

REGARD LAW GROUP, PLLC
ATTORNEYS AT LAW

269 WEST MAIN STREET
SUITE 600
LEXINGTON KY 40507-1759

859-281-1318
FAX 859-281-1319
www.regardlaw.com

June 5, 2012

RECEIVED

JUN 27 2012

PUBLIC SERVICE
COMMISSION

Mr. Jeff Derouen
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

Re: Bellsouth Telecommunications, LLC v. Halo Wireless, Inc., 2011-00283

Dear Mr. Derouen:

Please find enclosed the original and ten (10) copies of Halo Wireless's Motion to Compel.

Please let me know if you have any questions.

Sincerely,



Katherine W. Ross

Enclosures:

cc: All parties of record

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

RECEIVED

JUN 27 2012

PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

**BELLSOUTH
TELECOMMUNICATIONS, LLC
D/B/A AT&T KENTUCKY**

§
§
§
§
§
§
§
§
§
§
§
§
§

COMPLAINANT

CASE NO. 2011-00283

v.

HALO WIRELESS, INC.

DEFENDANT

HALO WIRELESS, INC.’S MOTION TO COMPEL

Pursuant to Rule 37.01 of the Kentucky Rules of Civil Procedure, Halo Wireless, Inc. (“Halo”) hereby files this Motion to Compel BellSouth Telecommunications, LLC d/b/a AT&T Kentucky (“AT&T Kentucky”) to respond to Halo’s First Set of Interrogatories Nos. 4, 8 and 13; First Requests for Admission Nos. 1 through 4, 7, 8, 10 through 14, and 16 through 22; and First Request for Production No. 1. For the following reasons, the Kentucky Public Service Commission (“Commission”) should compel AT&T Kentucky to respond to Halo’s discovery:

Argument

The applicable discovery standard is set out in Rule 26.02(1) of the Kentucky Rules of Civil Procedure:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if

the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

On June 1, 2012, Halo served its first data requests to AT&T Kentucky. *See* Halo's First Set of Data Requests of Halo Wireless, Inc. to AT&T Kentucky, attached hereto as Exhibit "A." On June 14, 2012, AT&T Kentucky objected to responding to the entirety of Halo's data requests and has failed to furnish responsive answers to Halo's First Set of Interrogatories Nos. 4, 8 and 13; First Requests for Admission Nos. 1 through 4, 7, 8, 10 through 14, and 16 through 22; and First Request for Production No. 1. *See* Responses to the First Set of Data Requests of Halo Wireless, Inc. to AT&T Kentucky, attached hereto as Exhibit "B."

AT&T Kentucky's Complaint alleges that Halo has breached the parties' interconnection agreement ("ICA") by delivering non-wireless traffic to AT&T Kentucky, altering call detail information, and non-payment of switched access charges. *See* Complaint Counts I-IV. Halo has tailored its data requests to these specific issues. Applying the applicable standard, the information Halo seeks is relevant to the subject matter of the issues in this proceeding and is clearly reasonably calculated to lead to the discovery of admissible evidence. Halo specifically addresses each of the data requests to which AT&T Kentucky objected below.

Interrogatory Nos. 4, 8 and 13.

Halo served the following Interrogatories upon AT&T Kentucky, and to which AT&T Kentucky has failed to provide responses.

4. Identify all Documents which you reviewed prior to filing the Complaint.
8. Define "end point" as used by AT&T and provide the source of the definition.
13. 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.

In its objections, AT&T Kentucky erroneously contends that the above Interrogatories are vague, ambiguous, overly broad, and/or irrelevant. To the contrary, the information Halo seeks is relevant to the subject matter of the issues in this proceeding and is narrowly tailored to AT&T Kentucky's claims. The Interrogatories are reasonably calculated to lead to the discovery of admissible evidence, and are not overbroad, vague or ambiguous.

First, AT&T Kentucky has failed to quantify how Interrogatory Nos. 4 and 13 are "overly broad" and its objections should be overruled on this basis alone. AT&T Kentucky has provided no explanation to support its claim, such as the number of person-hours that would be involved in obtaining the requested information, and has merely asserted this claim without support. These Interrogatories are not overly broad or burdensome because they are either already known and compiled, as with 4, or, in the case of 13, are so closely related to AT&T Kentucky's claims that a response would not require excessive effort. AT&T Kentucky should not be permitted to further refuse to comply with Halo's reasonable data requests based on unspecified claims of undue burden.

Second, Interrogatory No. 8 is neither vague nor ambiguous. Halo has clearly and coherently requested that AT&T Kentucky define the term "end point." In its Complaint, AT&T Kentucky has alleged that "Halo sends traffic to AT&T Kentucky that is not wireless-originated traffic, but rather is landline-originated interstate, interLATA or intraLATA toll traffic." *See* Complaint ¶ 7. This claim implies that AT&T Kentucky possesses knowledge regarding the end users and locations where Halo's traffic originates (i.e., the originating end point). Given this allegation, AT&T's definition of "end point" is of significant importance to the resolution of this case. In addition, AT&T Kentucky's witness, Mark Neinast, used the term "end-point" in his

Direct Testimony on page 12, line 20 and page 14, line 8. This Interrogatory is in no way ambiguous and AT&T Kentucky's objection is merely an attempt to withhold information that is helpful to Halo's defense. This objection is patently invalid and should be overruled.

Third, AT&T Kentucky has also refused to provide a response to Interrogatory No. 4 because it claims the response would be confidential and "protected by the work product doctrine...." However, Section 7(5)(a) of the Commission's Rules of Procedure establishes that:

No party to any proceeding before the commission shall fail to respond to discovery by the commission or its staff or any other party to the proceeding on grounds of confidentiality. If any party responding to discovery requests seeks to have a portion or all of the response held confidential by the commission, it shall follow the procedures for petitioning for confidentiality contained in this administrative regulation.

AT&T Kentucky has made no attempt to "follow the procedures for petitioning for confidentiality...." Instead, AT&T Kentucky merely makes a casual reference to the work product doctrine without any further explanation. This is clearly not compliant with this Commission's procedural rules and cannot serve as an appropriate basis for refusing to respond. AT&T Kentucky's objection on this ground should be overruled and it should be ordered to provide a full response to this interrogatory.

First Requests for Admission Nos. 1 through 4, 7, 8, 10 through 14, and 16 through 22.

Halo served the following Requests for Admission upon AT&T Kentucky and to which AT&T Kentucky has failed to provide responses.

1. It is possible for a single communication to involve more than one "origination" point (as you define that term).
2. If Transcom is an end user, the Transcom-related calls Halo delivers to AT&T in Kentucky fall within the definition of "Local Traffic" as defined in Section I.D. of the ICA.

3. If Transcom is an end user, the Transcom-related calls Halo delivers to AT&T in Kentucky are consistent with the usage contemplated by the definition of “Local Interconnection” in Section I.E. of the ICA.
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.”
7. 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 Kentucky then the call “originates on the Public Switched Telephone Network at Halo’s Base Station.
8. It is AT&T’s official position that telephone numbers are an accurate and appropriate way to rate calls for billing purposes.
10. 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.
11. AT&T contends its affiliate that provides voice over Internet Protocol (VoIP) service in association with U-Verse is not a telecommunications carrier.
12. 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.
13. For purposes of call rating, AT&T would not rate “toll” VoIP-TDM calls at the Interstate access price.
14. 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).
16. An end user cannot be an “intermediate switching point” in a call.
17. An end user can be an “intermediate switching point” in a call.
18. 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.
19. 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.
20. 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.

21. 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.
22. 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.

AT&T Kentucky has refused to provide responses to RFA Nos. 1 through 4, 7, 11, 12, and 16 through 22 because it claims the requests call for legal conclusions. However, an objection on this basis is not proper. Without conceding that AT&T Kentucky’s characterizations are correct, Halo notes that Rule 36.01(1) of the Kentucky Rules of Civil Procedure provides that “A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26.02 set forth in the request that relate to statements or opinions of fact *or of the application of law to fact*, including the genuineness of any documents described in the request.” (Emphasis added.) Subsection (2) further clarifies that “A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request[.]” These rules contemplate RFAs that seek the admission or denial of legal conclusions. AT&T Kentucky is not permitted to refuse to respond by propounding objections that argue that the RFAs call for legal conclusions. AT&T Kentucky’s objections must be overruled and it should be ordered admit or deny RFA Nos. 1 through 4, 7, 11, 12, and 16 through 22.

AT&T Kentucky has also refused to furnish responses to RFA Nos. 1, 8, 10, 13, 14, 16, and 17 on the grounds that the requests are vague or ambiguous. AT&T Kentucky is incorrect as it is obvious that the above RFAs are clearly stated and can be answered with a simple admission

or denial, with a brief explanation if needed. Rule 36.01 of the Kentucky Rules of Civil Procedure provides a straightforward method for obtaining discovery through requests for admission. AT&T Kentucky's refusal to provide *any* response to these requests is merely a ploy to avoid making admissions or denials that are inconvenient and supportive of Halo's legal positions. The above requests are coherent and Halo is entitled to admissions or denials from AT&T Kentucky.

AT&T Kentucky has further refused to provide admissions or denials that are responsive to RFA Nos. 8 and 10 through 14. The responses merely state that AT&T Kentucky's positions can be found in pleadings filed in foreign states and that it rates calls according to the terms of its tariffs and ICAs. AT&T Kentucky's responses to 11 and 12 contend that a response is not required because it has previously "made no contention" regarding the RFAs. These responses entirely omit the requested admissions or denials. Halo did not seek to know whether AT&T Kentucky had ever before asserted that its affiliate that provides VoIP service is a telecommunications carrier or an enhanced service provider. Neither did Halo request to know whether it had previously stated its position on the use of numbers for rating VoIP and mobile services at other state commissions. And Halo certainly did not ask whether AT&T Kentucky rates calls in accordance with its tariffs and ICAs. Instead these RFAs seek for AT&T Kentucky to admit or deny the propositions stated here, for this proceeding.

AT&T Kentucky is merely attempting to avoid furnishing inconvenient information with evasive responses to questions not asked. *See* KY. R. CIV. P. 37.01(c). Rule 36.01(2) of the Kentucky Rules of Civil Procedure establishes that "An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has

made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny.” AT&T Kentucky is not entitled to refuse to provide responses to these RFAs merely because “AT&T Kentucky has made no contention” regarding the subject matter previously or by referring to other documents not in evidence. AT&T Kentucky has failed to fully respond to the substance of these requests and it must be ordered to provide responsive answers.

First Request for Production No. 1

Halo served the following Request for Production upon AT&T Kentucky and to which AT&T Kentucky has failed to provide a response.

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.

AT&T Kentucky objected to this Request for Production on the basis that it contends the RFP is “overly broad” and irrelevant. As with Interrogatory Nos. 4 and 13, however, AT&T Kentucky has again failed to quantify how this data request is “overly broad” and its objections should be overruled on this basis alone. AT&T Kentucky has provided no information or explanation to support its claim, and this Commission should not grant objections based on unsupported assertions of burden. AT&T Kentucky should not be permitted to further refuse to comply with Halo’s reasonable data requests based on unspecific claims of undue burden.

Any responsive information would be relevant to this proceeding because it could indicate contrary positions to those advanced in this case. Should there be any communications between AT&T Kentucky and the Commission regarding Halo, the substance could be of great import to the nature and propriety of this complaint. AT&T Kentucky’s objection and refusal to

provide a response to this RFP indicate that such communications may have in fact occurred. Halo would not have access to such communications and it is therefore necessary to seek to obtain any such communications through the discovery process. AT&T Kentucky's objections should be overruled and it should be ordered to provide a complete response to Halo.

By improperly objecting to each of the above data requests, or refusing to provide responsive answers, AT&T Kentucky is withholding discoverable information from Halo. AT&T Kentucky is skirting the applicable rules in order prevent the discovery of information that is harmful to its case. The information the data requests sought is relevant and is reasonably calculated to lead to the discovery of admissible evidence. Halo has a right to obtain the information requested and it is necessary to properly prepare its case for hearing.

WHEREFORE, PREMISES CONSIDERED, Halo respectfully requests that the Commission enter an order requiring AT&T Kentucky to produce full responses to Halo's First Set of Interrogatories Nos. 4, 8 and 13; First Requests for Admission Nos. 1 through 4, 7, 8, 10 through 14, and 16 through 22; and First Requests for Production No. 1. Halo additionally requests any further relief to which it may show itself justly entitled.

Dated this 26th day of June, 2012.

Respectfully submitted,



ANDRE F. REGARD

Kentucky State Bar No. 88254

KATHERINE W. ROSS

Kentucky State Bar No. 93494

Regard Law Group, PLLC

269 W. Main Street, Ste. 600

Lexington, KY 40507

Phone: 859.281.1318

Fax: 859.281.1219

STEVEN H. THOMAS

Texas State Bar No. 19868890

TROY P. MAJOUÉ

Texas State Bar No. 24067738

JENNIFER M. LARSON

Texas State Bar No. 24071167

**McGUIRE, CRADDOCK
& STROTHER, P.C.**

2501 N. Harwood, Suite 1800

Dallas TX 75201

Phone: 214.954.6800

Fax: 214.954.6850

W. SCOTT MCCOLLOUGH

Texas State Bar No. 13434100

MATTHEW A. HENRY

Texas State Bar No. 24059121

MCCOLLOUGH|HENRY PC

1250 S. Capital of Texas Hwy., Bldg. 2-235

West Lake Hills, TX 78746

Phone: 512.888.1112

Fax: 512.692.2522

Attorneys for Halo Wireless, Inc.

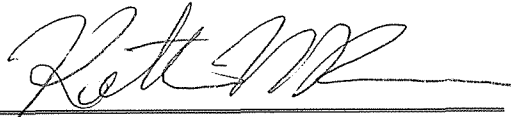
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Motion to Compel* was served via certified mail, return receipt requested, on the following counsel on this the 26th day of June, 2012.

COUNSEL FOR COMPLAINANT:

Mary K. Keyer, Esq.
BELLSOUTH TELECOMMUNICATIONS, LLC
D/B/A AT&T KENTUCKY
601 Chestnut Street, Room 407
Louisville, KY 40202

Dennis G. Friedman, Esq.
J. Tyson Covey, Esq.
MAYER BROWN LLP
71 South Wacker Drive
Chicago, IL 60606



Katherine W. Ross