/a AT&T Florida's Prehearing Statement, which we ask that you file in the captioned docket.

Copies have been served to the Parties shown on the attached Certificate of Service list.

Sincerely,

  
Suzanne L. Montgomery

cc: Parties of Record  
Gregory R. Follensbee

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**Certificate of Service  
Docket No. 110234-TP**

I HEREBY CERTIFY that a true and correct copy was served via Electronic Mail and First Class U. S. Mail this 7th day of June, 2012 to the following:

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\_\_\_\_\_  
Suzanne L. Montgomery

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint and petition for relief against            )           Docket No. 110234-TP  
Halo Wireless, Inc. for breaching the terms of            )  
the wireless interconnection agreement, by                )  
BellSouth Telecommunications, LLC d/b/a                 )  
AT&T Florida   )  
\_\_\_\_\_ )           Filed: June 7, 2012

**AT&T FLORIDA'S PREHEARING STATEMENT**

BellSouth Telecommunications, LLC d/b/a AT&T Florida ("AT&T Florida"), hereby submits, in compliance with the *Order Establishing Procedure* (Order No.: PSC-12-0202-PCO-TP), issued April 13, 2012, its Prehearing Statement.

**1. AT&T Florida's Witnesses**

J. Scott McPhee (Direct and Rebuttal, Issues 2-7): Mr. McPhee testifies regarding the terms of the Halo-AT&T Florida interconnection agreement ("ICA") and policy-related issues as they relate to the alleged breaches of the parties' interconnection agreement ("ICA"). He also addresses relief requested by AT&T Florida.

Mark Neinast (Direct and Rebuttal, Issues 2-4): Mr. Neinast testifies from a network perspective regarding Halo's breaches of the ICA by sending landline-originated traffic to AT&T Florida and by inserting incorrect Charge Number information on calls sent to AT&T Florida. Among other things, he discusses AT&T Florida's call studies that show Halo has been sending landline-originated traffic to AT&T Florida, as well as Halo's misuse of Charge Numbers by inserting a Transcom Charge Number into the call information on every call sent to AT&T Florida. Mr. Neinast also discusses why Transcom does not originate calls and does not qualify as an Enhanced Service Provider ("ESP").

Raymond Drause (Rebuttal, Issues 2, 4): Mr. Drause testifies regarding the technical connection between Transcom and Halo and the equipment used by each. He also addresses

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whether Transcom's equipment is technically capable of originating a call and whether Transcom qualifies as an ESP.

**2. AT&T Florida's Exhibits**

J. Scott McPhee (Direct)	JSM-1	Halo and Transcom Answers to Issues 1-8, with Exhibits 1-5 (Wisconsin Public Service Commission Docket No. 9594-TI-100)
	JSM-2	Excerpts from 9-19-11 Halo Bankruptcy Proceeding Transcript (U.S. Bankruptcy Court, E.D. Texas, Case No. 11-42464)
	JSM-3	Transcom webpages
	JSM-4	AT&T Wholesale Agreement with Halo Wireless, Inc.
	JSM-5	Amendment to AT&T Wholesale Agreement with Halo Wireless, Inc.
	JSM-6	8-12-11 Halo Letter and Presentation to FCC re: 8-10-11 Meeting
	JSM-7	10-17-11 Halo <i>Ex Parte</i> Letter to FCC
	JSM-8	Excerpts from 2-28-12 Proceeding Transcript (Wisconsin Public Service Commission Docket No. 9594-TI-100)
	JSM-9	1-26-12 Order (Tennessee Regulatory Authority Docket No. 11-00119)
Mark Neinast (Direct)	MN-1	1-26-12 Order (Tennessee Regulatory Authority Docket No. 11-00119)
	MN-2	3-9-12 Direct Testimony of Christopher J. Rozycki (South Carolina Office of Regulatory Staff Docket No. 2011-304-C)
	MN-3	Diagram of How Halo Sends Traffic to AT&T
	MN-4	Analysis of Landline-Originated vs. Wireless-Originated Calls sent by Halo

	MN-5	Example of Halo Calls Terminating to BellSouth Telecomm Inc. (AT&T FL) with 50 State LNP and Split Number Range Look Up
	MN-6	Florida Traffic Analysis Comparison
	MN-7	Simplified Call Flow Diagram
	MN-8	Sample SS7 Call Records
(Rebuttal)	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)
	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)
Raymond W. Drause (Rebuttal)	RD-1	Drause Resume
	RD-2	Typical Halo Tower Site
	RD-3	Call Path for Typical Transcom/Halo Call

3. **AT&T Florida's Basic Position**

AT&T Florida contends that Halo has breached the parties' ICA in three ways.

**A. Halo Breached the ICA By Sending Landline-Originated Traffic**

As specified in the ICA between Halo and AT&T Florida, the only kind of traffic that Halo is allowed to send to AT&T Florida is traffic that originates on wireless equipment or facilities. AT&T Florida's call analyses, however, show that a significant portion of the traffic that Halo has been sending to AT&T Florida originates on landline networks, not wireless networks. Halo's delivery of non-wireless originated traffic is a breach of the ICA. Moreover, much of this traffic is non-local, and therefore subject to AT&T Florida's tariffed terminating network switched access charges. Halo does not deny sending landline traffic to AT&T Florida, but claims that all the traffic should be deemed to originate with Transcom – rather than the

actual calling party – because all the calls pass through Transcom immediately before being handed to Halo (and then to AT&T Florida). Halo rests this theory on the idea that Transcom is an ESP, and therefore an end-user, and consequently must be deemed to originate every call it touches. Transcom is not an ESP (or an end-user) but even if it were, that does not mean that it originates every call that it touches. In this situation, the calls originate with the actual calling party, not Transcom. The FCC, the Tennessee Regulatory Authority, the Office of Regulatory Staff in South Carolina, and the Staff of the Illinois Commerce Commission all agree with AT&T Florida on this point.

**B. Halo Breached the ICA By Inserting Improper Charge Numbers**

The ICA requires the parties to send accurate call information to each other. Until the end of 2011, however, Halo inserted a Transcom “Charge Number” on every call it sent to AT&T Florida. This fact is undisputed. There was no basis for doing this, for Transcom has no relationship of any kind with the people who make or receive these calls, and inserting the Transcom Charge Number was contrary to established industry practice. Moreover, by inserting a Transcom Charge Number on calls, Halo made it appear to AT&T Florida’s billing and recording systems that every call was a local call. As AT&T Florida’s call studies show, however, most of the calls coming from Halo are non-local calls, which are subject to higher rates for transport and termination.

**C. Halo Breached the ICA by Failing to Pay for Interconnection Facilities**

Under the ICA, the costs for interconnection facilities are shared based on each carrier’s respective use of the facilities. Here, 100% (or close to 100%) of the traffic flowing over interconnection facilities comes from Halo (which makes sense because Halo has few if any customers for AT&T Florida end users to call). Accordingly, Halo owes AT&T Florida for

100% of those interconnection facilities it has obtained from AT&T Florida. Halo, however, has disputed and refused to pay the charges for such facilities. AT&T Florida asks the Commission declare that Halo is liable for those unpaid charges.

4. **Statement of Questions of Fact, Law, and Policy**

1. Does the Commission have jurisdiction to address AT&T Florida's Complaint?

AT&T Florida's Position: Yes. The Commission has jurisdiction to address disputes arising under the provisions of ICAs, including AT&T Florida's claims for breach of the ICA. Like every other Commission to address the issue, the Commission already denied Halo's partial motion to dismiss, which alleged lack of jurisdiction.

AT&T Florida Witnesses: None – Legal Issue.

2. Has Halo breached the ICA by sending traffic to AT&T Florida that was not "originated through wireless transmitting and receiving facilities" as provided by the parties' ICA?

AT&T Florida's Position: Yes. Under the ICA, the only kind of traffic that Halo is allowed to send to AT&T Florida is traffic that originates on wireless equipment or facilities. AT&T Florida's call analyses, however, show that a significant portion of the traffic that Halo has been sending to AT&T Florida originates on landline networks – ranging from 45% to 67%. Delivery of non-wireless originated traffic is a breach the ICA. Moreover, a large portion of the landline-originated traffic Halo sends is non-local traffic that is subject to AT&T Florida's tariffed terminating switched network access charges (which Halo has not paid).

Halo's only defense is a claim that Transcom is an Enhanced Service Provider, or "ESP," and therefore must be treated as an end-user, and consequently must be deemed to "originate" every call that passes through its equipment – even though Transcom is not the calling party and has no relationship with the calling party. Halo then claims that because Transcom has a short wireless transport connection to Halo that is always located in the same MTA where the calls it



passes to Halo are terminated, all the calls at issue here are actually wireless, local calls, and are not subject to switched access charges.

Transcom is not an ESP, but even if it were an ESP (or an end-user) that would not mean it is deemed to originate every call it touches. The FCC, the Tennessee Regulatory Authority, the Office of Regulatory Staff in South Carolina, and the Staff of the Illinois Commerce Commission all have rejected that theory, and so should this Commission.

AT&T Florida Witnesses: Neinast; McPhee; Drause

3. Has Halo complied with the signaling requirements in the parties' ICA?

AT&T Florida's Position: No. Until the end of 2011, Halo inserted a Transcom Charge Number on every call it sent to AT&T Florida. Charge Numbers are used to denote the entity that is financially responsible for a call, when that entity is different from the calling party. However, Transcom is not the financially responsible party on any of the calls Halo has been sending to AT&T. The improper insertion of the Transcom Charge Number misled AT&T Florida about the nature of the calls coming from Halo, and constitutes a breach of the ICA.

AT&T Florida Witnesses: Neinast, McPhee

4. Has Halo paid the appropriate compensation to AT&T Florida as prescribed by the parties' ICA? If not, what compensation, if any, would apply?

AT&T Florida's Position: No. Halo has not paid the appropriate compensation to AT&T Florida. The landline-originated traffic that Halo has been sending to AT&T Florida is not authorized by the ICA, and much of that traffic is non-local and therefore subject to terminating access charges under AT&T Florida's state and federal tariffs. Because it has used terminating switched network access service (by sending long-distance landline calls to AT&T Florida for termination), Halo is responsible to pay those access charges. AT&T Florida therefore asks the Commission to declare that Halo is liable for terminating switched network access charges on the

non-local traffic it has sent to AT&T Florida, though the bankruptcy court handling Halo's bankruptcy proceeding will determine the actual amount due.

AT&T Florida Witnesses: McPhee

5. Has Halo failed to pay AT&T Florida for facilities that AT&T Florida provided pursuant to the parties' ICA and that the ICA obliges Halo to pay for?

AT&T Florida's Position: Yes. Under the ICA, the costs for interconnection facilities are shared based on each carrier's respective use of the facilities. Here, 100% (or close to 100%) of the traffic flowing over interconnection facilities is terminating traffic coming from Halo. Accordingly, Halo owes AT&T Florida for 100% of those interconnection facilities it has obtained from AT&T Florida. Halo, however, has disputed and refused to pay the charges for such facilities. AT&T Florida asks the Commission declare that Halo is liable for those unpaid charges.

AT&T Florida Witnesses: McPhee.

6. a. Has Halo committed a material breach of its ICA with AT&T Florida?
- b. If Halo has committed a material breach of its ICA with AT&T Florida, is AT&T Florida entitled to terminate the ICA?
- c. If Halo has committed a material breach of its ICA with AT&T Florida, is AT&T Florida entitled to discontinue performance under the ICA?

AT&T Florida Position: Yes to all subparts. Halo has committed material breaches of the ICA by sending non-wireless originated traffic to AT&T Florida, disguising the traffic by inserting a Transcom Charge Number to make calls look local and by failing to pay appropriate facilities charges. Based on Halo's material breaches of the ICA, AT&T Florida is entitled as a matter of law to discontinue service under the ICA and stop accepting any traffic from Halo; and, if authorized by the bankruptcy court, to terminate the ICA.

AT&T Florida Witnesses: McPhee

7. What action should the Commission take based on its findings in Issues 1-6?

AT&T Florida's Position: The Commission should grant the following relief:

(a) Find that Halo has materially breached the ICA by (1) sending landline-originated traffic to AT&T Florida, and (2) inserting incorrect Charge Number information on calls;

(b) Find that as a result of these breaches (or either of them), AT&T Florida is excused from further performance under the ICA and may stop accepting traffic from Halo;

(c) Find, without quantifying any specific amount due, that Halo is liable to AT&T Florida for access charges on the non-local landline traffic it has sent to AT&T Florida;

(d) Find, without quantifying any specific amount due, that Halo is liable to AT&T Florida for the cost of interconnection facilities it has obtained from AT&T Florida; and

(e) Grant all other relief as is just and appropriate.

5. **Statement of Stipulated Issues**

The parties have not stipulated to any issues in this proceeding.

6. **Pending Motions**

There are no pending motions at this time.

7. **Requests for Confidentiality**

AT&T Florida seeks confidential treatment of its responses to Staff's First Set of Interrogatories, Nos. 2(a) and 2(c).

8. **Objections to Qualifications as an Expert**


It is unclear whether either of Halo's witnesses purports to be testifying as an expert. At this time, however, AT&T Florida is not raising any objections to the qualifications of those witnesses to present testimony in this proceeding.

9. **Other Requirements**

AT&T Florida knows of no requirements set forth in any Prehearing Order with which it cannot comply.

Respectfully submitted this 7<sup>th</sup> day of June, 2012.

AT&T FLORIDA



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