

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

May 29, 2012

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

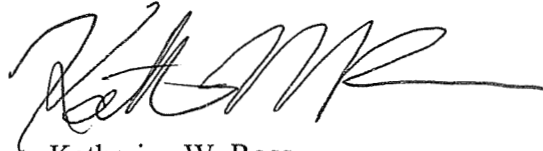
Re: Bellsouth Telecommunications, LLC v. Halo Wireless, Inc., 2011-00283

Dear Mr. Derouen:

Please find enclosed the original and ten (10) copies of Halo Wireless's Answer to the Complaint as well as the Partial Motion to Dismiss the Complaint against Halo Wireless.

Please let me know if you have any questions.

Sincerely,



Katherine W. Ross

Enclosures:

cc: All parties of record

RECEIVED

MAY 30 2012

PUBLIC SERVICE
COMMISSION

telephone exchange service to an ESP end user. All such calls received from Transcom within any particular MTA are terminated in that same MTA. The bottom line is that not one minute of the relevant traffic is subject to access charges.

Further, prior to December 29, 2011, Halo inserted the billing telephone number of its high volume customer into the Charge Number information. Halo provided this information in order to identify the party financially responsible for the calls passing over its egress trunks going to/from AT&T. The call detail information provided by Halo did not prevent AT&T from being able to properly bill Halo. To the contrary, billing for Halo traffic is based, according to the ICAs, on traffic factors negotiated between the parties, not “call-by-call” rating. Additionally, the calling parameters AT&T would like to use for call rating were provided unaltered, enabling them to derive traffic factors they could have used to change the factors already in place. And finally, consistent with the court decisions ruling that Halo’s high volume customer is an end user and an ESP, the call detail information that was provided accurately portrayed the traffic as intraMTA, and subject to the “local” charges in the ICA.

AT&T’s argument that Halo is in breach of the ICA because Halo has not paid AT&T for facilities is without any foundation in the ICA and must be denied. Per the terms of the ICA, AT&T cannot shift cost responsibility to Halo for facilities charges on AT&T’s side of the point of interconnection (“POI”).

In sum, there is no valid basis for the Complaint. The relevant traffic is not subject to access charges, Halo has not signaled incorrect call detail information, Halo does not owe AT&T for facilities charges, and therefore, AT&T is not entitled to the relief it requests.

II. ANSWER TO MATERIAL ALLEGATIONS

Halo denies that this Commission has jurisdiction over Counts I, II, and III of the Complaint. Accordingly, Halo has filed contemporaneously herewith a Motion to Dismiss Counts I, II, and III. Subject to Halo's Motion to Dismiss and without waiver of the same, Halo provides its answer to each of the material allegations below. Except as expressly admitted herein, Halo denies any and all allegations contained in the Complaint.

1. Halo admits the allegations contained in paragraph 1.
2. Halo admits the allegations contained in paragraph 2.
3. Halo admits the allegations contained in paragraph 3.
4. Halo admits that the Commission has jurisdiction over Counts IV. Halo denies the allegations contained in paragraph 4 as to Counts I, II, and III, and relies on its Partial Motion to Dismiss and the affirmative defense stated below to assert that the Commission does not have jurisdiction over the various federal issues that are essential prerequisites to determinations over the few issues that are in fact related to interpretation and enforcement of the ICA.

A. Count I

5. Halo repeats and realleges its responses to paragraphs 1-4 above.
6. In response to the allegations contained in paragraph 6, Halo admits that the ICA speaks for itself and has been properly cited.
7. Halo denies the allegations contained in paragraph 7 because Halo is CMRS and is providing wireless service in accordance with a license from the Federal Communications Commission ("FCC"). As explained below, this Commission does not have jurisdiction to interpret Halo's federal license or Halo's activities thereunder and determine whether Halo's service is or is not "CMRS."

8. Similarly, Halo denies the allegations contained in paragraph 8 because Halo is CMRS and is providing wireless service in accordance with a license from the FCC. As explained below, this Commission does not have jurisdiction to interpret Halo's federal license or Halo's activities thereunder and determine whether Halo's service is or is not "CMRS."

B. Count II

9. Halo repeats and realleges its responses to paragraphs 1-8 above.

10. In response to the allegations contained in paragraph 10, Halo admits that the ICA speaks for itself and has been properly cited.

11. In response to the allegations contained in paragraph 11 of the Complaint, Halo admits that it inserted the billing telephone number of its high volume customer into the Charge Number information prior to December 29, 2011, but denies that this additional information provided to ensure that the traffic was billed correctly actually prevented AT&T from properly billing for the traffic.

12. The allegations contained in paragraph 12 constitute legal argument to which no response is required. To the extent that a response is required, Halo denies the allegations contained in paragraph 12.

C. Count III

13. Halo repeats and realleges its responses to paragraphs 1-12 above.

14. Halo denies the allegations contained in paragraph 14 of the Complaint. As a CMRS, Halo is selling telephone exchange service to an ESP end user. All such calls received from Transcom within any particular MTA are terminated in that same MTA. The traffic is not landline-originated traffic, and thus, not one minute of the relevant traffic is subject to access charges.

D. Count IV

15. Halo repeats and realleges its responses to paragraphs 1-14 above. Halo admits that the Commission has jurisdiction over the “facilities” issue.

16. In response to the allegations contained in paragraph 16, Halo denies that it ordered the specific interconnection “transport facilities” from AT&T of which AT&T complains, and Halo further denies that AT&T has provided the specific interconnection “transport facilities” to Halo of which AT&T complains.

17. In response to the allegations contained in paragraph 17, Halo admits that AT&T has incorrectly billed Halo for certain alleged “transport facilities.” Halo has properly disputed the incorrect billings. Halo denies that AT&T is entitled to payment for the specific alleged “transport facilities” that are in issue. Halo denies that AT&T is entitled to the relief it requests in paragraph 17 of the Complaint.

18. The allegations contained in paragraph 18 constitute legal argument to which no response is required. To the extent that a response is required, Halo denies the allegations contained in paragraph 18.

19. In further response to the allegations of Count IV, and by way of further affirmative defenses to the same, Halo provides the following additional responses and information.

20. 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 POI.

21. The architecture in place is as follows: Halo obtains transmission from its network to AT&T tandem buildings from third party service providers. In all Kentucky locations, the

third party service providers have transport facilities and equipment in the tandem building, either in a “meet me room” area or via collocation facilities purchased from AT&T.

22. In all LATAs in Kentucky, Halo has secured third party transport all the way up to the mutually-agreed POI. The third party transport provider will have a collocation arrangement at each of the AT&T tandems where Halo is interconnected in Kentucky. As part of its third party provided transport arrangements, Halo secures a Letter of Agency/Channel Facility Assignment (“LOA/CFA”) from its third party transport service provider. The CFA portion of the LOA/CFA document consists of an Access Customer Terminal Location (“ACTL”), the third party provider’s circuit ID, and a specific channel facility assignment (at the DS-3 or DS-1 level depending on the arrangements) on the third party’s existing transport facilities. This CFA defines the specific rack, panel and jack locations at Halo’s third party transport providers’ digital signal cross-connect (“DSX”) where Halo and AT&T meet to exchange traffic. In other words, the mutually-agreed POI between AT&T and Halo is located where AT&T “plugs in” its network on the DSX panel where the CFA is given to Halo by the third party transport provider. This is memorialized by the fact that each POI will have a POI Common Language Location Identifier (“CLLI”) code, and the CLLI code corresponds exactly to the CFA location.

23. The ACTL CLLI and the corresponding CFA CLLI, are each composed of four sub-fields: (1) four characters to denote the city (formally called the Geographical code); (2) two characters to denote the state or province (the Geopolitical code); (3) two characters to denote the specific location or building address (the Network-Site code); and (4) three characters to specify a particular piece of equipment (the Network Entity code). The Network Entity code clearly is not related to AT&T’s tandem switch; instead, it corresponds to the third party

transport provider's DSX. The POI is where Halo's network ends. Halo has expended considerable sums to get to the POI location, which is in the AT&T tandem. AT&T is cost-responsible from there.

24. In order to implement interconnection, AT&T has to install *cross-connects* that go to the POI at the third party transport providers DSX that is inside the tandem building so that the parties can exchange traffic. AT&T is billing Halo for a wide assortment of facilities from the POI up to its tandem switch. These billings include DS3/DS1 multiplexing, which Halo is paying, and DS1 facility charges, DS1/DS0 multiplexing, DS-1 cross connects, and tandem port charges, all of which Halo has been disputing since these facilities are on AT&T's side of the POI.

25. There are three different physical interconnect situations in place today between Halo and AT&T that have POI nuances, but do not fundamentally change the POI arrangement from a cost responsibility stand point. These include:

- a. Halo hand off at the T1 level;
- b. Halo hand off at the DS-3 level, and where Halo's third party service provider provides a DS-3 to DS-1 mux/demux; and
- c. Halo hand off at the DS-3 level, and where Halo has ordered, and AT&T is providing, DS-3 to DS-1 mux/demux.

26. In the first two situations (a) and (b), the POI is either a DSX-1 or DSX-3 cross connect frame owned by Halo's third party service provider. In the third situation (c), the POI can either be considered the DSX-3 cross-connect frame of Halo's service provider, or the DS-3/DS-1 muxing equipment used by AT&T to provide the muxing service Halo has ordered and is receiving from AT&T. Halo's interconnection points in Kentucky employ a combination of interconnection methods a and c. But in all cases, the POI does not extend beyond the DS-1 interface point, and AT&T's responsibility to cross-connect to a DS-1 interface is not changed.

27. The DS-3 to DS-1 muxing/demuxing is done purely for AT&T's convenience; Halo was and is at all times prepared to support DS3 physical layer capability all the way into the tandem switch. Nonetheless, even though Halo could deny cost responsibility in these cases, Halo is paying AT&T for this multiplexing. In other words, these charges are not in dispute. Other than for this DS-3 to DS-1 muxing, AT&T, the ILEC, is not providing any transport or multiplexing on Halo's side of the POI. If and to the extent AT&T insists on moving forward with this part of the Complaint, Halo reserves the right to seek a refund for the payments it has made for DS3/DS1 multiplexing.

28. As detailed above, AT&T's so-called "facility" charges, and the charges subject to dispute, entirely relate to discrete network elements that run from the POI to AT&T's tandem switch. The ICA is crystal-clear that Halo is only responsible for "facilities" up to the POI, and AT&T is responsible for all facilities on its side of the POI.

29. AT&T's Type 2A interconnection implementation process requires the CMRS provider to submit the order, even when part of what is being "ordered" pertains to facilities, trunks and other things on AT&T's side of the POI and for which the "ordering" carrier is not financially responsible. There is no choice; if the order is not submitted in a way the system likes, the order is rejected. Placement of such orders does not create an obligation on Halo's part to pay for facilities on AT&T's side of the POI. More specifically, following the mandatory procedures in AT&T's OSS cannot somehow constitute a waiver of or amendment to the ICA terms relating to cost responsibility.

30. When the parties were initiating interconnection, there were email exchanges between Halo and AT&T's service provisioning team on this very subject very early on in the ordering process. Halo expressed willingness to follow AT&T's process, but also maintained

clarity on the POI designation as well as the fact that submitting orders did not change the cost responsibility arrangements in the ICA.

31. AT&T is attempting to shift cost responsibility to Halo when the ICA assigns responsibility to AT&T. Although Halo is paying AT&T for DS3/DS1 multiplexing, Halo at least arguably should not have any cost responsibility for this element and if this case wrongly goes forward Halo should recover the amounts it has paid for DS3/DS1 multiplexing.

32. Regardless, however, AT&T's billings for the "trunk/line" charges that Halo has disputed are incorrect and not supported by the ICA. Count IV of the Complaint – AT&T's argument that Halo is in breach of the ICA because Halo has not paid AT&T for facilities – is without any foundation in the ICA and must be denied.

III. AFFIRMATIVE DEFENSES

A. First Affirmative Defense

33. As described in the Partial Motion to Dismiss Counts I, II, and III, filed contemporaneously herewith, the Complaint necessarily requires the resolution of federal issues subject to federal jurisdiction. This Commission has no jurisdiction to consider the federal issues involved in Counts I, II, and III of the Complaint, nor does the Commission have jurisdiction to award the relief requested in Counts I, II, and III of the Complaint.

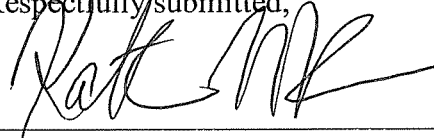
B. Second Affirmative Defense

34. The Complaint fails to state a claim upon which relief can be granted.

WHEREFORE, based on the foregoing, Halo denies that AT&T is entitled to the relief sought, or any other relief, and respectfully requests that the relief requested in the Complaint be denied in its entirety and that the Complaint be dismissed.

Respectfully submitted this 29th day of May 2012.

Respectfully submitted,



ANDRE F. REGARD

Kentucky Bar No. 88254

KATHERINE W. ROSS

Kentucky Bar No. 93494

REGARD LAW GROUP, PLLC

269 W. Main St., Ste. 600

Lexington, KY 40507

Phone: 859.281.1318

Fax: 859.281.1319

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

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.

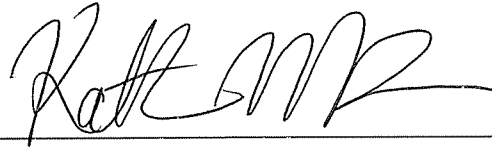
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Answer of Halo Wireless, Inc. to the Formal Complaint* was served via certified mail, return receipt requested, on the following counsel of record on this the 29th day of May, 2012:

COUNSEL FOR COMPLAINANT:

Mary K. Keyer, Esq.
BELLSOUTH TELECOMMUNICATIONS, LLC
D/B/A AT&T KENTUCKY
601 W. 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