



Mary K. Keyer
General Attorney
Kentucky Legal Department

AT&T Kentucky
601 W. Chestnut Street
Room 407
Louisville, KY 40203

T 502-582-8219
F 502-582-1573
mary.keyer@att.com

June 14, 2012

RECEIVED

VIA OVERNIGHT MAIL

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

JUN 15 2012

PUBLIC SERVICE
COMMISSION

Re: BellSouth Telecommunications, LLC, d/b/a AT&T
Kentucky, Complainant v. Halo Wireless, Inc., Defendant
PSC 2011-00283

Dear Mr. Derouen:

Enclosed for filing in the above-referenced case are the original and ten (10) copies of Direct Testimony of AT&T Kentucky's witnesses, J. Scott McPhee and Mark Neinast.

Please let me know if you have any questions.

Sincerely,


Mary K. Keyer

Enclosures

cc: Parties of Record

1037242

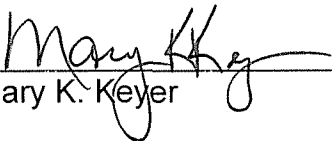
CERTIFICATE OF SERVICE – PSC 2011-00283

I hereby certify that a copy of the foregoing was served on the following individuals by mailing a copy thereof via U.S. Mail, this 14th day of June 2012.

Russell Wiseman
President & CEO
Halo Wireless, Inc.
2351 West Northwest Hwy., Suite 1204
Dallas, TX 75220

Jennifer M. Larson
McGuire, Craddock & Strother, P.C.
2501 N. Harwood, Suite 1800
Dallas, TX 75201

Katherine W. Ross, Esq.
Regard Law Group, PLLC
269 W. Main Street, Suite 600
Lexington, KY 40507-1759



Mary K. Keyer

COMMONWEALTH OF KENTUCKY
KENTUCKY PUBLIC SERVICE COMMISSION

PARISH OF EAST BATON ROUGE


STATE OF LOUISIANA

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared J. Scott McPhee, who being by me first duly sworn deposed and said that he is appearing as a witness on behalf of BellSouth Telecommunications, LLC d/b/a AT&T Kentucky before the Kentucky Public Service Commission in Docket Number 2011-00283, *In the Matter of: BellSouth Telecommunications, LLC, d/b/a AT&T Kentucky, Complainants v. Halo Wireless, Inc., Defendant*, and if present before the Commission and duly sworn, his statements would be set forth in the annexed direct testimony consisting of 27 pages and 8 exhibits.



J. Scott McPhee

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 6th DAY OF JUNE, 2012



Notary Public YOLANDA D. DIXON

My Commission Expires: LIFE

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of)	
)	
BELLSOUTH)	
TELECOMMUNICATIONS, LLC d/b/a)	
AT&T KENTUCKY,)	
)	Case No. 2011-00283
Complainant,)	
)	
v.)	
)	
HALO WIRELESS, INC.,)	
)	
Defendant.)	

Direct Testimony of J. Scott McPhee
On Behalf of AT&T Kentucky

June 15, 2012

1 **DIRECT TESTIMONY OF J. SCOTT MCPHEE**
2 **ON BEHALF OF AT&T KENTUCKY**

3

4 **I. INTRODUCTION**

5 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

6 A. My name is J. Scott McPhee. My business address is 2600 Camino Ramon, San
7 Ramon, California.

8 **Q. ON WHOSE BEHALF ARE YOU PROVIDING YOUR TESTIMONY TODAY?**

9 A. BellSouth Telecommunications, LLC d/b/a AT&T Southeast d/b/a AT&T
10 Kentucky, which I will refer to as AT&T Kentucky.

11 **Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?**

12 A. I am an Associate Director – Wholesale Regulatory Policy & Support for Pacific
13 Bell Telephone Company d/b/a AT&T California. I work on behalf of the AT&T
14 incumbent local exchange carriers (“ILECs”) throughout AT&T’s 22-state ILEC
15 territory. I am responsible for providing regulatory and witness support relative to
16 various wholesale products and pricing, supporting negotiations of local
17 interconnection agreements (“ICAs”) with competitive local exchange carriers
18 (“CLECs”) and commercial mobile radio service (“CMRS”) providers, participating
19 in state commission and judicial proceedings, and guiding compliance with the
20 Federal Telecommunications Act of 1996 (“1996 Act” or “Act”) and its
21 implementing rules.

22 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**

23 A. I received my Bachelor of Arts degree with a double major in Economics and
24 Political Science from the University of California at Davis.

1 **Q. PLEASE OUTLINE YOUR WORK EXPERIENCE AT AT&T.**

2 A. I began employment with AT&T's predecessor, SBC, in 2000 in the Wholesale
3 Marketing – Industry Markets organization as Product Manager for Reciprocal
4 Compensation throughout SBC's 13-state region. My responsibilities included
5 identifying policy and product issues to assist negotiations and witnesses
6 addressing SBC's reciprocal compensation and interconnection arrangements,
7 as well as SBC's transit traffic offering. In June of 2003, I moved into my current
8 role as an Associate Director in the Wholesale Marketing Product Regulatory
9 organization. In this position, my responsibilities include helping define AT&T's
10 positions on certain issues for Wholesale Marketing, and ensuring that those
11 positions are consistently articulated in proceedings before state commissions.

12 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE STATE PUBLIC UTILITY**
13 **COMMISSIONS?**

14 A. Yes, I have testified before several state public utility commissions, including this
15 one, on telecommunications issues. Virtually all of those cases involved the
16 arbitration of ICAs or disputes regarding the interpretation or enforcement of
17 ICAs, like the one at issue in this proceeding.

18 **Q. HAVE YOU TESTIFIED BEFORE ANY OTHER STATE COMMISSIONS ON**
19 **THE SUBJECTS YOU WILL ADDRESS IN THIS TESTIMONY?**

20 A. Yes. AT&T and Halo are contesting in a number of other state commissions the
21 same issues that are presented in this case. As of the date of this testimony, I
22 have filed testimony in the parallel proceedings in ten other states and have
23 reviewed Halo's pre-filed testimony in most of those states, and I testified at the
24 evidentiary hearings in the Wisconsin, Tennessee, South Carolina, Georgia,

1 Illinois and Louisiana proceedings. As a result, I am familiar with the positions
2 Halo has been advancing on the issues in this case.

3 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?**

4 A. I will discuss AT&T Kentucky's ICA with Halo and the claims AT&T Kentucky has
5 made for breach of the ICA. I will also provide background on the disputes and
6 why they are important.

7 **Q. WHAT IS AT&T KENTUCKY'S MAIN COMPLAINT AGAINST HALO?**

8 A. Halo is sending landline-originated traffic to AT&T Kentucky in violation of the
9 parties' ICA. In addition, Halo for many months disguised traffic (by modifying
10 the call records) so that toll traffic appeared to our billing systems to be local
11 traffic. Halo has discontinued that practice, but it was nonetheless wrongful at
12 the time, and was another breach of the parties' ICA. The effect of Halo's
13 delivery of landline-originated traffic in breach of the ICA (both when Halo was
14 modifying the call records and since it discontinued that practice) has been to
15 enable Halo to avoid paying the AT&T ILECs many millions of dollars in
16 applicable access charges.¹ AT&T Kentucky's aim in this case is to obtain a
17 remedy for, and put an end to, Halo's continuing breach of its ICA with AT&T
18 Kentucky.

19

¹ Halo's breach of its ICA with AT&T Kentucky also enabled Halo to avoid the payment of access charges to other ILECs in Kentucky, including rural local exchange carriers ("RLECs"). I understand there is a complaint pending before this Commission among the RLECs, AT&T Kentucky and Halo regarding millions of minutes of traffic that Halo sends through AT&T Kentucky to be terminated to the RLECs. My testimony in this proceeding does not address that complaint.

1 **Q. HAS THE FCC RECENTLY ADDRESSED THE EFFECTS OF ACCESS-**
2 **AVOIDANCE SCHEMES LIKE HALO’S?**

3 A. Yes. On November 18, 2011, the FCC issued its *Connect America Order*.² In
4 the words of FCC Commissioner Michael J. Copps, that Order

5 puts the brakes on the arbitrage and gamesmanship that have
6 plagued [intercarrier compensation] for years and that have
7 diverted private capital away from real investment in real networks.
8 By some estimates . . . phantom traffic affects nearly one-fifth of the
9 traffic on the carriers’ networks. Today we say “no more.”³

10 Commissioner Copps thus decried the fact that the unlawful avoidance of access
11 charges, also known as access arbitrage, is an ongoing and significant problem
12 for the industry as a whole. Halo’s is just the latest in a long line of access
13 charge avoidance schemes.

14 **Q. WHAT IS THE FINANCIAL IMPACT OF HALO’S SCHEME?**

15 A. Through April 2012, Halo owed AT&T Kentucky \$259,815 in unpaid access
16 charges,⁴ and the debt continues to increase significantly each month. From
17 March 2011, through March 2012, the monthly volume of traffic Halo sent to
18 AT&T Kentucky increased by 576%. Halo is now sending AT&T Kentucky more
19 than 13.3 million minutes of traffic per month. Across AT&T’s 22-state ILEC
20 territory, Halo owed AT&T approximately \$18,522,864 in unpaid access charges
21 as of April 2012 for traffic the AT&T ILECs terminated to their end user

² Report and Order and Further Notice of Proposed Rulemaking, *Connect America Fund*, WC Docket No. 10-90 *et al.*, 2011 WL 5844975 (rel. Nov. 19, 2011) (“*Connect America Order*”).

³ *Id.* at 749 (statement of Commissioner Michael J. Copps).

⁴ This represents the difference between (i) the reciprocal compensation charges Halo has paid AT&T Kentucky for terminating to its end user customers traffic delivered by Halo, and (ii) the switched access charges that Halo should have paid AT&T Kentucky on Halo-delivered access traffic that AT&T Kentucky terminated to its end user customers. I explain reciprocal compensation charges and access charges below.

1 customers. As in Kentucky, that amount continues to grow, to the tune of about
2 \$ 1.1 million per month.

3 **Q. WHY IS IT IMPORTANT FOR THE COMMISSION TO DECIDE THIS CASE**
4 **PROMPTLY?**

5 A. Simply because the longer it takes for the Commission to decide this case, the
6 more Halo improperly gains from its scheme and the more AT&T Kentucky and
7 other carriers unjustly lose. This is especially so with Halo having filed for
8 bankruptcy, which makes it even less likely that AT&T Kentucky will ever receive
9 the access charges it is owed. Halo should not be permitted to continue to “run a
10 tab” on AT&T Kentucky’s network by sending traffic that is not authorized by the
11 ICA and not paying the applicable rates for its traffic. Because Halo has
12 breached its ICA with AT&T Kentucky, AT&T Kentucky should be allowed to stop
13 accepting traffic from Halo (as it was allowed to do in Tennessee on precisely the
14 grounds it asserts here) in order to avoid future financial harm from Halo not
15 paying the applicable charges for its traffic.⁵

16

17 **II. BACKGROUND**

18 **Q. WHAT IS HALO?**

19 A. Halo Wireless, Inc. is a corporation organized and operating under the laws of
20 the state of Texas. The company is headquartered in Fort Worth, Texas.

⁵ In light of Halo’s pending bankruptcy proceeding, AT&T Kentucky does not ask the Commission to order payment of any money as part of this case. AT&T Kentucky does, however, ask the Commission to rule that Halo should be required to pay AT&T Kentucky the applicable access charges on the traffic Halo has sent. Liquidation of these amounts and other payment issues presumably will be dealt with in the bankruptcy court.

1 **Q. WHO ARE HALO'S OFFICERS?**

2 A. Halo's officers are:

3 Russell Wiseman, President

4 Jeff Miller, Chief Financial Officer

5 Carolyn J. Malone, Secretary/Treasurer⁶

6 **Q. DOES HALO HAVE ANY EMPLOYEES?**

7 A. Halo has only two employees – Jeff Miller and Carolyn Malone, each of whom is
8 paid \$500 per month. While Halo identifies Russell Wiseman as its President,
9 Mr. Wiseman is not an employee of Halo. Mr. Wiseman is paid as an employee
10 of an affiliate company, Source Communications of America.⁷

11 **Q. WHO OWNS HALO?**

12 A. Halo is owned by Scott Birdwell (50%), Gary Shapiro (10%), and Timothy Terrell
13 (40%).⁸

14 **Q. WHAT DOES HALO CLAIM TO BE?**

15 A. Halo claims to be a commercial mobile radio service ("CMRS") or wireless
16 provider.

17

⁶ See **Exhibit JSM-1** at 10 (*Investigation into Practices of Halo Wireless, Inc. and Transcom Enhanced Services, Inc.*, Docket No. 9594-TI-100, Halo Wireless, Inc. and Transcom Enhanced Services, Inc.'s Answers (without exhibits) on Issues 1-8 in the Notice of Proceeding (filed with Pub. Serv. Comm'n of Wisc., Dec. 2, 2011)).

⁷ See **Exhibit JSM-2** (Excerpts from Creditors' Meeting Transcript) at 8-9 (*In re: Halo Wireless, Inc.*, United States Bankruptcy Court for the Eastern District of Texas, Case No. 11-42464 (*"Halo Bankruptcy proceeding"*), Transcript of Proceeding Conducted by United States Trustee, Section 341 Meeting of Creditors held Sept, 19, 2011 (*"Creditors' Meeting Transcript"*)). The entire transcript is voluminous and will be made available upon request.

⁸ Exhibit JSM-1 at 10.

1 **Q. WHAT TYPE OF EQUIPMENT DOES HALO CLAIM TO OPERATE?**

2 A. Halo claims to operate wireless “base stations” by which it connects to its
3 “customers.” Halo leases the base station equipment from a company called
4 SAT Net.⁹ SAT Net is another affiliate of Halo. The officers of SAT Net include
5 the same Jeff Miller and Carolyn Malone who are the officers/employees of Halo.
6 The common owners/investors between SAT Net and Halo are Scott Birdwell,
7 Gary Shapiro, and Tim Terrell.¹⁰

8 **Q. WHERE DOES HALO GET ITS REVENUE?**

9 A. Halo gets 100% of its revenue from a closely affiliated company called
10 Transcom.¹¹ In fact, if we assume, just for the sake of discussion, that Transcom
11 is a “customer” of Halo, as Halo claims it is, then Transcom is Halo’s *only* paying
12 customer in Kentucky. In a submission it made in the parallel proceeding in
13 Wisconsin earlier this year, Halo stated that it had 35 consumer customers –
14 none of whom was in Kentucky. Halo has since clarified that its “consumer
15 customers” are not paying customers.

16 **Q. WHAT IS TRANSCOM?**

17 A. Transcom is a corporation organized and operating under the laws of the state of
18 Texas. Headquartered in Fort Worth, Texas, Transcom operates switches in
19 Dallas, New York, Atlanta and Los Angeles. Transcom accepts traditional circuit-

⁹ Exhibit JSM-2 at 14.

¹⁰ Exhibit JSM-2 at 15-16.

¹¹ Exhibit JSM-1 at 4-5 (“Currently, the only [high volume] customer is Transcom, and traffic from Transcom provides 100 percent of Halo’s current revenues . . .”).

1 switched protocols such as Time Division Multiplexing (“TDM”) at these
2 switches.¹²

3 Transcom has represented on its website that the company’s “core service
4 offering” is “voice termination services.”¹³ Voice termination service is the
5 intermediate routing of telephone calls between carriers for termination to the
6 carriers serving the called party. On its website, Transcom stated that it
7 terminates “nearly one billion minutes per month,” and provides service to the
8 largest Cable/MSOs, CLECs, broadband service providers, and wireless
9 customers.¹⁴

10 **Q. DOES TRANSCOM’S WEBSITE STILL SAY THAT TRANSCOM’S CORE**
11 **SERVICE OFFERING IS VOICE TERMINATION SERVICES?**

12 A. Interestingly enough, no; Transcom changed its website after AT&T pointed out
13 in other state commission proceedings Transcom’s representation there that
14 Transcom’s core service offering is voice termination services. AT&T also
15 pointed out that contrary to Transcom’s litigation position that it is an enhanced
16 service provider, Transcom’s self-description on its website made no mention
17 whatsoever of enhanced services. Transcom, evidently recognizing that its
18 presentation of itself on its website was detracting from the picture it was trying to
19 paint in the state commission proceedings, recently changed its website. That
20 change does not help the Transcom/Halo cause here; rather, it is an
21 acknowledgement that the candid admissions on the website were hurting

¹² See **Exhibit JSM-3** (Transcom webpages printed January 9, 2012).

¹³ *Id.*

¹⁴ *Id.* As I understand it, an MSO is a multiple system operator.

1 Transcom/Halo. In fact, the Transcom representative who testifies on behalf of
2 Halo in these cases admitted in pre-filed testimony in South Carolina that
3 Transcom changed its website specifically because AT&T was pointing out the
4 website admissions in these proceedings.¹⁵

5 **Q. WHO ARE TRANSCOM'S OFFICERS?**

6 A. The officers of Transcom are largely the same as the officers of Halo. The
7 officers of Transcom are:

8 Scott Birdwell, CEO and Chairman

9 W. Britt Birdwell, COO and President

10 Jeff Miller, Chief Financial Officer

11 Carolyn J. Malone, Secretary and Treasurer¹⁶

12 **Q. WHO OWNS TRANSCOM?**

13 A. There are several investors. Scott Birdwell is the largest single individual
14 owner.¹⁷

15 **Q. IS THIS THE SAME SCOTT BIRDWELL WHO IS THE MAIN SHAREHOLDER**
16 **OF HALO?**

17 A. Yes, this is the same Scott Birdwell who also controls Halo. Mr. Wiseman, in his
18 current capacity as the President of Halo (having replaced Mr. Birdwell in that

¹⁵ Pre-filed Surrebuttal Testimony of Robert Johnson dated March 30, 2012, South Carolina Public Service Commission Docket No. 2011-304C, at 10, lines 20-22 ("Transcom has recently updated its website to more clearly establish . . . that Transcom is an ESP.").

¹⁶ Exhibit JSM-1 at 11.

¹⁷ *Id.*

1 capacity), reports to a management committee of the investor-owners: Scott
2 Birdwell, Jeff Miller, and Carolyn Malone.¹⁸

3 **Q. WHAT IS YOUR UNDERSTANDING OF THE RELATIONSHIP BETWEEN**
4 **TRANSCOM AND HALO?**

5 A. Transcom and Halo are operating in concert in an attempt to avoid access
6 charges. Transcom aggregates third-party toll traffic by selling its “voice
7 termination service,” then hands the traffic off to Halo, which mischaracterizes
8 the traffic as wireless-originated intraMTA traffic.

9 **Q. HOW AND WHY WOULD HALO AND TRANSCOM BE ACTING TOGETHER?**

10 A. Transcom is a very high-volume “least-cost router”¹⁹ operating in the middle of
11 toll calls. To the best of my knowledge, and based on everything Halo has said
12 in other state proceedings, neither Transcom nor any customer of Transcom
13 actually initiates any telephone calls. Rather, Transcom takes calls initiated by
14 customers of other carriers and then hands the calls off to someone else (here,
15 Halo) *before* the calls are delivered to the carrier that actually terminates the call
16 to an end user. Halo and Transcom then argue that this process somehow
17 transforms landline-originated traffic into wireless-originated traffic, and somehow
18 transforms interMTA (*i.e.*, toll) wireless traffic into intraMTA (*i.e.*, local) traffic. In
19 this way, Halo erroneously contends that none of the traffic it hands off to ILECs
20 is access traffic or subject to access charges.

¹⁸ Exhibit JSM-2 at 64.

¹⁹ AT&T Kentucky witness Mark Neinast explains the term “least cost routing” at page 11 of his prefiled Direct Testimony.

1 **Q. HAS TRANSCOM PREVIOUSLY BEEN ASSOCIATED WITH OTHER**
2 **CARRIERS THAT ENGAGED IN ACCESS-AVOIDANCE PRACTICES?**

3 A. Yes. Transcom previously sent traffic to carriers like CommPartners and Global
4 NAPS, which, like Halo, had schemes designed to avoid access charges. Global
5 NAPs previously reported that a substantial portion of its traffic was delivered to it
6 by Transcom.²⁰ With Global NAPs in receivership and CommPartners in
7 bankruptcy, Halo provides a replacement vehicle for Transcom's continuing
8 arbitrage.

9
10 **III. HALO'S DEALINGS WITH AT&T**

11 **Q. WHEN DID HALO BEGIN TO SEND TRAFFIC TO AT&T?**

12 A. Halo first sent traffic to AT&T in Texas in September 2010, and to AT&T
13 Kentucky in February 2012. Typically, when a carrier enters the market, there is
14 a ramp-up period where one would expect growth to be steady, but not
15 exponential. Halo is notable in that the rate at which its traffic has grown has
16 been abnormally fast.

17 **Q. HAS HALO ENTERED INTO AN ICA WITH AT&T KENTUCKY UNDER**
18 **SECTIONS 251 AND 252 OF THE 1996 ACT?**

19 A. Yes. The ICA is attached to my testimony as **Exhibit JSM-4**. Halo actually
20 opted into the ICA of another carrier, T-Mobile, subject to one important

²⁰ *Palmerton Telephone Company v. Global NAPs South, Inc., Global NAPs Pennsylvania, Inc., Global NAPs, Inc. and Other Affiliates*, Docket C-2009-2093336, Opinion and Order entered March 16, 2010 ("the majority of [GNAPs'] traffic is received from three other carriers, Transcom, CommPartners and PointOne"); *Joint Petition Of Hollis Telephone et al for Authority to Block the Termination of Traffic from Global NAPs Inc.*, New Hampshire Public Utilities Commission, Docket No. DT 08-028, Reconsideration Order, Order No. 25,088 dated November 9, 2009; and *Matter of the Complaint of AT&T Ohio v. Global NAPs, Ohio, Inc.*, PUCO Case No. 08-690-TP-CSS, Opinion and Order dated June 9, 2010.

1 amendment, which I will discuss below. By letter dated May 5, 2010, this
2 Commission approved Halo's ICA, as amended, pursuant to Section 252(e) of
3 the 1996 Act.

4 **Q. ARE THERE DIFFERENT TYPES OF INTERCONNECTION AGREEMENTS**
5 **FOR DIFFERENT TYPES OF CARRIERS?**

6 A. Yes. Landline ICAs contain different terms and conditions than wireless ICAs
7 due to different treatment of the different types of traffic. A major difference
8 between landline and wireless ICAs concerns what constitutes a local call and
9 the appropriate compensation for the exchange of such calls between the
10 carriers' respective end users, as well as some differences in how landline and
11 wireless carriers provision and pay for certain network facilities.

12 **Q. WHAT TYPE OF ICA DOES HALO HAVE WITH AT&T KENTUCKY?**

13 A. The T-Mobile ICA Halo opted into with AT&T Kentucky is a wireless ICA.

14 **Q. WHAT IS THE SIGNIFICANCE OF THE AMENDMENT TO THE ICA THAT**
15 **YOU MENTIONED?**

16 A. The ICA amendment that Halo agreed to when it adopted the ICA includes the
17 following clause:

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

25
26 **Exhibit JSM-5** is a copy of this amendment. The significance of this amendment
27 is that it clearly provides that Halo can *only* send wireless-originated traffic to
28 AT&T Kentucky. Any landline-originated traffic sent by Halo to AT&T Kentucky
29 for termination is in violation of the terms of the ICA.

1 **IV. HALO'S BREACH OF THE ICA BY SENDING LANDLINE TRAFFIC**

2 **Q. HAS HALO BEEN COMPLYING WITH THE ICA BY SENDING ONLY**
3 **WIRELESS-ORIGINATED TRAFFIC TO AT&T KENTUCKY?**

4 A. No. As Count I of AT&T Kentucky's Formal Complaint alleges, Halo is breaching
5 the ICA by sending traffic that is originated when a retail end user places a call
6 using a landline telephone. This is not "traffic that originates through wireless
7 transmitting and receiving facilities" as required by the ICA. Furthermore, Halo
8 presented inaccurate call information that effectively disguised the type of traffic it
9 sent to AT&T. AT&T Kentucky witness Mark Neinast explains how AT&T
10 discovered the true nature of the calls that Halo has been sending to AT&T.

11 **Q. WHY DOES IT MATTER WHETHER HALO SENDS AT&T KENTUCKY**
12 **LANDLINE-ORIGINATED OR WIRELESS-ORIGINATED TRAFFIC?**

13 A. First and foremost, of course, it is important because the ICA requires Halo to
14 send AT&T Kentucky wireless-originated traffic only. There are no provisions in
15 the ICA that allow Halo to send AT&T Kentucky landline traffic. Accordingly,
16 Halo breached the contract when it did not abide by that requirement. Second,
17 there is a significant difference in what Halo is required to pay AT&T Kentucky for
18 terminating landline traffic (if such traffic were allowed) versus terminating
19 wireless traffic. This is known as "intercarrier compensation." Different
20 intercarrier compensation rates apply depending on whether traffic is local or
21 non-local, and the definitions of what qualifies as local or non-local differ
22 depending on whether the traffic is wireless or landline. Halo has been
23 breaching its ICA by sending non-local landline traffic to AT&T Kentucky but then
24 claiming the traffic is actually wireless and local, in order to pay a lower
25 intercarrier compensation rate. The ICA contains intercarrier compensation rates

1 for some kinds of traffic, but non-local landline traffic is subject to different rates
2 contained in AT&T Kentucky's switched access tariffs.

3 **Q. YOU SAID THAT LOCAL AND NON-LOCAL CALLS ARE DEFINED**
4 **DIFFERENTLY FOR WIRELESS AND LANDLINE TRAFFIC. PLEASE**
5 **ELABORATE.**

6 A. Whether a call is "local" (and thus subject to reciprocal compensation rates) or
7 "non-local" (and thus subject to tariffed access charges) is determined based on
8 different criteria for calls placed using a wireless device as opposed to calls
9 placed using a landline telephone. Consistent with the FCC's intercarrier
10 compensation regulations, AT&T Kentucky's ICAs with wireless carriers
11 (including the Halo ICA) provide that calls originated by and terminated to end-
12 users that are both physically located within the same MTA (Major Trading Area)
13 ("IntraMTA" calls) are "local" calls and thus subject to reciprocal compensation
14 rates. See ICA (Exhibit JSM-4), Section I. D., definition of "Local Traffic." An
15 MTA, therefore, is analogous to a landline local calling area, but as explained
16 below, it is typically much larger. Calls exchanged between end-users located in
17 different MTAs are "interMTA" calls and subject to tariffed interstate or intrastate
18 switched access charges, which are higher.

19 Different criteria are used to determine whether landline traffic is "local" or
20 "non-local" for purposes of intercarrier compensation. Landline traffic does not
21 rely on MTA boundaries. Rather, landline traffic uses what I will refer to generally
22 as "local calling areas," which are based on rate centers. Local calling area and
23 MTA boundaries are vastly different in size (with MTAs being geographically
24 much larger than local calling areas). There are only 5 MTAs that cover any

1 geographic area in Kentucky²¹ (and only 51 in the nation), whereas there are 374
2 local calling areas in Kentucky alone.

3 **Q. IS THERE A SIGNIFICANT DIFFERENCE BETWEEN THE AMOUNTS HALO**
4 **HAS BEEN PAYING AT&T KENTUCKY FOR TERMINATING HALO-**
5 **DELIVERED TRAFFIC TO ITS END USER CUSTOMERS AND THE AMOUNT**
6 **THAT HALO SHOULD HAVE BEEN PAYING AT&T KENTUCKY FOR**
7 **TERMINATING THAT TRAFFIC?**

8 A. Yes. Because it claims that all of the traffic it sends to AT&T Kentucky is
9 wireless and local (intraMTA), Halo has only been paying AT&T Kentucky the
10 reciprocal compensation rate on the Halo-delivered traffic that AT&T terminates.
11 As demonstrated in Mr. Neinast's testimony, however, much of the Halo-
12 delivered traffic is actually interexchange landline traffic and is therefore subject
13 to AT&T Kentucky's tariffed access charges – not reciprocal compensation. Of
14 course, Halo should not be sending AT&T Kentucky any landline-originated traffic
15 at all, but when it does send such traffic it obviously should be responsible for
16 paying the applicable terminating access rate.

17 **Q. DOES HALO DENY THAT IT HAS BEEN SENDING AT&T TRAFFIC THAT**
18 **BEGINS USING A LANDLINE VOICE SERVICE?**

19 A. No. In fact, Halo has consistently acknowledged in its testimony in other states
20 that it delivers traffic to AT&T that starts out on landline equipment, such as a
21 regular landline phone. Halo has argued, however, that even when calls actually
22 begin as landline calls, they somehow "originate" again as wireless (and local)
23 calls when they pass through Transcom before reaching Halo. More specifically,
24 Halo has contended that Transcom is an "Enhanced Service Provider," or "ESP,"

²¹ Almost 80% of the land area of Kentucky is contained in a single MTA.

1 that ESPs are treated as “end users,” and that ESPs are deemed to originate (or
2 re-originate) calls that pass through them.

3 **Q. HAS THE FCC ADDRESSED HALO’S ARGUMENT?**

4 A. Yes. In its *Connect America Order*, the FCC rejected Halo’s argument about
5 where Halo’s calls originate. Here is the FCC’s discussion, which I quote at
6 length because of its importance:

7 1003. In the *Local Competition First Report and Order*, the Commission
8 stated that calls between a LEC and a CMRS provider that originate and
9 terminate within the same Major Trading Area (MTA) at the time that the
10 call is initiated are subject to reciprocal compensation obligations under
11 section 251(b)(5), rather than interstate or intrastate access charges. As
12 noted above, this rule, referred to as the “intraMTA rule,” also governs the
13 scope of traffic between LECs and CMRS providers that is subject to
14 compensation under section 20.11(b). The *USF/ICC Transformation*
15 *NPRM* sought comment, *inter alia*, on the proper interpretation of this rule.

16
17 1004. The record presents several issues regarding the scope and
18 interpretation of the intraMTA rule. Because the changes we adopt in this
19 Order maintain, during the transition, distinctions in the compensation
20 available under the reciprocal compensation regime and compensation
21 owed under the access regime, parties must continue to rely on the
22 intraMTA rule to define the scope of LEC-CMRS traffic that falls under the
23 reciprocal compensation regime. We therefore take this opportunity to
24 remove any ambiguity regarding the interpretation of the intraMTA rule.

25
26 1005. We first address a dispute regarding the interpretation of the
27 intraMTA rule. **Halo Wireless (Halo) asserts that it offers “Common
28 Carrier wireless exchange services to ESP and enterprise
29 customers” in which the customer “connects wirelessly to Halo base
30 stations in each MTA.”**²² It further asserts that its “high volume” service
31 is CMRS because “the customer connects to Halo’s base station using
32 wireless equipment which is capable of operation while in motion.” **Halo
33 argues that, for purposes of applying the intraMTA rule, “[t]he
34 origination point for Halo traffic is the base station to which Halo’s
35 customers connect wirelessly.”** On the other hand, ERTA claims that

²² The FCC cited two Halo *ex parte* filings for this description, which make clear that the alleged ESP is Transcom. For reference, I attach Halo’s two *ex partes* as **Exhibit JSM-6** and **Exhibit JSM-7**.

1 Halo's traffic is not from its own retail customers but is instead from a
2 number of other LECs, CLECs, and CMRS providers. **NTCA further**
3 **submitted an analysis of call records for calls received by some of**
4 **its member rural LECs from Halo indicating that most of the calls**
5 **either did not originate on a CMRS line or were not intraMTA, and**
6 **that even if CMRS might be used “in the middle,” this does not affect**
7 **the categorization of the call for intercarrier compensation purposes.**
8 These parties thus assert that by characterizing access traffic as intraMTA
9 reciprocal compensation traffic, Halo is failing to pay the requisite
10 compensation to terminating rural LECs for a very large amount of traffic.
11 Responding to this dispute, CTIA asserts that “it is unclear whether the
12 intraMTA rules would even apply in that case.”

13
14 1006. **We clarify that a call is considered to be originated by a CMRS**
15 **provider for purposes of the intraMTA rule only if the calling party**
16 **initiating the call has done so through a CMRS provider.** Where a
17 provider is merely providing a transiting service, it is well established that
18 a transiting carrier is not considered the originating carrier for purposes of
19 the reciprocal compensation rules. Thus, we agree with NECA that **the**
20 **“re-origination” of a call over a wireless link in the middle of the call**
21 **path does not convert a wireline-originated call into a CMRS-**
22 **originated call for purposes of reciprocal compensation and we**
23 **disagree with Halo’s contrary position.** (Emphasis added, footnotes
24 omitted).²³
25

26 **Q. BASED ON YOUR PARTICIPATION IN THE PARALLEL CASES INVOLVING**
27 **AT&T ILECS AND HALO IN OTHER STATES, DOES HALO AGREE THAT**
28 **THE FCC HAS REJECTED HALO’S THEORY THAT ALL CALLS ORIGINATE**
29 **WITH TRANSCOM?**

30 A. Yes. In the early stages of the litigation between AT&T ILECs and Halo, Halo’s
31 position on the FCC’s Order was a moving target, as Halo has struggled to try to
32 find some way to avoid the unavoidable fact that that Order deprives it of any
33 defense against AT&T’s claims. Halo now acknowledges, however, that the FCC
34 rejected its theory. For example, Halo’s attorney asked the following questions at
35 the hearing in the Wisconsin case on February 28, 2012:

²³ *Connect America Fund*, FCC 11-161, 2011 WL 5844975 (rel. Nov. 18, 2011) (“*Connect America Order*”).

1 Q: Now, you understand Halo took the position all along, even before
2 the FCC order, based on our reading of the rules, we thought
3 Transcom was the originating party. You understand we took that
4 position, right?
5

6 A: I've read that.
7

8 Q. Okay. *And the FCC disagreed on November 18th?*
9

10 A. I've read that, too.²⁴
11

12 In addition, Russ Wiseman, who has routinely testified on behalf of Halo in these
13 proceedings as Halo's president, testified as follows in the most recent version of
14 his testimony, in Georgia: "We acknowledge that the FCC . . . apparently now
15 believes ESPs . . . do not originate calls."²⁵ This is clearly an acknowledgement
16 that the FCC has rejected Halo's theory, because the only basis for Halo's theory
17 that Transcom originates the calls that Halo delivers to AT&T was Halo's
18 contention that Transcom is an ESP.
19

20 **V. HALO'S LIABILITY FOR ACCESS CHARGES**

21 **Q. WHAT IS THE BASIS FOR AT&T KENTUCKY'S REQUEST THAT THE**
22 **COMMISSION RULE THAT HALO MUST PAY AT&T KENTUCKY ACCESS**
23 **CHARGES?**

24 A. As demonstrated above, Halo is sending AT&T Kentucky interexchange landline
25 traffic for termination to AT&T Kentucky's customers. Halo has been paying
26 AT&T Kentucky reciprocal compensation on this traffic (as if the traffic were local)

²⁴ See **Exhibit JSM-8** (Excerpts from Transcript of February 28, 2012 Hearing in Wisconsin Public Service Commission's Investigation into Practices of Halo Wireless, Inc. and Transcom Enhanced Services, Inc. (PSCW Docket No. 9594-TI-100), at 94-95 (emphasis added).

²⁵ Prefiled Direct Testimony of Russ Wiseman on Behalf of Halo Wireless, Inc., filed March 19, 2012, in Georgia Public Service Commission Docket No. 34219, at 31, lines 3-4.

1 rather than the higher access charges that apply to interexchange traffic. AT&T
2 Kentucky is simply asking the Commission to rule that Halo owes access
3 charges on the interexchange traffic that AT&T Kentucky has terminated to its
4 end user customers for Halo (minus a credit for charges Halo has paid). AT&T
5 Kentucky, however, is not asking the Commission to determine how much Halo
6 owes – that task is for the bankruptcy court.

7 **Q. ARE THE ACCESS CHARGE RATES THAT HALO OWES SET FORTH IN**
8 **THE PARTIES' INTERCONNECTION AGREEMENT?**

9 A. No, these are tariffed rates. AT&T Kentucky's federal tariff, filed with the FCC,
10 requires Halo to pay access charges on the interstate traffic AT&T Kentucky has
11 terminated for Halo, and AT&T Kentucky's state tariff, filed with this Commission,
12 requires Halo to pay access charges on the intrastate non-local traffic AT&T
13 Kentucky has terminated for Halo.

14 **Q. WHAT ARE THE PERTINENT PROVISIONS OF THE FEDERAL TARIFF?**

15 A. BellSouth Telecommunications Tariff F.C.C. No. 1, Sections 6.8.1 and 6.8.2.

16 **Q. WHAT ARE THE PERTINENT PROVISIONS OF THE STATE TARIFF?**

17 A. BellSouth Telecommunications, Inc. Kentucky Access Services Tariff Sections
18 E6.8.1 and E6.8.3.

19
20 **VI. HALO'S BREACH OF ICA BY SENDING INACCURATE CALL DETAIL**

21
22 **Q. IN ADDITION TO VIOLATING THE TERMS OF THE ICA BY SENDING**
23 **LANDLINE TRAFFIC TO AT&T KENTUCKY, HAS HALO BREACHED OTHER**
24 **PROVISIONS OF THE ICA?**

25 A. Yes. Halo has violated the ICA by sending inaccurate call information.

1 **Q. IS HALO REQUIRED TO PROVIDE ACCURATE CALL DETAIL**
2 **INFORMATION FOR THE TRAFFIC IT SENDS TO AT&T KENTUCKY?**

3 A. Yes. Section XIV.G of the ICA states:

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

9 This is an important provision. One of the major reasons carriers enter into ICAs
10 is to provide the terms and conditions under which the parties will exchange
11 traffic between their respective end users and to appropriately bill each other for
12 that traffic. Call detail information is used for determining the appropriate
13 intercarrier compensation due, and without proper call detail information, calls
14 cannot be easily and accurately analyzed by billing systems.

15 **Q. HAS HALO FULFILLED ITS CONTRACTUAL OBLIGATION TO PROVIDE**
16 **ACCURATE CALL DETAIL TO AT&T KENTUCKY?**

17 A. No. As Mr. Neinast describes in his testimony, Halo has sent traffic to AT&T
18 Kentucky that contained inaccurate call detail information, and thus breached the
19 ICA.

20 **Q. HALO HAS ARGUED IN OTHER STATES THAT INSERTING AN**
21 **INACCURATE CHARGE NUMBER MADE NO DIFFERENCE, BECAUSE THE**
22 **ICA USES FACTORS TO DETERMINE THE PERCENTAGE OF HALO**
23 **TRAFFIC THAT WILL BE BILLED AS LOCAL TRAFFIC VERSUS TOLL**
24 **TRAFFIC. PLEASE RESPOND.**

25 A. The ICA does use factors to determine how much Halo traffic will be billed as
26 local traffic versus toll traffic, but these factors *only* apply to *wireless* traffic. The
27 ICA does not have any factor for landline traffic because the ICA does not allow
28 Halo to send any landline traffic to AT&T Kentucky in the first place.

1 As for wireless traffic, while the ICA originally used a 1% factor to treat 1%
2 of the traffic from Halo as interMTA (toll) traffic and the rest as local traffic, that
3 was only a default factor “[f]or Carriers that have not exchanged traffic under a
4 previous CMRS interconnection agreement with BellSouth or for traffic categories
5 that are not technically feasible to measure.” ICA Section VII.E. The ICA
6 provides that AT&T can unilaterally update the percentages for purposes of
7 billing switched access if it is technically possible for AT&T to measure traffic for
8 classification. AT&T has determined that the PLU (percent local usage factor)
9 and the PIU (percent interstate usage factor) for the wireless traffic that Halo has
10 been sending to AT&T are different than the default percentages. Accordingly,
11 AT&T notified Halo that it intended to bill Halo using updated factors for wireless
12 traffic in its May 13, 2011 Demand Letter to Halo. That letter communicated new
13 factors to Halo for wireless traffic subject to switched access rates, based upon
14 actual traffic data. As that letter explains, not only has Halo been improperly
15 avoiding access charges on large amounts of unauthorized landline traffic, but it
16 also has been sending significantly more interMTA wireless traffic than it told
17 AT&T it would.

18
19 **VII. HALO’S BREACH OF ICA BY FAILING TO PAY FOR FACILITIES**

20 **Q. WHAT IS AT&T KENTUCKY’S CLAIM CONCERNING FACILITIES**
21 **CHARGES?**

22 A. Halo has purchased transport facilities from AT&T Kentucky, and AT&T Kentucky
23 has provided those facilities pursuant to the terms of the ICA, but Halo has not
24 paid AT&T Kentucky for those facilities.

1 **Q. WHAT FACILITIES ARE IN DISPUTE?**

2 A. Halo ordered – and AT&T Kentucky provisioned – DS3 and DS1 channelized
3 facilities, multiplexing for those channels, cross-connects to connect facilities
4 Halo leased from a third party to the facilities Halo ordered from AT&T Kentucky,
5 as well as channel terminations to three AT&T Kentucky switches. To be
6 precise, Halo obtained both DS3 and DS1 facilities at two locations (Louisville
7 and Winchester), and only DS1 facilities in one location (Owensboro).

8 **Q. HOW MUCH DOES HALO OWE AT&T KENTUCKY FOR THE FACILITIES IT**
9 **OBTAINED FROM AT&T KENTUCKY?**

10 A. Even though Halo has ordered these facilities from AT&T Kentucky and AT&T
11 Kentucky provided them, Halo has refused to pay AT&T Kentucky for them.
12 AT&T Kentucky has billed Halo the use of these facilities, and as of March 31,
13 2012, Halo had disputed and failed to pay \$308,916.32 of the facilities charges
14 AT&T Kentucky billed.

15 **Q. WHAT IS THE BASIS FOR AT&T KENTUCKY’S CLAIM IN THE ICA?**

16 A. Under the ICA, the costs for wireless facilities are apportioned based upon the
17 percentage of traffic each carrier is responsible for. In this case, AT&T Kentucky
18 is responsible for the portion of traffic that originates with AT&T Kentucky end
19 users and is destined for Halo, while Halo is responsible for the portion of traffic
20 Halo sends to AT&T Kentucky for termination to AT&T Kentucky end users. Halo
21 is also responsible for any intermediary (transit) traffic exchanged between third
22 party carriers and Halo that is transported via these facilities. Section V.B. of the
23 ICA addresses “Interconnection Trunk Group Options” for facilities and provides:

1 BellSouth and Carrier will share the cost of the two-way trunk group
2 carrying both Parties traffic proportionally when purchased via this
3 Agreement or the General Subscriber Services Tariff, Section A35,
4 or, in the case of North Carolina, in the North Carolina Connection
5 and Traffic Interchange Agreement effective June 30, 1994, as
6 amended from time to time. BellSouth will bear the cost of the two-
7 way trunk group for the proportion of the facility utilized for the
8 delivery of BellSouth originated Local traffic to Carrier's POI within
9 BellSouth's service territory and within the LATA (calculated based
10 on the number of minutes of traffic identified as BellSouth's divided
11 by the total minutes of use on the facility), and Carrier will provide
12 or bear the cost of the two-way trunk group for all other traffic,
13 including Intermediary traffic.

14 In addition, Section VI.B.2 states "[t]he Parties agree to share proportionally in
15 the recurring costs of two-way interconnection facilities." The apportioning of
16 these facilities costs applies for the entire facility between AT&T Kentucky's
17 switch and Halo's switch.

18 **Q. IS THIS THE SAME WAY FACILITIES COSTS ARE APPORTIONED IN CLEC**
19 **LANDLINE ICAS?**

20 A. No. In landline CLEC ICAs, each carrier is solely financially responsible for all of
21 the facilities on its respective side of the Point of Interconnection ("POI"). For
22 example, in an ICA between AT&T Kentucky and ABC CLEC, the parties would
23 agree upon the location of a POI for purposes of interconnection, and each
24 carrier would then provision its own facilities from its switch to that POI. The POI
25 is the demarcation indicating the distinct networks of each carrier. Wireless
26 interconnection, as I just discussed, does not apply this methodology, but instead
27 provides that each carrier share the costs of the entire facility, based upon their
28 respective usage of that facility.

1 Q. WITH RESPECT TO HALO'S INTERCONNECTION, WHAT IS THE
2 PROPORTION OF THE FACILITY COSTS ASSIGNED TO HALO BASED
3 UPON SECTION V.B. OF THE ICA?

4 A. Halo is responsible for 100% (or very close to 100%) of the facilities costs as
5 AT&T Kentucky originates no (or very little) traffic destined to Halo's switch.²⁶
6 Nearly all of the traffic exchanged between Halo and AT&T Kentucky comes from
7 Halo and is destined for termination by AT&T Kentucky or a third party carrier
8 subtending AT&T Kentucky's tandem switch.

9 Q. GIVEN THAT HALO IS RESPONSIBLE FOR NEARLY 100% OF THE
10 FACILITIES COSTS, DOES THE ICA PROVIDE FOR HOW HALO WILL BE
11 BILLED FOR ANY PORTIONS OF THAT FACILITY THAT AT&T KENTUCKY
12 HAS PROVISIONED?

13 A. Yes. Section VI.B., "Compensation of Facilities," of the ICA provides how Halo is
14 to be billed for the facilities it orders from AT&T Kentucky. Specifically, VI.B.2.b
15 states:

16 BellSouth will bill Carrier for the entire cost of the facility. Carrier
17 will then apply the BellSouth originated percent against the Local
18 Traffic portion of the two-way interconnection facility charges billed
19 by BellSouth to Carrier. Carrier will invoice BellSouth on a monthly
20 basis, this proportionate cost for the facilities utilized by BellSouth.

21 Q. HALO HAS CONTENDED IN OTHER PROCEEDINGS THAT IT PROVIDES
22 ITS OWN INTERCONNECTION FACILITIES, OBTAINED FROM A THIRD
23 PARTY, AND THAT HALO THEREFORE DOES NOT OWE FACILITIES
24 CHARGES TO AT&T. DO YOU AGREE?

25 A. No, I do not. While it may very well be true that Halo has provisioned some of its
26 own interconnection facilities leased from a third party, Halo's facilities do not

²⁶ I say 100% or nearly 100% based upon recorded data for Halo's traffic. For example, the January 2012 usage data shows AT&T sent just 435 MOUs to Halo across the entire nine-state AT&T Southeast Region.

1 extend all the way to AT&T Kentucky's switches. The entirety of the
2 interconnection facility is from Halo's switch to AT&T Kentucky's switch, and
3 Halo's facility does not quite reach its destination. The charges in dispute are for
4 the AT&T Kentucky-provided facilities that extend from the end of Halo's facility
5 (for example, at a third party collocation cage where Halo's leased facility
6 terminates) to AT&T Kentucky's switch ports. Though the facilities that AT&T
7 Kentucky is providing to Halo may all be within the confines of a single building,
8 they are necessary in order to connect Halo to AT&T Kentucky for the purposes
9 of exchanging traffic.

10
11 **VIII. CONCLUSION AND BASIS FOR DISCONTINUATION OF SERVICE TO HALO**

12 **Q. HOW SHOULD THE COMMISSION RULE IN THIS PROCEEDING?**

13 A. The Commission should find that Halo has breached the parties' ICA by sending
14 landline-originated traffic, by providing AT&T Kentucky incorrect call data, and by
15 refusing to pay for interconnection facilities.

16 **Q. WHAT RELIEF IS AT&T KENTUCKY SEEKING FROM THE COMMISSION**
17 **FOR HALO'S BREACHES OF THE ICA?**

18 A. AT&T Kentucky is asking the Commission to:

19 (a) Find that Halo has materially breached the ICA by (1) sending
20 landline-originated traffic to AT&T Kentucky, (2) inserting incorrect Charge
21 Number information on calls; and (3) failing to pay AT&T Kentucky for facilities
22 Halo obtained from AT&T Kentucky;

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

4 (c) Find, without quantifying any specific amount due, that Halo is
5 liable to AT&T Kentucky for access charges on the non-local landline traffic it has
6 sent to AT&T Kentucky for termination to AT&T Kentucky's end user customers;

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

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

11 **Q. WHY DO HALO'S BREACHES EXCUSE AT&T KENTUCKY FROM FURTHER**
12 **PERFORMANCE UNDER THE ICA?**

13 A. That is a legal question. I am informed by counsel, however, that under
14 Kentucky law, a party to a contract is excused from performing its obligations
15 under the contract if the other party materially breaches the contract. Also, Halo
16 has not disputed, in any of the numerous parallel proceedings, that AT&T would
17 be entitled to discontinue performance under the ICA if it is determined that Halo
18 has breached the ICA as AT&T contends it has.

19 **Q. IS THE BREACH HALO COMMITS WHEN IT SENDS AT&T KENTUCKY**
20 **LANDLINE-ORIGINATED TRAFFIC A MATERIAL BREACH?**

21 A. From my perspective, yes. I do not know if the term "material" has a specific
22 legal meaning. If it does, I cannot speak to that. I can say, however, that the
23 requirement that Halo send AT&T Kentucky only wireless-originated traffic goes
24 to the very heart of the parties' agreement, as evidenced by the fact that the ICA

1 was specifically amended when Halo entered it in order to make this requirement
2 clear. This is a wireless agreement for a supposedly wireless provider, and that
3 is absolutely central to the parties' arrangement. By sending AT&T Kentucky
4 landline-originated traffic, Halo was not violating some secondary or ancillary
5 requirement; it was violating the very core of the agreed arrangement.

6 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

7 **A. Yes.**

1037290

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” orders⁶ 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.

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 some⁹ 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

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); *Geri 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" traffic²¹ 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 Inter-carrier 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 protocol-compatible 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)

NILES BERMAN
Wisconsin State Bar No. 1017082
**WHEELER, VAN SICKLE &
ANDERSON, S.C.**
25 West Main Street, Suite 801
Madison, WI 53703
Phone: 608.255.7277
Fax: 608.255.6006

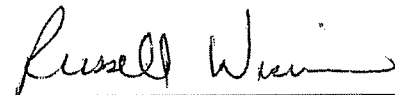
STEVEN H. THOMAS
Texas State Bar No. 19868890
TROY P. MAJOUÉ
Texas State Bar No. 24067738
JENNIFER M. LARSON
Texas State Bar No. 24071167
**McGUIRE, CRADDOCK
& STROTHER, P.C.**
2501 N. Harwood, Suite 1800
Dallas, TX 75201
Phone: 214.954.6800
Fax: 214.954.6850

W. SCOTT MCCOLLOUGH
Texas State Bar No. 13434100
Federal Bar No. 53446
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.
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.

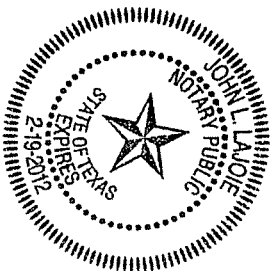


Russell Wiseman
President, Halo Wireless, Inc.

SUBSCRIBED and SWORN to before me by Russell Wiseman, this 2 day of December, 2011.

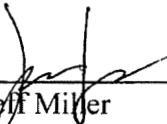


NOTARY PUBLIC, STATE OF TEXAS



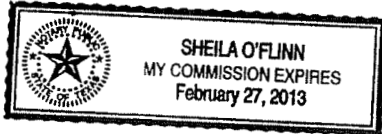
VERIFICATION OF TRANSCOM ENHANCED SERVICES, INC.

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.





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 SERVICES, LLC,	§	CHAPTER 11
	§	
DEBTOR.	§	CONFIRMATION HEARING: 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

Order Confirming Plan - Page 1

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

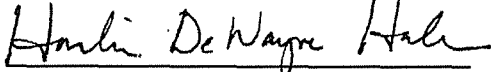


ENTERED

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.

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.	§	
<hr/>	§	
TRANSCOM ENHANCED SERVICES, INC.,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	
	§	
GLOBAL CROSSING BANDWIDTH, INC. and GLOBAL CROSSING TELECOMMUNICATIONS, INC.,	§	ADVERSARY NO. 06-03477-HDH
	§	
Defendants.	§	
<hr/>	§	

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###

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EXHIBIT 3

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

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

427 B.R. 585
(Cite as: 427 B.R. 585)

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")

427 B.R. 585
(Cite as: 427 B.R. 585)

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-

427 B.R. 585
(Cite as: 427 B.R. 585)

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 Liljeberg 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

427 B.R. 585
(Cite as: 427 B.R. 585)

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:

427 B.R. 585
(Cite as: 427 B.R. 585)

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

427 B.R. 585
(Cite as: 427 B.R. 585)

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.

Bkrcty.N.D.Tex.,2005.
In re Transcom Enhanced Services, LLC
427 B.R. 585

END OF DOCUMENT

EXHIBIT 4

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



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

**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. - Page 1**

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).

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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 accruing 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

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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

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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

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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

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	\$ -

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	\$	-

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

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

1

RADIO STATION AUTHORIZATION

LICENSEE: HALO WIRELESS

ATTN: NATHAN NELSON
HALO WIRELESS
307 WEST 7TH STREET SUITE 1600
FORT WORTH, TX 76102-5114

Call Sign WQJW781	File Number 0003681223
Radio Service NN - 3650-3700 MHz	
Regulatory Status Common Carrier	

FCC Registration Number (FRN): 0018359711

Grant Date 01-27-2009	Effective Date 01-27-2009	Expiration Date 11-30-2018	Print Date 01-27-2009
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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)

<p>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.</p>
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

In Re:) Case No. 11-42464
))
HALO WIRELESS, INC.,)
) Sherman, Texas
Debtor.) 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

1 For AT&T:

Toby L. Gerber
FULBRIGHT & JAWORSKI, LLP
2200 Ross Avenue, Suite 2800
Dallas, TX 75201-2784
(214) 855-8000

4 Transcription Service:

Kathy Rehling
209 Bay Circle
Coppell, TX 75019
(972) 304-1998

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Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 SHERMAN, TEXAS - SEPTEMBER 19, 2011

2 MR. VARDEMAN: This is the meeting of creditors in
3 Bankruptcy Case No. 11-42464, Halo Wireless, Inc. That's the
4 name of the debtor. The Debtor's attorney is Mr. Paul
5 Keiffer, and also Ms. Kim Moses. Both of those are present
6 today. The Debtor's representatives are Russell Wiseman and
7 Jeff Miller. I have checked their driver's licenses, for the
8 record.

9 Mr. Wiseman and Mr. Miller, my name is John Vardeman.
10 I'm an attorney with the U.S. Trustee's Office. I need to
11 swear you in and ask you some questions. Please raise your
12 right hand as I swear you in, and please answer all of my
13 questions out loud. We are recording this.

14 (Mr. Wiseman and Mr. Miller are sworn.)

15 MR. VARDEMAN: And Mr. Wiseman, what is your
16 capacity with the Debtor?

17 MR. WISEMAN: President and Chief Operating Officer.

18 MR. VARDEMAN: And Mr. Miller?

19 MR. MILLER: Chief Financial Officer.

20 MR. VARDEMAN: Okay. Did you help Mr. Keiffer and
21 Ms. Moses in the preparation of the bankruptcy petition, the
22 schedules, and the Statement of Financial Affairs filed in
23 this case?

24 MR. WISEMAN: Yes.

25 MR. MILLER: Yes.

1 MR. VARDEMAN: Is all of the information contained
2 in the bankruptcy filing true and correct?

3 MR. WISEMAN: Yes, to our knowledge.

4 MR. MILLER: Yes.

5 MR. VARDEMAN: Did you list all of the Debtor's
6 assets?

7 MR. WISEMAN: Yes.

8 MR. MILLER: Yes.

9 MR. VARDEMAN: Did you list all of the Debtor's
10 liabilities?

11 MR. WISEMAN: Yes.

12 MR. MILLER: Yes.

13 MR. VARDEMAN: Is there anything in the bankruptcy
14 filing that needs to be changed or corrected at this point?

15 MR. WISEMAN: No.

16 MR. MILLER: No.

17 MR. VARDEMAN: Okay. Mr. Keiffer, as I understand,
18 the Debtor was provided approximately \$50,000 as a retainer
19 in this case. Is that correct?

20 MR. KEIFFER: Correct. Of which \$42,000 was filed
21 with the -- as the actual retainer. The \$8,000 was pre --
22 earned prepetition.

23 MR. VARDEMAN: All right. And there is an
24 application to employ on file. Is that correct?

25 MR. KEIFFER: Already granted.

1 MR. VARDEMAN: Are there going to be any other
2 professionals hired in this case?

3 MR. KEIFFER: There are already two professionals
4 employed by the Court. There are two that remain at issue.

5 MR. VARDEMAN: These are special counsel?

6 MR. KEIFFER: Correct.

7 MR. VARDEMAN: Any CPAs or Realtors or anything, --

8 MR. KEIFFER: No.

9 MR. VARDEMAN: -- valuation experts?

10 MR. KEIFFER: Not at this juncture.

11 MR. VARDEMAN: All right. Where is the debtor in
12 possession account located?

13 MR. MILLER: Wells Fargo.

14 MR. VARDEMAN: Are there any other accounts still
15 open that the Debtor has an interest in?

16 MR. MILLER: No, sir.

17 MR. VARDEMAN: How much money does the Debtor have?
18 Everything?

19 MR. KEIFFER: Today, or on the date of --

20 MR. VARDEMAN: Today. Approximately.

21 MR. MILLER: I don't know that. I mean, --

22 MR. VARDEMAN: Mr. Wiseman, do you know?

23 MR. WISEMAN: I do not know, no.

24 MR. VARDEMAN: Okay. How would you find out?

25 MR. MILLER: I'd just call. I mean, I know at the

1 end of August there was roughly \$300,000 in the account.

2 MR. GERBER: Could you speak up a bit?

3 MR. MILLER: Sure.

4 MR. GERBER: And say it again?

5 MR. MILLER: Sure. At the end of August, there was
6 roughly \$300,000 on the books.

7 MR. VARDEMAN: Is there a cash collateral issue in
8 this case?

9 MR. KEIFFER: No.

10 MR. VARDEMAN: The case was filed on August the 8th.
11 I believe, then, the monthly operating report would be first
12 due tomorrow, on September the 20th, and every 20th of the
13 month thereafter.

14 MR. KEIFFER: Correct. And working on it now.
15 People are working on it now. We should get our first draft
16 this afternoon.

17 MR. VARDEMAN: Are you operating a business?

18 MR. MILLER: Yes.

19 MR. VARDEMAN: Okay. How many employees --

20 MR. KEIFFER: Try to be a little more forceful in
21 your --

22 MR. VARDEMAN: Yeah. We are recording it.

23 MR. MILLER: I'm sorry. Okay.

24 MR. VARDEMAN: How many employees?

25 MR. MILLER: Two employees, and 15 -- 15 --

1 MR. WISEMAN: Contractor/consultants included, or
2 just employees?

3 MR. VARDEMAN: Just employees.

4 MR. MILLER: Two.

5 MR. VARDEMAN: Are you the two employees?

6 MR. WISEMAN: No. Well, he is.

7 MR. MILLER: I am a --

8 MR. VARDEMAN: Okay. And who's the other employee?

9 MR. MILLER: Carolyn Malone.

10 MR. VARDEMAN: All right. Are your wages current
11 since the date of the bankruptcy?

12 MR. MILLER: Yes.

13 MR. VARDEMAN: Tax withholding?

14 MR. MILLER: Yes.

15 MR. VARDEMAN: All the bills that have come due
16 since the date of the bankruptcy, are those current?

17 MR. MILLER: Yes. All right. Can you --

18 MR. KEIFFER: We usually say all the bills that have
19 accrued postpetition and are due currently, we have. There
20 may have been other bills that have come due, but the split,
21 we've -- we'll take the pre and post and take care of that.

22 MR. VARDEMAN: Is it the same answer?

23 MR. MILLER: Yes.

24 MR. VARDEMAN: Okay. Are there any officers that
25 are being compensated? Are you being compensated?

1 MR. MILLER: Yes.

2 MR. VARDEMAN: All right. And how much are you
3 compensated, Mr. Miller?

4 MR. MILLER: \$500 a month.

5 MR. VARDEMAN: Is that it?

6 MR. MILLER: Yes.

7 MR. VARDEMAN: Mr. Wiseman?

8 MR. WISEMAN: Yes, sir?

9 MR. VARDEMAN: Are you being compensated?

10 MR. WISEMAN: Yes.

11 MR. VARDEMAN: How much?

12 MR. WISEMAN: As -- I'm not an employee.

13 MR. VARDEMAN: As an officer?

14 MR. WISEMAN: My annual compensation through my
15 employer is \$200,000 a year.

16 MR. VARDEMAN: Who is your employer?

17 MR. WISEMAN: Source Communications of America.

18 MR. VARDEMAN: All right. Do you receive any
19 compensation from Halo Wireless?

20 MR. KEIFFER: Directly?

21 MR. WISEMAN: Directly? No.

22 MR. VARDEMAN: Okay. Any other officers that
23 receive compensation?

24 MR. MILLER: Carolyn Malone.

25 MR. KEIFFER: Is she an officer or an employee?

1 MR. MILLER: She's an officer and an employee.

2 MR. KEIFFER: All right.

3 MR. VARDEMAN: How much does she get?

4 MR. MILLER: \$500 a month.

5 MR. VARDEMAN: Where do you carry your casualty and
6 liability insurance?

7 MR. MILLER: I'd have to look it up.

8 MR. KEIFFER: I don't know that there's a statement
9 on it. Do you recall, Kim? Do we pay any -- we sent the
10 data to them.

11 MR. VARDEMAN: You've provided that to our office?

12 MR. KEIFFER: Yes. We provided that --

13 MR. VARDEMAN: Okay. Then I'll waive that question
14 for the time being until we have a chance to look at that.

15 Okay. Franchises and licenses: Are there franchises and
16 licenses that the Debtor has?

17 MR. WISEMAN: Would you consider the radio station
18 authorization from the FCC a license?

19 MR. VARDEMAN: I would.

20 MR. KEIFFER: Yes.

21 MR. WISEMAN: Off the top of my head, that's the
22 only one I can think of.

23 MR. VARDEMAN: FCC license? Is there just one?

24 MR. WISEMAN: Yes.

25 MR. VARDEMAN: Are you current with your obligations

1 on that?

2 MR. WISEMAN: There are no obligations on it.

3 MR. KEIFFER: We do have another license listed on
4 Schedule B-23 as Ameliowave software license.

5 MR. VARDEMAN: Okay.

6 MR. KEIFFER: But that's -- I don't know if -- you
7 know, that depends upon whether you consider your Microsoft
8 operating system license as a license.

9 MR. VARDEMAN: Okay. All right.

10 MR. MILLER: Right. It's just a software license.

11 MR. VARDEMAN: Right. Mr. Keiffer, very briefly,
12 tell me how we got here and where we're going. I think
13 everybody knows, though.

14 MR. KEIFFER: Everybody knows and everybody has
15 their opinions on whether they agree with how I put it or
16 not. But the Debtor was facing or involved in at least 20
17 actions in 10 different states, in either public utilities
18 commissions, public service commissions, state district or
19 U.S. district courts, some of which the Debtor brought
20 themselves but most of which they had not, the vast majority
21 they had not.

22 Regarding the nature of the Debtor's operations, that 20
23 -- and, again, continued to increase; it was moving up in
24 time -- litigation sequence was crippling to the Debtor's
25 prospects. The Debtor could not continue, did not have the

1 There may be interim decisions that may make one thing happen
2 and you have to operate under that, but there'll be appellate
3 rights. This matter will not, I suspect, when the first
4 judge makes the first statement about -- at the first battle,
5 that that will be the end of it. I suspect we'll be going up
6 as far as these -- as circumstances will allow us.

7 MR. VARDEMAN: Okay. All right. I understand.

8 Okay. How many creditor groups do we have represented
9 here? If you'll please raise your hand. Okay. I see four
10 hands. Okay. What I'll do is I'll divide your time up ten
11 minutes at a time and we'll go that way and see where we get
12 from at that point.

13 I think we all sat in on the hearing the other day. I
14 know what the issues are in this case. Please understand
15 that the scope of the 341 is basically to find out about the
16 Debtor's assets, liabilities, income and expenses, and their
17 schedules. So let's please limit the questions to those
18 items.

19 It's always ladies first. Ma'am, you're first. Your
20 name and who do you represent?

21 MS. BROWN: Brook Brown.

22 MR. VARDEMAN: Okay.

23 MS. BROWN: And I represent the Texas and Missouri
24 Telephone Companies.

25 MR. VARDEMAN: Do you have questions for the Debtor?

1 MS. BROWN: Yes, I do. Pull up a chair?

2 MR. VARDEMAN: You may. That would be the easiest
3 thing to do.

4 MS. BROWN: Thank you.

5 MR. VARDEMAN: Okay. Go ahead.

6 MS. BROWN: Thank you. Mr. Wiseman and Mr. Miller,
7 could you turn to Schedule B? And can you tell me: Are the
8 base stations with which Halo connects with Transcom, are
9 they shown on this Schedule B?

10 MR. WISEMAN: The base stations that Halo connects
11 to Transcom with? The Halo base stations are leased through
12 a company called SAT Net. So the leasing arrangements are
13 included in the schedules, but the assets themselves are
14 owned by a company called SAT Net.

15 MR. KEIFFER: The SAT Net reference is in Schedule
16 G. And there is a reference at that point in Schedule G that
17 there's an issue of whether it is or isn't a lease. We
18 reserve that point.

19 MS. BROWN: Okay. What is the annual amount of that
20 lease?

21 MR. MILLER: Well, the current payment terms are
22 \$165,000 a month for 12 months.

23 MR. KEIFFER: It would be about \$1,900,000 to \$2
24 million?

25 MR. MILLER: Right. The current --

1 MR. KEIFFER: For an annual.

2 MR. MILLER: The current obligation --

3 MS. BROWN: A month for nine months, did you say?

4 I'm sorry.

5 MR. MILLER: Twelve. Twelve months.

6 MS. BROWN: For 12 months? And when was that --
7 that contract was entered into June 1 of 2010?

8 MR. MILLER: If that's what it says here, that's
9 correct.

10 MS. BROWN: Okay. And SAT Net is also an affiliate
11 of the Debtor?

12 MR. KEIFFER: Under bankruptcy definitions, we
13 believe that to be the case.

14 MS. BROWN: Okay. Mr. Miller, are you president of
15 SAT Net?

16 MR. MILLER: I am.

17 MS. BROWN: Are you an employee of SAT Net?

18 MR. MILLER: I am.

19 MS. BROWN: And Ms. Malone is Secretary/Treasurer of
20 SAT Net?

21 MR. MILLER: She is.

22 MS. BROWN: Are there any other common directors or
23 owners or investors between SAT Net and Halo?

24 MR. MILLER: There are.

25 MS. BROWN: Who are they, please?

1 MR. MILLER: Gary Shapiro, Tim Terrell and Scott
2 Birdwell.

3 MS. BROWN: And where are these base stations
4 located? What is the physical address?

5 MR. MILLER: There's a schedule in the documents
6 that lists the exact address.

7 MS. BROWN: Could you identify that for me, please?

8 MR. MILLER: Okay. Exhibit G-1 is the -- is 27 of
9 the 28 tower site addresses. There is one additional site in
10 Enid, Oklahoma. I don't know that we have the address listed
11 here, but if you need the address I can provide it.

12 MS. BROWN: So is it your -- are you saying that
13 there is a Halo-owned or operated base station at each of the
14 addresses listed on Exhibit G-1?

15 MR. MILLER: Halo has tower leases in each of those
16 locations --

17 MS. BROWN: That's not my question.

18 MR. MILLER: -- from which it operates the base
19 stations which are leased from SAT Net.

20 MS. BROWN: Let me ask my question again. Are the
21 base stations that Halo uses to connect with Transcom, are
22 those base stations physically located at the addresses
23 listed on G-1?

24 MR. MILLER: Yes.

25 MS. BROWN: And I believe that those tower leases

1 are also leases, right, not Halo assets?

2 MR. MILLER: Those are leases. And --

3 MR. KEIFFER: I don't know if I'm going to
4 characterize the leases as being assets are not, but
5 nonetheless they are leases.

6 MS. BROWN: They're not physical property owned by
7 -- the towers are not owned by Halo?

8 MR. MILLER: That's correct.

9 MS. BROWN: They're leased?

10 MR. WISEMAN: Space on the towers are leased. The
11 towers themselves.

12 MS. BROWN: And who are they leased by? Are they
13 leased in Halo's name? Does Halo hold the lease?

14 MR. MILLER: Yes.

15 MS. BROWN: And who is the lessor?

16 MR. MILLER: American Tower in 27 of the locations,
17 and SBA Communications in one of them.

18 MS. BROWN: And who is the second? I'm sorry.

19 MR. MILLER: SBA Communications. That's the one in
20 Enid, Oklahoma.

21 MR. KEIFFER: That's the one we need to add.

22 MS. MOSES: No, it's listed.

23 MR. WISEMAN: It's listed?

24 MR. KEIFFER: In G.

25 MS. MOSES: It's just listed separately.

1 MR. KEIFFER: Yeah. Rural telephonic service. It's
2 been out there forever.

3 MR. WISEMAN: It's a fee that any common carrier has
4 to pay to subsidize rural services across the -- every
5 carrier pays it.

6 MR. KEIFFER: Every carrier. Any phone bill you'll
7 get, you'll see one.

8 MR. WISEMAN: It's not an optional thing.

9 MS. SEPANIK: So there's no contract?

10 MR. KEIFFER: Correct.

11 MR. WISEMAN: No.

12 MR. KEIFFER: I think it's statutory.

13 MR. WISEMAN: We report our --

14 MS. SEPANIK: It's statutory?

15 MR. WISEMAN: We report our revenues and they --
16 it's like any other tax obligation. There's schedules based
17 on your revenues. You pay the fees.

18 MR. KEIFFER: That's why it's on Schedule E, because
19 it's a statutory obligation.

20 MS. SEPANIK: Right. Yeah.

21 MR. KEIFFER: An excise tax --

22 MS. SEPANIK: Uh-huh.

23 MR. KEIFFER: -- is what it's been characterized to
24 be similar to.

25 MS. SEPANIK: Uh-huh.

1 MR. BENNETT: And is 100 percent of that thought to
2 be priority?

3 MR. KEIFFER: There's -- yeah. I don't think
4 there's any subdivision, David, for them that they've got to
5 do part of it's priority, and what's not. I think it's just
6 like, everything Uncle Sam has, it's all priority.

7 MR. WISEMAN: Yeah.

8 MR. KEIFFER: Okay.

9 MR. VARDEMAN: A couple of more questions.

10 MS. SEPANIK: That's it.

11 MR. VARDEMAN: Okay. Mr. Gerber, do you have any
12 other questions?

13 MR. GERBER: If you don't mind, sir.

14 Mr. Wiseman, who do you report to in your capacity as an
15 officer of the Debtor?

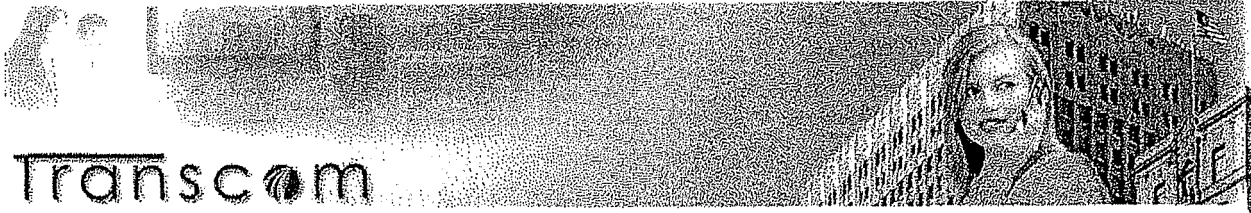
16 MR. WISEMAN: I report to a management committee of
17 the investor-owners.

18 MR. GERBER: Okay. And who is -- who sits on that
19 management committee?

20 MR. WISEMAN: It's Scott Birdwell, Jake Miller,
21 Carolyn Malone. Occasionally the major investors have
22 participated in that.

23 MR. GERBER: And who are those -- would you just
24 name those major investors?

25 MR. WISEMAN: Tim Terrell and Gary Shapiro.



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Products & Services



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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

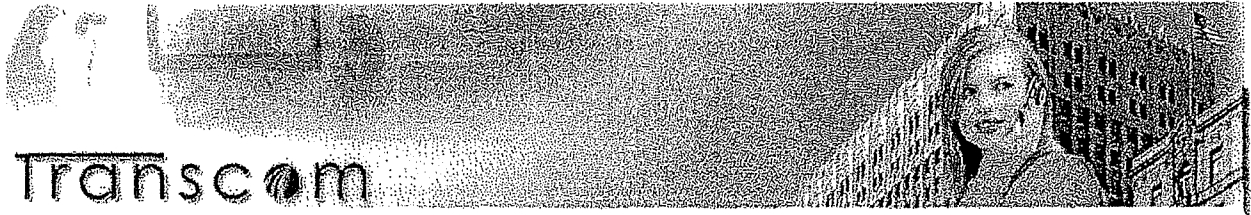
Customers who do not have facilities at these locations or prefer to connect via an IP connection can connect to us via our Nextone SBC (Session Border Controller). We support most protocols with H.323 and SIP being the most common.

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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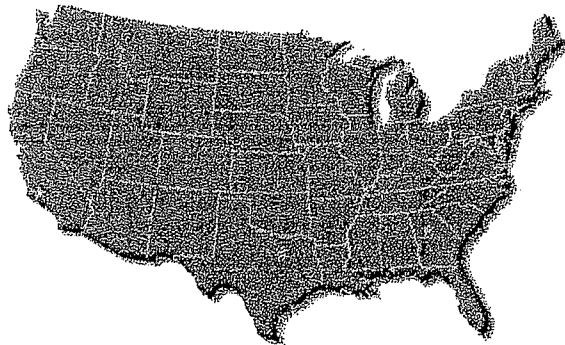
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Transcom Enhanced Services is a wholesale enhanced voice service provider serving most of North America. A facilities based provider, Transcom terminates nearly one billion minutes per month. Transcom's customers include the largest Cable/MSOs, CLECs, broadband service providers, and wireless carriers. Transcom's focus is US/Canada termination but its customers are located globally.



 Locate star to view offices



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AT&T Wholesale Agreement

Contract Number: 8792

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.

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: Todd Wallace

By: Eddie A. Reed, Jr.

Name: Todd Wallace

Name: Eddie A. Reed, Jr.

Title: CTO

Title: Director-Interconnection Agreements

Date: 3-29-2010

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.**

TABLE OF CONTENTS

Section	
<u>I.</u>	Definitions
<u>II.</u>	Purpose
<u>III.</u>	Term of the Agreement
<u>IV.</u>	Methods of Interconnection
<u>V.</u>	Interconnection Trunk Group Options
<u>VI.</u>	Compensation and Billing
<u>VII.</u>	Non-Local Traffic Interconnection
<u>VIII.</u>	Meet Point Billing
<u>IX.</u>	Access to Poles, Ducts, Conduits, and Rights of Way
<u>X.</u>	Access to 911/E911 Emergency Network
<u>XI.</u>	Access to Telephone Numbers
<u>XII.</u>	Local Number Portability
<u>XIII.</u>	Access to Signaling and Signaling Databases
<u>XIV.</u>	Network Design and Management
<u>XV.</u>	Auditing Procedures
<u>XVI.</u>	Liability and Indemnification
<u>XVII.</u>	Modification of Agreement
<u>XVIII.</u>	Taxes and Fees
<u>XIX.</u>	Treatment of Proprietary and Confidential Information
<u>XX.</u>	Resolution of Disputes
<u>XXI.</u>	Waivers
<u>XXII.</u>	Assignment
<u>XXIII.</u>	Amendment
<u>XXIV.</u>	Severability
<u>XXV.</u>	Survival
<u>XXVI.</u>	Governing Law
<u>XXVII.</u>	Arm's Length Negotiations
<u>XXVIII.</u>	Filing of Agreement
<u>XXIX.</u>	Notices
<u>XXX.</u>	Headings of No Force or Effect
<u>XXXI.</u>	Multiple Counterparts
<u>XXXII.</u>	Entire Agreement
<u>XXXIII.</u>	No Joint Venture
<u>XXXIV.</u>	Remedies Cumulative
<u>XXXV.</u>	No Third Party Beneficiaries
<u>XXXVI.</u>	References to Other Documents
<u>XXXVII.</u>	Miscellaneous

Attachments:

A

B1

B2

Affiliates

Local CMRS Interconnections Rates

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

party¹; (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 its 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 party 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

T-Mobile USA, Inc.

12920 SE 38th St.
Bellevue, WA 98006
ATTN: General Counsel
CC: Carrier Management

CC: Randy Ham, Director Wireless
Interconnection

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:

	<u>Type 1</u>	<u>TYPE 2A</u>	<u>Type 2B</u>
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").

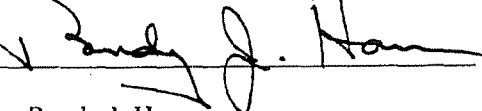
WHEREAS, BellSouth and T-Mobile entered into the Agreement on May 1, 2003, and;

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.

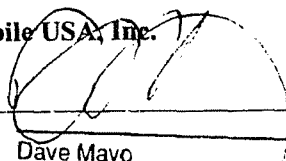
BellSouth Telecommunications, Inc.

By: 
Name: Randy J. Ham

Title: Assistant Director -
Wireless Interconnection

Date: 3/3/04

T-Mobile USA, Inc.

By: 
Name: Dave Mayo

Vice President, Finance & Planning
Engineering & Technical Operations

Title: _____
Date: 3/1/04

**CMRS0043-AMENDMENT
EXHIBIT 1**

ATTACHMENT A

Call Sign	Market No. - Freq. Block	Market Name	Licensee
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.

**CMRS0043-AMENDMENT
EXHIBIT 1**

Call Sign	Market No. - Freq. Block	Market Name	Licensee
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.

T-Mobile USA, Inc.

By: Randy J. Ham

By: [Signature]

Name: Randy J. Ham

Name: Dave Mayo

Assistant Director -

Title: Wireless Interconnection

Title: VP Eng. + Ops. Finance & Planning

Date: 4/30/06

Date: 04/30/2006

**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:

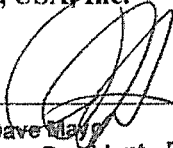
1. The term of the Agreement shall be extended three (3) years from the date of T-Mobile's extension request to January 7, 2011.
2. EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.
3. In entering into this Amendment, neither 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.**

T-Mobile, USA, Inc.

By: Kathy Wilson-Chu
Name: Kathy Wilson-Chu
Title: Director
Date: 4/21/08

By: 
Name: **Dave Wang**
Vice President - Engineering
Finance/Strategy & Development
Title: _____
Date: _____

T-Mobile Legal Approval By:


4-2-08

**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;

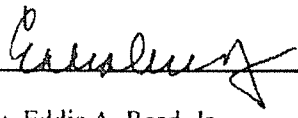
NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:


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").

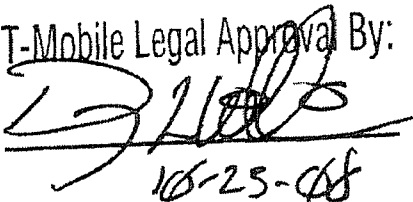
IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below.

**BellSouth Telecommunications, Inc.,
by AT&T Operations, Inc.,
its authorized agent.**

T-Mobile USA, Inc.

By: 
Name: Eddie A. Reed, Jr.
Title: Director - Interconnection Agreements
Date: 12-15-08

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

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.

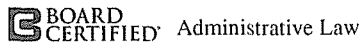
AMENDMENT – WHEREAS CLAUS AT&T-22STATE
PAGE 2 OF 2
HALO WIRELESS
VERSION – 03/25/10

Halo Wireless, Inc.

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: Todd Wallace
Name: Todd Wallace
Title: CEO
Date: 3-29-2010

By: Eddie A. Reed, Jr.
Name: Eddie A. Reed, Jr.
Title: Director-Interconnection Agreements
Date: 4.5.10



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

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:

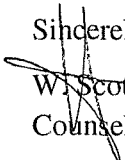
Wireline Competition Bureau: Randy Clarke, Travis Litman, John Hunter, Al Lewis, Richard Hovey, Rebekah Goodheart and Marcus Maher

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.



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



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



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



FCC Meeting August 10, 2011

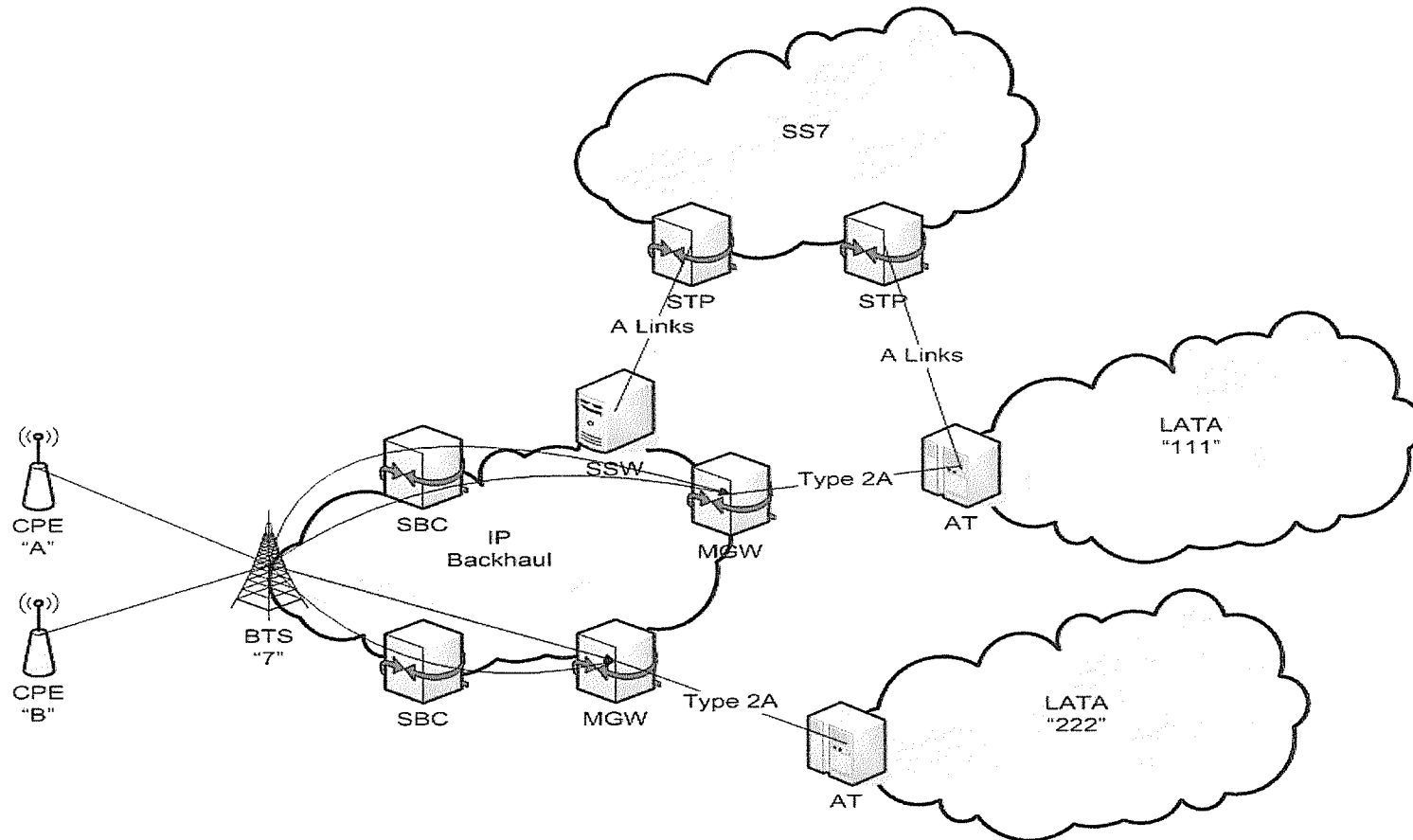
Halo Wireless has invested substantial capital in its 3.65 Ghz
WiMax 802.16(e) wireless network.





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.*





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.



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:
 - o Must obtain interconnection agreements with ILECs to enable traffic exchange across wide footprint, starting with principal ILEC that operates primary tandems.
 - o 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.



FCC Meeting August 10, 2011

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).*



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.



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.



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.

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.



FCC Meeting August 10, 2011

Thank you for your time.



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

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

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).

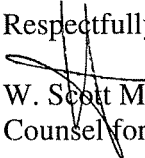
⁶ Declaratory Ruling and Report and Order, *In the Matter of Developing a Unified Inter-carrier Compensation Regime, T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, CC Docket 01-92, FCC 05-42, 20 FCC Rcd 4855 (2005) ("*T-Mobile*"). Note 57 expressly 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.

Transcript of Proceedings - February 28, 2012
Volume 2 - Technical Session

Public Service Commission of Wisconsin
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BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

INVESTIGATION INTO PRACTICES OF)	
HALO WIRELESS, INC., and TRANSCOM)	Docket No.
ENHANCED SERVICES, INC.)	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

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9:30 a.m.	EXHIBITS:
	Prefiled; J.S. McPhee
	5; T. McCabe 17; L.
	Robinson 13



Transcript of Proceedings - February 28, 2012
Volume 2 - Technical Session

94

1 only reason was to disguise.

2 A In my experience --

3 MR. FRIEDMAN: There's no question.

4 BY MR. McCOLLOUGH:

5 Q Okay. You say in here the only reason was to
6 disguise, to deceive. Isn't it at least possible
7 that Halo was telling the world, responsible party's
8 Transcom, here's your billing telephone number?
9 Isn't that possible?

10 A It seems far-fetched, but I suppose in some world it
11 might be.

12 Q Generally when people are out there trying to
13 deceive, they're hiding something, aren't they?

14 A I believe that's true.

15 Q How is signaling additional information specifically
16 identifiable to a particular customer hiding
17 something?

18 A When it's not the original customer, it's some sort
19 of deception.

20 Q That's Halo's customer?

21 A It may or may not be Halo's customer, but it has
22 nothing to do with the originator of the call.

23 Q Granted, granted. Now, you understand Halo took the
24 position all along, even before the FCC order, based
25 on our reading of all the rules, we thought Transcom

Transcript of Proceedings - February 28, 2012
Volume 2 - Technical Session

95

1 was the originating party. You understand we took
2 that position, right?

3 A I've read that.

4 Q Okay. And the FCC disagreed on November 18th?

5 A I've read that, too.

6 Q So just in terms of intent, isn't it at least
7 possible that what Halo was saying is I've got an end
8 user customer and I'm going to act much like AT&T
9 does when it has an ISDN PBX customer with PRI and,
10 you know, if the charge numbers -- I mean, if the CPN
11 doesn't signify, quote, the people we think to be the
12 responsible party, we're going to signal it and
13 charge them?

14 MR. FRIEDMAN: I'm going to object on two
15 grounds. One is it was asked, albeit in a slightly
16 different form, and already answered. Second is
17 it's cumulative and argumentative. The testimony
18 says what it says. Counsel has made his point. I'm
19 not sure how much use it would be to the Commission
20 to have further debate on this.

21 EXAMINER NEWMARK: Sustained.

22 BY MR. McCOLLOUGH:

23 Q Page 8 of your direct --

24 MR. McCOLLOUGH: And by the way, Your
25 Honor, if we get to a stopping point that's

Transcript of Proceedings - February 28, 2012
Volume 2 - Technical Session

110

1 adjust down the number. You know, that's what the
2 witness said. My point, Your Honor, is, you know, I
3 had to sit here and cross-examine this guy, and he'd
4 say, okay, well, I can fix that by changing the
5 number and add to that an amount that supposedly
6 wireline originated would go down and down and down.
7 At some point that would get mighty small.

8 He's acknowledged that even the TDS
9 numbers that showed up might well have been
10 originated on a wireless unit using an ESP, Skype,
11 going to another ESP, we say Transcom and to Halo.
12 And our contention is that's originating with Halo,
13 and I don't think no matter how many times you read
14 those two paragraphs, the FCC said it is not. What
15 they were talking about is traffic that does
16 originate on other carriers' networks.

17 Now, is it true that Halo has said, sure,
18 some of these calls may have started somewhere else,
19 but if you read the rebuttal, what Mr. Wiseman said
20 was we built our business plan reading these FCC
21 rules and, oh, by the way, not just the FCC, the
22 Court of Appeals decisions out of the D.C. Circuit
23 that said ESPs are end users and originate calls.

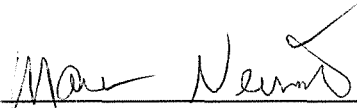
24 I just want to make sure that the
25 Commission understands that you can't always put

COMMONWEALTH OF KENTUCKY
KENTUCKY PUBLIC SERVICE COMMISSION

COUNTY OF Collin

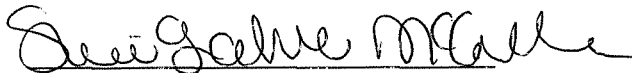
STATE OF Texas

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared Mark Neinast, who being by me first duly sworn deposed and said that he is appearing as a witness on behalf of BellSouth Telecommunications, LLC d/b/a AT&T Kentucky before the Kentucky Public Service Commission in Docket Number 2011-00283, *In the Matter of: BellSouth Telecommunications, LLC, d/b/a AT&T Kentucky, Complainants v. Halo Wireless, Inc., Defendant* and if present before the Commission and duly sworn, his statements would be set forth in the annexed direct testimony consisting of 36 pages and 8 exhibits.



Mark Neinast

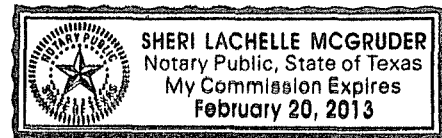
SWORN TO AND SUBSCRIBED BEFORE ME
THIS 05 DAY OF JUNE, 2012



Notary Public

My Commission Expires: 02-20-2013

1036702



COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of)	
)	
BELLSOUTH)	
TELECOMMUNICATIONS, LLC d/b/a)	
AT&T KENTUCKY,)	
)	Case No. 2011-00283
Complainant,)	
)	
v.)	
)	
HALO WIRELESS, INC.,)	
)	
Defendant.)	

DIRECT TESTIMONY OF MARK NEINAST
ON BEHALF OF AT&T KENTUCKY

June 15, 2012

1 I. **INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Mark Neinast. My business address is 308 S. Akard, Dallas, Texas
4 75202.

5 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

6 A. I am an Associate Director – Network Regulatory in AT&T’s Network Planning
7 and Engineering Department.

8 **Q. FOR WHICH PARTY ARE YOU PROVIDING THIS TESTIMONY?**

9 A. BellSouth Telecommunications, LLC d/b/a AT&T Kentucky.¹

10 **Q. PLEASE DESCRIBE YOUR JOB RESPONSIBILITIES.**

11 A. My primary responsibility is to represent various AT&T operating companies in
12 the development of network policies, procedures, and plans from a technical and
13 regulatory perspective. I assist in developing corporate strategy associated with
14 9-1-1, interconnection, switching, Signaling System 7 (“SS7”), call-related
15 databases, and emerging technologies such as Internet Protocol (“IP”)-based
16 technologies and services. I am also responsible for representing the company’s
17 network organization in negotiations, arbitrations, and disputes with Competitive
18 Local Exchange Carriers (“CLECs”) and wireless carriers.

¹ In some instances, I use “AT&T” to refer to AT&T incumbent local exchange carriers (“ILECs”) generally, including but not limited to AT&T Kentucky.

1 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK**
2 **EXPERIENCE.**

3 A. I have a Bachelor of Science degree in Business Administration from the
4 University of Texas at Dallas, with a double major in Management Information
5 Systems and Behavioral Management. I have been employed by AT&T for over
6 36 years, primarily in the network organization. This includes seven years in
7 central offices as a technician. I also spent two years as a training instructor for
8 electronic switching systems and four years managing technicians in central
9 offices and a Network Operations Center ("NOC"). I worked as a staff manager
10 for the North Texas Network Operations Division for five years. In that role, I
11 supported NOC functions and managed major switching system projects.
12 Subsequently, as an Area Manager in a NOC Translations Center for over seven
13 years, I was responsible for managing the switch translations for over 100
14 switches. I also successfully managed many other major network projects,
15 including over 60 analog-digital switching dial-to-dial and 16 analog-digital 911
16 conversions, as well as the implementation of Local Number Portability ("LNP") in
17 all of these switching systems.

18 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE STATE PUBLIC UTILITY**
19 **COMMISSIONS?**

20 A. Yes, I have testified before several state public utility commissions, including the
21 Kentucky Public Service Commission, on technical and network issues. These
22 proceedings most often involved the arbitration of interconnection agreements
23 ("ICAs") or disputes regarding claimed breaches of an approved ICA.

1 **Q. HAVE YOU TESTIFIED BEFORE ANY OTHER STATE COMMISSIONS ON**
2 **THE SUBJECTS YOU WILL ADDRESS IN THIS TESTIMONY?**

3 A. Yes. AT&T and Halo are contesting in a number of other state commissions the
4 same claims AT&T Kentucky has asserted here. As of the date of this direct
5 testimony, I have filed testimony in the parallel proceedings in 10 other states,
6 reviewed Halo's testimony in most of those states, and testified at the evidentiary
7 hearings in the Wisconsin, Tennessee, South Carolina, Georgia, Illinois and
8 Louisiana proceedings. As a result, I am well aware of the positions Halo has
9 been advancing on the issues in this case.

10 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?**

11 A. As AT&T Kentucky witness Scott McPhee discusses in his direct testimony, Halo
12 and AT&T Kentucky are parties to an ICA that allows Halo to deliver only
13 wireless-originated traffic to AT&T Kentucky. I will show, from a network and
14 technical perspective, that Halo has been breaching the ICA by sending AT&T
15 Kentucky substantial volumes of landline-originated traffic.

16 I will also show that Halo improperly inserted call detail data on calls it
17 sent to AT&T Kentucky. Specifically, Halo inserted a certain "Charge Number"
18 into the SS7 call record² – even though there is no such number associated with
19 the person who actually made the call, and that person has no relationship with
20 Halo or with the entity to which the Charge Number was assigned. By doing this,
21 Halo made calls appear to be wireless-originated even though they were actually

² I explain the SS7 system and the associated records below.

1 landline-originated (and thus were delivered to AT&T Kentucky in breach of the
2 ICA), and to appear local even though they were actually non-local.

3 **Q. WHY DOES IT MATTER THAT HALO IS SENDING AT&T KENTUCKY**
4 **LANDLINE-ORIGINATED TRAFFIC?**

5 A. By breaching the parties' contract in this way, Halo is engaging in an access-
6 charge avoidance scheme. Specifically, and as I will explain, the access charges
7 that Halo should be paying AT&T Kentucky for interexchange, landline-originated
8 traffic that Halo is delivering to AT&T Kentucky for termination to its end user
9 customers are higher than the reciprocal compensation charges that apply to
10 local (*i.e.*, intraMTA)³ wireless-originated traffic. Halo is sending AT&T Kentucky
11 large volumes of interexchange, landline-originated traffic that are subject to
12 access charges, but is avoiding the payment of those higher access charges by
13 representing the traffic as local (*i.e.*, intraMTA) wireless-originated traffic.

14 **Q. HAVE ANY REGULATORY AGENCIES MADE DECISIONS ABOUT HALO'S**
15 **PRACTICES?**

16 A. Yes. The Federal Communications Commission ("FCC"), singling out Halo by
17 name, rejected the arguments that Halo has made in defense of its practices.
18 Assuming that this Commission follows the FCC's lead, the only possible
19 conclusion is that Halo breached its ICA with AT&T Kentucky.

20 In addition, the one state commission that has resolved an AT&T ILEC's
21 claims against Halo as of the date of this testimony resolved the claims in favor

³ I explain below what I mean by "intraMTA."

1 of AT&T. AT&T Tennessee brought the same claims against Halo that AT&T
2 Kentucky is asserting here, and after considering the parties' pre-hearing briefs,
3 conducting a full evidentiary hearing, and hearing oral argument, the Tennessee
4 Regulatory Authority ("TRA") rejected Halo's positions, decided all the issues in
5 favor of AT&T Tennessee, and granted AT&T Tennessee all the relief it
6 requested, which is the same relief AT&T Kentucky requests here.⁴

7 **II. BACKGROUND**

8 **Q. DOES AT&T KENTUCKY HAVE AN ICA WITH HALO?**

9 A. Yes. Mr. McPhee talks about the ICA. He explains that the ICA permits Halo to
10 send AT&T Kentucky only wireless-originated traffic, not landline-originated
11 traffic.

12 **Q. DOES AT&T KENTUCKY SEND ANY TRAFFIC TO HALO?**

13 A. I have reviewed our records, which we keep in the ordinary course of our
14 business, and they show that virtually all the traffic the parties exchange is one-
15 way, from Halo to AT&T Kentucky. Of the traffic that Halo delivers to AT&T
16 Kentucky, some is destined to AT&T Kentucky end-users, and some is

⁴ The TRA's decision is attached to my testimony as **Exhibit MN-1**. As I note below, another state commission, the Pennsylvania Public Service Commission rejected an argument that is at the core of Halo's position here, in a case that did not involve Halo or AT&T. Also, in AT&T's ongoing parallel proceeding against Halo in South Carolina, the South Carolina Office of Regulatory Staff concluded that Halo is breaching its ICA with AT&T South Carolina by delivering landline-originated traffic to AT&T South Carolina, and recommended that the South Carolina Public Service Commission authorize AT&T South Carolina to stop accepting traffic from Halo. See **Exhibit MN-2a** at p. 10, lines 9-15. And in the ongoing parallel proceeding in Illinois, the Staff of the Illinois Commerce Commission strongly supports AT&T Illinois' position that Halo has breached its ICA with AT&T Illinois and is liable for access charges. See **Exhibit MN-2b** hereto.

1 transported by AT&T Kentucky to other carriers for termination to their end-user
2 customers.

3 **Q. DO HALO'S END-USER CUSTOMERS PLACE THE CALLS THAT HALO**
4 **DELIVERS TO AT&T KENTUCKY?**

5 A. No. In fact, Halo has virtually no end-user customers. In a submission it made in
6 the parallel proceeding in Wisconsin earlier this year, Halo stated that it had 35
7 consumer customers – 24 in Texas and 11 in other states, but none in Kentucky.
8 All the traffic that Halo delivers to AT&T Kentucky starts with end users that are
9 served by other providers.

10 **Q. PLEASE DESCRIBE THE TRAFFIC THAT HALO SENDS TO AT&T**
11 **KENTUCKY.**

12 A. The diagram attached to my testimony as **Exhibit MN-3** depicts the traffic that
13 Halo sends to AT&T Kentucky. As the diagram shows, the calls originate with
14 end-user customers of various landline and wireless service providers using
15 either landline or wireless equipment.⁵

16 The calling party makes a call to someone in Kentucky who is a customer
17 of either AT&T Kentucky or of a third party carrier to which AT&T Kentucky
18 delivers traffic. The call is transported, by means unknown to AT&T Kentucky, to
19 a company called Transcom,⁶ which is very closely affiliated with Halo, as Mr.

⁵ Note that AT&T Kentucky is not saying that *all* the traffic it receives from Halo is landline-
originated. Much of it is, however, and that is the breach of the parties' ICA.

⁶ Transcom Enhanced Services, Inc.

1 McPhee details in his testimony. Transcom is an aggregator of traffic from other
2 carriers, and it bills its “core service offering” as “termination services.”

3 Transcom then hands off the call to Halo, which in turn delivers it to AT&T
4 Kentucky, either for termination to an AT&T Kentucky end-user customer or for
5 delivery to the third party carrier that serves the called party.

6 **Q. WHY IS IT IMPORTANT THAT THE ICA SPECIFIES THAT HALO IS ONLY TO**
7 **SEND AT&T KENTUCKY WIRELESS-ORIGINATED TRAFFIC?**

8 A. Because wireless-originated and landline-originated traffic are supposed to be
9 delivered to AT&T Kentucky on separate trunks so that AT&T Kentucky can
10 correctly bill carriers for terminating these different types of traffic on AT&T
11 Kentucky’s network (or so that the terminating carrier can correctly bill the
12 originating carrier for traffic that AT&T Kentucky hands off to third party carriers
13 for termination). AT&T’s billing system cannot automatically tell whether a call
14 delivered to AT&T Kentucky originated as a landline call or a wireless call.⁷ As a
15 result, when carriers send traffic to AT&T Kentucky, different trunks are used to
16 deliver landline traffic and wireless traffic. By having the ICA specify that Halo
17 will send AT&T Kentucky only wireless-originated traffic, AT&T Kentucky knows

⁷ In the past, one generally knew that a given NPA-NXX (the first six digits of a 10-digit phone number, with the area code first) was either a wireless NPA-NXX or a landline NPA-NXX, because a database known as the Local Exchange Routing Guide (“LERG”) defined it as one or the other. With the advent of wireless number portability, however, the NPA-NXX no longer accurately indicates in every instance whether a given call originated on a wireless or landline network. Hence, the only practicable way that AT&T Kentucky, as the terminating carrier, can know whether calls are wireless-originated or landline-originated is by segregating the traffic on separate trunk groups. (As I discuss below, it is possible to determine, by consulting the Local Number Portability data base, whether a given 10-digit phone number belongs to a landline carrier or a wireless carrier, but that process cannot be used for normal billing purposes.)

1 that Halo should only be using trunks groups allocated for wireless traffic, so that
2 the appropriate billing will apply.

3 **Q. ARE YOU SAYING THAT THE RATE AT&T KENTUCKY CHARGES FOR**
4 **TERMINATING CALLS DELIVERED TO AT&T KENTUCKY IS DETERMINED**
5 **SOLELY BY THE TYPE OF TRUNK THE CALL IS DELIVERED ON?**

6 A. No. The type of trunk the traffic is delivered on tells AT&T Kentucky which type
7 of boundaries to use to separate local calls from non-local calls (MTA boundaries
8 for wireless calls; local calling areas for landline calls).⁸ The originating and
9 terminating NPA-NXXs of the call are then used to determine, based on an end-
10 to-end analysis, whether the call is local or non-local based on the type of
11 geographic boundaries that apply to that type of traffic. In other words, AT&T
12 Kentucky first has to establish that all the traffic it receives over a specific trunk
13 group is either wireless or landline. Only then can AT&T Kentucky determine the
14 appropriate intercarrier compensation rate (local or non-local) to apply based on
15 the originating NPA-NXX and terminating NPA-NXX.

⁸ Mr. McPhee discusses principles of intercarrier compensation in his testimony. In a nutshell, *wireless* traffic is considered “local,” and thus subject to reciprocal compensation charges, if it is *intra*MTA, that is, if it originates and terminates in the same **Major Trading Area (“MTA”)**. Wireless traffic is considered non-local, and thus subject to access charges, which are typically higher than reciprocal compensation charges, if it is *inter*MTA, that is, if it originates in one MTA and terminates in another. *Landline calls*, in contrast, are considered local, and thus subject to reciprocal compensation, if they originate and terminate in the same **local calling area**, and are considered non-local, and thus subject to access charges, if they originate in one local calling area and terminate in another. Thus, for purposes of intercarrier compensation, an MTA is the wireless equivalent of a local calling area in the landline world. An MTA, however, is much bigger than a local calling area; the entire United States is divided into only 51 MTAs.

1 **Q. ARE THE TRUNKS THAT HALO IS USING TO SEND TRAFFIC TO AT&T**
2 **KENTUCKY RESERVED FOR WIRELESS TRAFFIC ONLY?**

3 A. Yes. And as a result, Halo has been billed for the traffic as if it is all wireless
4 traffic.

5 **III. HALO'S SENDING OF LANDLINE-ORIGINATED TRAFFIC**

6 **Q. HAS AT&T KENTUCKY ANALYZED THE TRAFFIC HALO IS SENDING IT TO**
7 **DETERMINE WHETHER, AS REQUIRED BY THE ICA, ALL THE TRAFFIC IS**
8 **WIRELESS-ORIGINATED?**

9 A. Yes.

10 **Q. WHAT PROMPTED AT&T TO ANALYZE HALO'S TRAFFIC?**

11 A. Not long after Halo started sending traffic to AT&T, we noticed three unusual
12 characteristics of the traffic: First, AT&T's billing records showed that the volume
13 of traffic Halo was delivering to AT&T was growing extraordinarily rapidly. The
14 rate of growth was far greater than what one would expect from what was
15 supposed to be a start-up, rural wireless carrier, which is what we understood
16 Halo represented itself to be.

17 Second, while the volumes of traffic that Halo was delivering were growing
18 rapidly, there was practically no traffic at all going the other way – from AT&T end
19 users to Halo or to any Halo customers. Again, this would not be expected of a
20 normal wireless service provider, since calls are made to cell phones just as they
21 are made from cell phones.

22 Third, 100% of the traffic that Halo was delivering to AT&T was
23 represented as intraMTA (local wireless), based on the call data Halo was

1 providing in the SS7 signals it sent. This, too, was striking, because one would
2 expect incoming calls to be a mix of interMTA (toll wireless) and intraMTA calls
3 (local wireless).

4 These observations aroused our suspicion about what Halo was actually
5 doing and whether it was trying to avoid access charges. We therefore began to
6 review the data more closely in order to determine exactly what Halo was doing.

7 **Q. WHY DID AT&T'S INITIAL OBSERVATIONS SUGGEST THAT HALO MIGHT**
8 **BE TRYING TO AVOID ACCESS CHARGES?**

9 A. Access charge avoidance schemes are nothing new. We have seen such
10 schemes often over the years, so we are attuned to traffic patterns that indicate
11 they may be in play.

12 The very fast growth in Halo's traffic, while not typical of a genuine start-up
13 wireless service provider, was to be expected of a company serving as a provider
14 of least cost routing (a term I explain below) for other carriers. Likewise, the fact
15 that we had virtually no end user customers making calls to Halo customers,
16 while unheard of for a real wireless service provider, was not surprising if Halo
17 was essentially a low-cost traffic terminator. And the only plausible explanation
18 for the fact that all of Halo's traffic was being presented as intraMTA (local
19 wireless) traffic was that Halo was trying to avoid the access charges that would
20 apply to interMTA traffic (toll wireless) – or to interexchange (toll) landline traffic.

1 **Q. YOUR LAST ANSWER REFERRED TO “LEAST COST ROUTING.” WHAT IS**
2 **THAT?**

3 A. Many toll calls, after being originated, traverse several different networks before
4 termination to an end user. The hand-off from one network to the next is
5 instantaneous and seamless, so that the end-user customers, as well as the
6 originating and terminating carrier, are unaware of the multiple handoffs that may
7 be occurring. Interexchange carriers (“IXCs”), wireless providers and voice over
8 Internet Protocol (“VoIP”) providers are all searching for means to deliver traffic
9 for termination at the lowest possible cost. As a result, a number of carriers offer
10 wholesale transport and termination using “least cost routing,” *i.e.*, the cheapest
11 available routing. Some of these carriers engage in access charge avoidance;
12 by dramatically lowering their termination costs, they are able to offer termination
13 service at low rates that are attractive to their customers. It appears that that is
14 what we are dealing with here.

15 **Q. WHEN AT&T TOOK A CLOSER LOOK AT HALO’S TRAFFIC, WHAT DID IT**
16 **FIND?**

17 A. We discovered that most of the calls Halo is sending to AT&T — about two-thirds
18 of the calls — are not wireless-originated, but instead are landline-originated,
19 contrary to the ICA.

20 **Q. WHO PERFORMED THE CLOSE ANALYSIS OF HALO’S TRAFFIC THAT**
21 **SHOWED THAT HALO IS SENDING AT&T KENTUCKY SUBSTANTIAL**
22 **VOLUMES OF LANDLINE-ORIGINATED TRAFFIC?**

23 A. I performed the analyses in collaboration with my colleague, Stanley Mensinger.

1 **Q. PLEASE DESCRIBE IN GENERAL TERMS HOW YOU AND MR. MENSINGER**
2 **PERFORMED THE ANALYSES.**

3 A. We performed three analyses: one for the one-week period starting June 14,
4 2011; one for the one-week period starting September 26, 2011; and one for the
5 four-week period starting January 18, 2012. For each study, we looked at all the
6 traffic Halo sent AT&T Kentucky during the study period by examining the SS7
7 information on the traffic.

8 **Q. WHAT DO YOU MEAN BY SS7 INFORMATION?**

9 A. When an end user places a call, the telecommunications network must set up the
10 transmission path over which that call will be carried, maintain that transmission
11 path during the duration of the call, and “tear down” that transmission path once
12 the call is over. In order to do this, signaling messages containing information
13 necessary to set up, maintain, and tear down the transmission path for a given
14 call must be sent back and forth between the voice switches that are involved in
15 carrying that call. SS7 (which stands for Signaling System 7) information
16 embedded in these signals provides detail about where a call originated and
17 terminated and the carriers on each end.

18 **Q. WHAT SS7 INFORMATION PROVIDES THAT DETAIL?**

19 A. The intercarrier compensation rate that applies to a call is determined by its
20 originating and terminating end-points, which, as I explained above, normally can
21 be determined by comparing the originating NPA-NXX and terminating NPA-
22 NXX. Under current industry practices, the originating NPA-NXX is taken from

1 the telephone number of the originating caller, which is referred to as the Calling
2 Party Number, or “CPN.”⁹ The terminating NPA-NXX is taken from the telephone
3 number of the called party. These two fields in the SS7 message determine the
4 rating of the call for purposes of intercarrier compensation.

5 **Q. WHAT STEPS DID YOU AND MR. MENSINGER TAKE TO ANALYZE THE**
6 **CALLS SENT BY HALO TO DETERMINE WHETHER THEY WERE**
7 **LANDLINE-ORIGINATED OR WIRELESS-ORIGINATED?**

8 A. For each of the three studies, we took the following steps:

- 9 1. For each call, we first identified the 10-digit Calling Party Number
10 (“CPN”) of the calling party (which is one of the SS7 data fields on
11 each call).
- 12 2. We then looked in the Local Exchange Routing Guide (“LERG”)¹⁰ to
13 find the carrier that holds the NPA-NXX code for that originating
14 CPN.
- 15 3. Because telephone numbers can be ported (*i.e.*, transferred from
16 one carrier to another), we then looked at the Local Number

⁹ When a call is initiated, SS7 signaling sends information about that call to the terminating switch. Some of this information shows up in “fields” that are reflected on the Initial Address Message (“IAM”), which is sent each time a call is set up between switches. One of the fields is “Calling Party Number,” or “CPN.” CPN is normally associated with Caller ID service, but it also has other uses. For example, telecommunication carriers use the CPN field in their billing systems for intercarrier compensation to determine whether a call is interMTA or intraMTA (or interexchange or intraexchange for landline calls).

¹⁰ The LERG is a national routing database that stores information necessary to properly route traffic throughout the United States. It displays, for each NPA-NXX, the carrier to which that NPA-NXX is assigned, the tandem switch for routing interexchange and local traffic, and other pertinent information.

1 Portability (“LNP”) database to see whether the originating number
2 had been ported to some carrier other than the one that owned the
3 NPA-NXX.

4 4. At that point, we knew who the originating carrier was. Based on
5 the type of originating carrier (wireless or landline, as specified by
6 the originating carrier in the LERG), we also knew whether the call
7 was a landline-originated call or a wireless-originated call.

8 5. We could also determine, based on the end-points of the call and
9 type of call, which intercarrier compensation rate should have
10 applied (*i.e.*, reciprocal compensation or access charges). Our
11 focus, however, was on whether traffic was landline-originated or
12 wireless-originated.

13

14 **Q. WHAT TOOLS DID YOU USE TO PERFORM THIS ANALYSIS?**

15 A. The process I just described was automated. It used a protocol analyzer tool
16 within AT&T Kentucky’s SS7 signaling network that can pull data and create
17 reports on the signaling data based on live traffic. Because all of the calls in
18 question terminated or transited through an AT&T Kentucky tandem switch, the
19 only thing to determine was where each call originated and the type of carrier
20 that served the originating end-user. Using the process described above, calls
21 were sorted out and we identified the originating carrier for each call and
22 determined whether it was a wireless or landline carrier.

1 **Q. WHAT DID YOUR ANALYSIS REVEAL?**

2 A. During the one-week period in June of 2011 that we examined, 89% of the calls
3 that Halo sent to AT&T Kentucky were landline-originated, in breach of the ICA.
4 During the one-week study period in September/October of 2011, the percentage
5 of landline-originated calls was 67%. Finally, during the most recent study
6 period, the four-week period starting in January of 2012, 69% of the calls that
7 Halo sent to AT&T Kentucky were landline-originated, in breach of the ICA.
8 These results are reflected in **Exhibit MN-4** to my testimony.

9 **Q. PLEASE EXPLAIN EXHIBIT MN-4.**

10 A. The data is broken down into the categories that are used for intercarrier
11 compensation, namely intrastate versus interstate and intraMTA versus
12 interMTA. The data also distinguishes between traffic delivered to AT&T
13 Kentucky for termination to its end-user customers and traffic delivered to AT&T
14 Kentucky for delivery to third-party carriers. For example, the table shows that
15 during the four-week study period in 2012, 73% of the traffic that Halo delivered
16 to AT&T Kentucky for delivery to third party carriers was landline-originated,
17 while 61% of the traffic that Halo delivered to AT&T Kentucky for delivery to its
18 end users was landline-originated. When all the traffic is taken into account, 69%
19 of all the Halo traffic delivered to AT&T Kentucky during that period was landline
20 traffic.

21 To give an idea of the data that was examined and the types of
22 interexchange landline calls we found in our analysis, **Exhibit MN-5** provides

1 details on a sample of 50 landline-originated calls sent by Halo to AT&T
2 Kentucky.

3 **Q. HOW DO YOU KNOW YOUR DATA IS ACCURATE?**

4 A. We know the data is accurate because it is based on SS7 signaling data, which
5 is the same data used for call delivery. In other words, it is the system that the
6 entire industry uses. It is a very mature system that is highly accurate and is
7 relied upon within the industry throughout the United States and other countries
8 where SS7 is deployed.

9 **Q. IN OTHER PROCEEDINGS, HALO HAS SUGGESTED THAT THE ACTUAL
10 PERCENTAGE OF LANDLINE-ORIGINATED CALLS MAY BE LOWER THAN
11 YOUR ANALYSES REFLECT FOR VARIOUS REASONS. HOW DO YOU
12 RESPOND TO THAT SUGGESTION?**

13 A. I will address Halo's specific claims below, but in general, what matters in this
14 case is the fact that Halo is sending AT&T Kentucky significant volumes of
15 landline-originated calls, in violation of the parties' ICA. Whether the percentage
16 is 80% or 70% or 60% makes no difference. If AT&T Kentucky were asking the
17 Commission to quantify the access charges that Halo owes to AT&T Kentucky for
18 this traffic, precision would make a difference – but AT&T Kentucky is not asking
19 for that in this case. Even if there were any significant imprecision in our
20 numbers – and I am confident there is not – the fact remains that Halo is sending
21 AT&T Kentucky substantial volumes of landline-originated traffic in violation of
22 the ICA.

1 **Q. HAS HALO DENIED THAT FACT?**

2 A. No, it has not. Halo has quibbled about AT&T's calculations, but Halo has never
3 denied that it is delivering many calls to AT&T that were initiated by end users on
4 landline equipment.

5 **Q. WHAT ARE HALO'S QUIBBLES ABOUT AT&T'S CALCULATIONS?**

6 A. Halo observes that some of the calls that we identified as landline may have
7 originated on a wireless device using an Internet Protocol ("IP") application like
8 Skype or Google Voice. Such calls, Halo states, may signal a landline number of
9 a company like Level 3 or Bandwidth.com, even though the person that
10 originates the communication does so on a wireless device. To the extent that
11 our analysis counts such calls as landline-originated, Halo argues, we have
12 overstated the percentage of landline-originated calls.

13 **Q. IS HALO CORRECT ABOUT THAT?**

14 A. No, because under current industry standards, the determinant of whether a
15 carrier is landline or wireless is the LERG. Every carrier identifies in the LERG
16 whether each NPA-NXX assigned to that carrier is wireless or landline, and when
17 our analysis treated a call as landline, that means that the carrier that holds the
18 NPA-NXX for that call identified the NPA-NXX as landline. Thus, our analysis
19 complied with industry standards, and *properly* treated as landline-originated a
20 call that originated on wireless equipment only when the holder of the NPA-NXX
21 for that call identified the NPA-NXX as landline.

1 **Q. EVEN THOUGH AT&T KENTUCKY DISAGREES WITH HALO'S ARGUMENT**
2 **ABOUT IP-ORIGINATED CALLS, DID YOU DO ANYTHING IN YOUR**
3 **ANALYSIS TO TAKE HALO'S POINT INTO ACCOUNT?**

4 A. Yes. Just for the sake of argument, we re-ran our numbers treating *all* calls that
5 showed originating Level 3 or Bandwidth.com numbers as wireless rather than
6 landline. By doing this, we gave Halo an enormously over-generous benefit of
7 the doubt, not only because Halo's point about IP calls is mistaken, but also
8 because not all Level 3 and Bandwidth.com calls originate on wireless
9 equipment.

10 **Q. WHAT EFFECT DID THIS ADJUSTMENT HAVE ON THE NUMBERS?**

11 A. As I said before, during the three periods we analyzed, 89%, 67% and 69%,
12 respectively, of the calls Halo delivered to AT&T Kentucky were landline-
13 originated (in breach of the ICA) – treating calls as landline-originated or
14 wireless-originated in accordance with the way carriers designate themselves in
15 the LERG. When we re-ran the numbers treating all the Level 3 and
16 Bandwidth.com calls as wireless-originated (even though not all of them were),
17 those percentages reduced to 84%, 59% and 65%, respectively. In other words,
18 even giving Halo an overly generous benefit of the doubt, a very substantial
19 percentage of the traffic Halo delivered was landline-originated, in violation of the
20 ICA. This is reflected in **Exhibit MN-6** to my testimony.

21 **Q. HAS HALO RAISED ANY OTHER CRITICISMS OF YOUR ANALYSIS?**

22 A. Yes. Halo claims that our analysis mistakenly assumes that the originating and
23 terminating NPA-NXXs of a call are determinative of the geographic location of

1 the calling party and the called party. In particular, Halo has pointed to foreign
2 exchange (“FX”) or virtual NXX numbers, which a customer can obtain so that
3 people can call the customer by dialing a local call even though the customer and
4 the callers are in different local calling areas.¹¹

5 **Q. HOW DO YOU RESPOND TO THIS CRITICISM?**

6 A. It is true, as Halo has pointed out, that the NPA-NXX does not in each and every
7 instance accurately reflect actual geographic location. Nonetheless, NPA-NXX is
8 the most reliable indicator we have in the telecommunications industry; it is
9 accurate for the vast majority of calls; and it is standard, accepted practice in the
10 industry to use NPA-NXX as a proxy for geographic location for landline calls.
11 And again, even if we accept that there are occasional instances in which the
12 NPA-NXXs on the call data that we analyzed do not correlate with actual
13 geographic location, that does not change the fact – a fact that Halo does not
14 dispute – that much of the traffic that Halo is delivering to AT&T Kentucky is calls
15 that are initiated by an end user using landline equipment – not wireless
16 equipment as the ICA requires.

¹¹ For example, a business in Frankfort, Kentucky, that wants to attract callers from Lexington might obtain a Lexington phone number for one of its landline phones in Frankfort, so that Lexington callers can reach the business by dialing a “local” call. In that scenario, the business’s NPA-NXX does not accurately reflect the business’s geographic location.

1 **Q. IF HALO DOES NOT DENY THAT IT IS SENDING AT&T KENTUCKY SUCH**
2 **TRAFFIC, HOW DOES HALO JUSTIFY THIS APPARENT BREACH OF THE**
3 **PARTIES' ICA?**

4 A. Halo makes the following argument: According to Halo, Transcom, Halo's
5 collaborator from which Halo receives all the traffic it sends to AT&T Kentucky, is
6 an Enhanced Service Provider ("ESP"), because it enhances the audio quality of
7 the calls it terminates through Halo. Based on the premise that Transcom is an
8 ESP, Halo argues that every call that passes through Transcom actually
9 terminates with Transcom, which then "originates a further communication,"
10 which Transcom delivers to Halo, which in turn hands it off to AT&T Kentucky.

11 Halo asserts that the Transcom equipment that supposedly originates this
12 further communication is wireless equipment that is located in the same MTA as
13 the AT&T Kentucky switch where Halo hands the traffic to AT&T Kentucky. From
14 this Halo draws two conclusions: First, that the call that Halo delivers to AT&T
15 Kentucky is actually wireless-originated (and thus in compliance with the
16 Halo/AT&T Kentucky ICA) because it is originated by Transcom's wireless
17 equipment – even if the communication was actually initiated by some other
18 carrier's end-user customer on a regular landline phone. And second, that the
19 call is subject to reciprocal compensation, and not access charges, because it
20 originates (at the Transcom equipment) and terminates in the same MTA and is
21 thus an intraMTA call.

1 **Q. IS HALO'S DEFENSE VALID?**

2 A. No. But before I explain why, I want to make sure it is clear what the traffic at
3 issue looks like. To do that, I refer to **Exhibit MN-7** to this testimony, which
4 illustrates such a call in simplified form. As the illustration shows, we have a
5 person in California using a landline phone to call someone in Frankfort – let's
6 say it's a girl calling her grandmother. The girl dials her grandmother in the
7 familiar way – "1" followed by the area code (NPA) and her grandmother's seven-
8 digit phone number (starting with the NXX). The call eventually is transported to
9 Transcom equipment located in the same MTA as the grandmother. Transcom
10 hands the call off to Halo, which in turn delivers the call to AT&T Kentucky for
11 termination to its customer, the grandmother.¹²

12 This is a standard, run-of-the mill landline long distance call for which
13 AT&T Kentucky is entitled to access charges. Halo, however, is saying that
14 when the call hits Transcom, it terminates there, because Transcom is
15 supposedly an ESP, and that Transcom originates a further communication,
16 which Halo terminates to AT&T Kentucky. Because this "further communication"
17 "originates" on Transcom's wireless equipment, Halo contends, it is a wireless
18 call, and because the Transcom equipment is in the same MTA as the AT&T
19 Kentucky switch to which the call is delivered, it is, according to Halo, an

¹² Neither the girl nor the grandmother, of course, has any idea that Transcom or Halo has anything to do with this call; unbeknownst to them, the carrier that transports the call from California to Kentucky (perhaps an IXC) – which would have to pay access charges to AT&T Kentucky if it delivered the call directly to AT&T Kentucky – has an arrangement with Transcom pursuant to which it instead hands the call to Transcom, which will have the call terminated for a lower rate (in this case, as a result of an access-avoidance scheme).

1 intraMTA wireless call to which reciprocal compensation, rather than access
2 charges, applies.

3 **Q. DO YOU ACCEPT ANY PART OF HALO'S ARGUMENT?**

4 A. Solely for the sake of discussion, I assume that Transcom's connection with Halo
5 is wireless, and that Transcom has wireless equipment in the same MTA where
6 Halo hands the call off to AT&T Kentucky, although I have no way to
7 independently verify that those things are true. Even so, Halo's argument that
8 the girl's call to her grandmother terminates at Transcom and that Transcom then
9 originates a new and somehow different call to Grandma does not hold water.

10 **Q. WHY NOT?**

11 A. In the first place, Halo's position has been rejected by the two regulatory bodies
12 that have considered it – the FCC and the Tennessee Regulatory Authority. In
13 addition, the Pennsylvania Public Utility Commission, in a case that did not
14 involve Halo, rejected a claim that Transcom is an ESP, and the South Carolina
15 Office of Regulatory Staff, in the current proceeding between AT&T and Halo in
16 that state, concluded, contrary to Halo's position, that Halo is not an end user
17 and "cannot be classified as an originating or terminating end user."¹³

18 **Q. WHAT DID THE FCC SAY ABOUT HALO'S POSITION?**

19 A. Mr. McPhee addresses that, and I do not want to duplicate his discussion. In
20 short, though, when Halo presented the FCC with the same arguments it is

¹³ See **Exhibit MN-2a**, p. 5, lines 15-18.

1 making in these proceedings, the FCC, in its November, 2011, *Connect America*
2 *Fund* decision on intercarrier compensation and related matters, rejected those
3 arguments and ruled that a call is considered to be originated by a CMRS
4 provider only if the calling party initiating the call has done so through a CMRS
5 provider.¹⁴ Accordingly, the FCC further stated that “***the ‘re-origination’ of a***
6 ***call over a wireless link in the middle of the call path does not convert a***
7 ***wireline-originated call [i.e., a landline-originated call] into a CMRS-***
8 ***originated call for purposes of reciprocal compensation and we disagree***
9 ***with Halo’s contrary position.*”¹⁵**

10 **Q. STARTING ON PAGE 20 OF THIS TESTIMONY, YOU SUMMARIZED HALO’S**
11 **ATTEMPT TO EXPLAIN THAT IT IS NOT BREACHING THE PARTIES’ ICA**
12 **EVEN THOUGH IT IS DELIVERING TRAFFIC TO AT&T KENTUCKY THAT**
13 **WAS INITIATED ON LANDLINE EQUIPMENT. DOES HALO’S ARGUMENT**
14 **DEPEND ON TRANSCOM BEING AN ESP?**

15 A. Yes. Halo’s argument depends on two propositions: (1) that Transcom is an
16 ESP, and (2) because Transcom is an ESP, the calls at issue somehow
17 “originate” with Transcom. Halo must establish both of these propositions to
18 prevail but, as I explain below, it can establish neither.

19 **Q. WHAT IS AT&T KENTUCKY’S POSITION ON THOSE TWO PROPOSITIONS?**

20 A. That Transcom is not an ESP, *and* even if Transcom were an ESP, it would
21 make no difference because the traffic that passes through Transcom is not
22 originated by Transcom.

¹⁴ *Connect America Fund*, FCC 11-161, 2011 WL 5844975 (rel. Nov. 18, 2011), ¶ 1006.

¹⁵ *Id.* (emphasis added).

1 **Q. LET'S ADDRESS THE FIRST OF THE TWO PROPOSITIONS FIRST. DID THE**
2 **FCC DECIDE THAT TRANSCOM WAS NOT AN ESP?**

3 A. No, the FCC did not address that question. As I read the FCC's discussion, the
4 FCC took at face value Halo's representation that Transcom is an ESP and
5 decided that that makes no difference because there is no second call
6 origination.

7 **Q. WHAT IS THE BASIS FOR AT&T KENTUCKY'S POSITION THAT TRANSCOM**
8 **IS NOT AN ESP?**

9 A. That is ultimately a legal question. I am aware that there is a well-developed
10 body of law that addresses what is and what is not an enhanced service, and I do
11 not purport to be an expert on that law. AT&T Kentucky will discuss that law in
12 its brief.

13 That said, I do have a working understanding based on my years of
14 experience in the industry as to what constitutes an enhanced service, and that
15 understanding matches what counsel tells me the law says. I will express my
16 own view on the matter, with the recognition that AT&T Kentucky will
17 demonstrate later that the legal authorities, which should be determinative,
18 support that view.

19 I have seen no evidence that Transcom provides enhanced services.
20 Halo claims that Transcom does things to the telephone calls it carries to make
21 them clearer. But I do not believe that qualifies Transcom's service as an
22 "enhanced" service. Certainly, Transcom is not making available additional
23 information that is added to the call (the "enhancement"), which is the type of

1 enhanced service I am familiar with. Halo has claimed Transcom makes non-
2 trivial changes to user-supplied information, but when asked to identify these
3 alleged changes, Halo and Transcom can only point to examples of how
4 Transcom makes a call clearer, by allegedly eliminating background and white
5 noise. Another supposed enhancement is a Comfort Noise Generator, which is
6 commonly used to provide background noise to an end user during moments of
7 silence when packets are not being sent over the network, so they are not
8 confused that the call has ended. Certainly, the phone industry has been
9 attempting since its inception to make calls more clear, but this type of
10 improvement does not make a vanilla voice service an enhanced service. No
11 evidence has been presented in any of the parties' proceedings that Transcom is
12 fundamentally changing the character of a telephone service. And there is
13 likewise no evidence that any of the end users who make the calls that pass
14 through Transcom are aware of the alleged "enhancements" – or were even
15 aware that Transcom exists. Regardless of what Transcom does or does not do,
16 the actual originating party that placed a call destined for someone in Kentucky is
17 totally unaware that their call was routed in this manner, and Transcom did not
18 offer that party any enhancement.

19 **Q. DID THE TENNESSEE REGULATORY AUTHORITY DECIDE WHETHER**
20 **TRANSCOM IS AN ESP?**

21 A. Yes. In its decision earlier this year that resolved in AT&T Tennessee's favor all
22 the issues presented in this case, the TRA specifically held that "Transcom Is Not

1 an Enhanced Service Provider,”¹⁶ and it devoted two and a half pages of its
2 decision to explaining the basis for that conclusion.¹⁷ Among the points that the
3 TRA made were these:

- 4 • The “FCC has held that services are not ‘enhanced’ when customers use
5 the same dialing method for allegedly ‘enhanced’ calls that they would for
6 any other call, or where the alleged ‘enhancement’ was made without the
7 advance knowledge or consent of the ‘customer’ that placed the call and
8 the customer is not provided with the ‘capability’ to do anything other than
9 make a telephone call.”¹⁸
- 10 • “[T]he record . . . indicates that Transcom provides no services to actual
11 end-users and does not offer any enhancements discernible to the person
12 that actually places the call.”¹⁹
- 13 • “The record also supports the conclusion that end-users are completely
14 unaware that Transcom is even involved in call delivery.”²⁰
- 15 • “Despite [Halo’s] claim of computer processing of data, Transcom only
16 reduces background noise and inserts ‘comfort noise’ in periods of silence
17 so that those periods of silence are not mistaken for the end of a call. . . .
18 The alleged ‘enhancements’ . . . are simply processes to improve the

¹⁶ See Exhibit MN-1 at 20.

¹⁷ *Id.* at 20-22.

¹⁸ *Id.* at 20-21.

¹⁹ *Id.* at 21.

²⁰ *Id.*

1 quality of the call. Telecommunications networks have been routinely
2 making those types of improvements for years . . . yet none of these
3 processes are deemed ‘enhancements’ in the sense of an ESP.”²¹

4 The TRA’s reasons for finding that Transcom is not an ESP are essentially
5 the same as mine, which are set forth above and to which I testified in that case.

6 **Q. YOU MENTIONED A DECISION BY THE PENNSYLVANIA PUBLIC UTILITY**
7 **COMMISSION THAT SUPPORTS AT&T KENTUCKY’S POSITION. WHAT DID**
8 **THE PENNSYLVANIA COMMISSION DECIDE?**

9 A. The Pennsylvania PUC’s decision came in a case that did not involve Halo, but
10 that involved a carrier called Global NAPs. Global NAPs, much like Halo here,
11 argued that “Transcom’s removal of background noise, the insertion of white
12 noise, the insertion of computer developed substitutes for missing content, and
13 the added capacity for the use of short codes to retrieve data during a call all
14 constitute ‘enhancements’ to the traffic that Transcom passes on to GNAPs.”²²
15 The Pennsylvania Commission rejected that argument, stating, “[W]e find that
16 Transcom does not supply GNAPs with ‘enhanced’ traffic under applicable
17 federal rules. Consequently, such traffic cannot be exempted from the
18 application of appropriate jurisdictional carrier access charges.”²³

²¹ *Id.* at 21-22 (citations omitted).

²² *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).

²³ *Id.*, *62.

1 **Q. IS THERE ANY ADDITIONAL BASIS FOR THE CONCLUSION THAT**
2 **TRANSCOM IS NOT AN ESP?**

3 A. As AT&T Kentucky witness McPhee notes, Transcom has stated on its website
4 that the company's "core service offering" is "voice termination services."²⁴ Also
5 telling is the fact that the Transcom webpage entitled "Products and Services" did
6 not make even a single mention of enhanced services. It is hard to believe that a
7 real Enhanced Service Provider would not make even a passing reference to
8 enhanced services on the webpage that describes its products and services.²⁵

9 Similarly, I learned from Transcom during the parallel proceeding in
10 Wisconsin to which AT&T, Halo and Transcom were parties, that none of
11 Transcom's written marketing materials makes any mention of the supposed
12 "enhancements" that Transcom claims it provides, and that Transcom's contracts
13 with its customers also make no mention of any such enhancements, and do not
14 require Transcom to provide the enhancements. Again, it is hard to believe that
15 what Transcom is selling is enhanced services when its contracts with its
16 customers do not require Transcom to provide enhanced services.

17 All of these facts support my view that whatever Transcom is doing to the
18 audio quality of the calls it processes is merely incidental to the transmission of
19 the underlying telecommunications services. I understand from counsel that the

²⁴ See Direct Testimony of J. Scott McPhee on behalf of AT&T Kentucky, p. 8, lines 3-4.

²⁵ As Mr. McPhee explains in his Direct Testimony, Transcom recently changed its website to better comport with the Halo/Transcom litigation position. I attach no significance to that tactical move, however, except to note that it shows Halo and Transcom recognized that the website's truthful representation of the fact that Transcom is not selling enhanced services was hurting Transcom and Halo in proceedings like this one.

1 FCC has made clear that services like Transcom's that are merely incidental to a
2 telecommunications service, and that do not alter the fundamental character of
3 the service, are not enhanced services. I am not asking the Commission to take
4 my word for that; AT&T Kentucky will discuss the law in legal submissions.

5 **Q. NOW LET'S ADDRESS THE SECOND OF THE TWO PROPOSITIONS UPON**
6 **WHICH HALO BASES ITS ARGUMENT THAT IT IS NOT BREACHING THE**
7 **ICA. IF TRANSCOM WERE AN ESP, WOULD IT FOLLOW THAT THE CALLS**
8 **HALO IS DELIVERING TO AT&T KENTUCKY ORIGINATE WITH TRANSCOM,**
9 **AS HALO CONTENDS?**

10 A. No. As I explained, even if Transcom were an ESP, which it is not, Halo's theory
11 would still fail, because Transcom is not originating a "further communication," as
12 Halo has claimed. In fact, no calls are originated by Halo or Transcom. Calls –
13 including large numbers of landline-originated calls – merely pass through
14 Transcom on the way to Halo, and since Transcom has some wireless
15 equipment, Halo pretends that the call has magically morphed from landline-
16 originated to wireless-originated and from a toll call to a local call. Passing the
17 call through some entity that the actual caller does not even know exists does not
18 re-originate a call or originate a new call.

19 **Q. IS THE UNDERSTANDING THAT YOU JUST EXPRESSED SUPPORTED BY**
20 **THE APPLICABLE LAW?**

21 A. I am informed by counsel that it is. And indeed, this is another legal question that
22 AT&T Kentucky will address in its briefs. I do not purport to be the master of the
23 various FCC decisions on this point, but I am aware that they comport with my
24 view that Transcom is not originating calls.

1 **IV. HALO'S MANIPULATION OF CHARGE NUMBERS**

2

3 **Q. HOW DID HALO MANIPULATE THE CHARGE NUMBERS OF THE TRAFFIC**
4 **IT SENT TO AT&T KENTUCKY?**

5 A. Until the end of 2011, Halo improperly inserted an unauthorized Charge Number
6 ("CN") in the call data that it sent to AT&T Kentucky in the SS7 message for each
7 call. This made landline-originated calls appear to be wireless-originated calls
8 and non-local calls appear to be local calls, which impeded AT&T Kentucky's
9 ability to bill the correct intercarrier compensation rate on Halo's traffic. Halo
10 ceased this practice on December 29, 2011, but that does not explain or excuse
11 its prior behavior.

12 **Q. PLEASE DISCUSS CN AND HOW IT WORKS TOGETHER WITH CPN.**

13 A. CN, like CPN (Calling Party Number), is a field in the information stream in an
14 SS7 message. For the vast majority of calls there is no CN in the SS7 message,
15 and the CPN is used to determine the rating for the call, as I described above.
16 On some calls, however, the call data also includes a Charge Number, which is
17 used to identify the customer responsible for paying for the call. In the vast
18 majority of calls where there is a CN, the CN is identical to the CPN, in which
19 event billing systems use the CPN to determine the proper intercarrier
20 compensation rate for the call.

1 In some instances, however, the CN is different from the CPN. For
2 example, a company using a PBX²⁶ to serve a large number of individual
3 business lines typically wants to use a single master billing telephone number for
4 all long distance calls. For such a company, the company's CN (say, its general
5 line) will be used as the master billing number for all the lines served by the PBX.
6 The company may then use the individual CPN to assign to each department
7 within the company financial responsibility for all calls made by that department's
8 lines. For example, 502-555-1000 might be the CN for all numbers in the range
9 502-555-1000 to 502-555-1999. Then, any time one of the PBX stations, 502-
10 555-1000 to 502-555-1999, makes a long distance call, telephone number 502-
11 555-1000 is populated in the CN field so that IXCs would bill the master number
12 instead of the actual CPN. This is an accepted practice across the industry and
13 service providers have agreed upon billing system rules to accommodate this.
14 Thus, when CN is used and is different from the CPN, AT&T's billing systems
15 use the number in the CN field to determine what number will be charged for the
16 call, and ignore the number in the CPN field. This too is the accepted industry
17 practice.

18 **Q. DID HALO FOLLOW THE INDUSTRY PRACTICE?**

19 A. No. Instead, Halo routinely inserted a CN into the call record for each call.
20 Specifically, (i) on the vast majority of calls, where there is no CN, Halo inserted

²⁶ A PBX (Private Branch Exchange) is similar to a small switch that a large business end-user may have on its premises to handle the company's calls.

1 a CN on its own, and (ii) on that small number of calls where there is a CN, Halo
2 changed the CN from what it originally was. In both situations, Halo inserted a
3 CN that Halo states is assigned to Transcom. Indeed, Halo inserted the same
4 CN on every call it sent to AT&T Kentucky in a given MTA. By doing this, Halo
5 doubly disguised the nature of calls: first, Halo made all calls appear wireless
6 even though many of them were originated by a landline caller; second, Halo
7 made all calls appear to be local even though many were non-local (either
8 interMTA if wireless or interexchange if landline). Disguising calls in this way is
9 contrary to industry practices and makes it very difficult for AT&T Kentucky to
10 properly bill for terminating calls sent by Halo. **Exhibit MN-8** to my testimony
11 provides a sample of SS7 data depicting Halo-terminated calls where Halo
12 inserted Transcom's CN into the call data even though the call originated with no
13 CN; this is in the top table on Exhibit MN-8. For comparison, I also show what
14 AT&T typically sees from a typical CMRS carrier in that carrier's SS7 records;
15 this is in the bottom table on Exhibit MN-8. This comparison demonstrates how
16 Halo's behavior is drastically different from the norm.

17 **Q. YOU SAY THAT HALO WAS DISGUISED THE TRUE NATURE OF ITS**
18 **TRAFFIC, BUT WASN'T AT&T KENTUCKY ABLE TO DISCERN THE TRUE**
19 **NATURE OF THE TRAFFIC BY LOOKING AT THE ORIGINATING CPN AND**
20 **USING THE PROCESS YOU AND MR. MENSINGER USED FOR YOUR CALL**
21 **ANALYSES?**

22 A. Yes, but that was because we performed additional, special analyses of the data.
23 We do not generate our bills to Halo by manually reviewing millions of bits of SS7

1 data. We use our mechanized billing systems to generate our bills to Halo, and
2 Halo was disguising the true nature of its traffic *from our billing systems*.

3 **IV. DISCONTINUATION OF SERVICE TO HALO**

4
5 **Q. ARE YOU AWARE THAT AT&T KENTUCKY IS ASKING THE KENTUCKY**
6 **COMMISSION TO AUTHORIZE AT&T KENTUCKY TO DISCONTINUE**
7 **SERVICE TO HALO – TO STOP ACCEPTING TRAFFIC FROM HALO, IN**
8 **OTHER WORDS?**

9 A. Yes, I am.

10 **Q. DO YOU HAVE ANY EXPERIENCE WITH WHAT HAPPENS WHEN AN AT&T**
11 **ILEC DISCONTINUES SERVICE TO ANOTHER CARRIER?**

12 A. I do. In fact, I was involved in implementing AT&T Tennessee's termination of
13 service to Halo when the TRA authorized AT&T Tennessee to take that step.

14 **Q. IF THE COMMISSION AUTHORIZES AT&T KENTUCKY TO STOP**
15 **ACCEPTING TRAFFIC FROM HALO AND AT&T KENTUCKY DOES SO,**
16 **WHAT IMPACT WILL THAT HAVE ON KENTUCKY CONSUMERS OF**
17 **TELECOMMUNICATIONS SERVICES?**

18 A. Based on my years of telecommunications experience in general and on our
19 experience in Tennessee in particular, I would expect it to have no discernible
20 effect on Kentucky consumers.

21 **Q. PLEASE ELABORATE.**

22 A. First, and most important, no one in Kentucky is going to lose dial tone -- the
23 ability to make calls -- and there will be no impact whatsoever on emergency
24 services. Recall that Halo has no end-user consumer customers in Kentucky --
25 all we are talking about is traffic that comes from Halo to AT&T Kentucky, either

1 for termination to AT&T Kentucky's local exchange customers or for delivery to
2 other carriers.

3 **Q. BUT WHEN PEOPLE MAKE CALLS THAT WOULD BE ROUTED THROUGH**
4 **TRANSCOM/HALO TO AT&T KENTUCKY, SUCH AS THE GIRL CALLING**
5 **HER GRANDMOTHER IN YOUR ILLUSTRATION, WILL THOSE CALLS**
6 **COMPLETE?**

7 A. Yes. I was confident that the answer to that question was yes before we
8 discontinued service to Halo in Tennessee, and our Tennessee experience
9 confirmed that that was correct.

10 **Q. WHAT WAS THE BASIS FOR YOUR BELIEF BEFORE AT&T DISCONTINUED**
11 **SERVICE TO HALO IN TENNESSEE?**

12 A. Many carriers have switches that are programmed to find alternative routing if a
13 call fails to complete via the primary route. To the extent that the carriers that
14 pass traffic to Transcom fall into that category, the calls will complete, with no
15 complications. Assume, for example, that Carrier X has direct connections with
16 AT&T Tennessee and used to deliver substantial volumes of access traffic to
17 AT&T Tennessee over those direct connections. Assume further that Carrier X
18 started routing its access traffic through Halo to AT&T Tennessee in order to get
19 the benefit of Halo's least cost routing. This would have significantly reduced the
20 volumes of traffic Carrier X sent directly to AT&T Tennessee, but those direct
21 connections remained in place. What would happen, then, when AT&T
22 Tennessee, having received approval from the TRA, discontinues service to
23 Halo? If Carrier X's switches were programmed as many carriers' switches are,
24 they would route Carrier X's traffic directly to AT&T Tennessee when the routing

1 through Halo fails. And this, of course, happens instantaneously, and is
2 transparent to the end-users. From the point of view of the girl and her
3 grandmother, nothing has happened – the girl dials her grandmother’s number
4 and the call completes, just as it always did.

5 **Q. BUT WHAT ABOUT CARRIERS THAT DIDN'T PRE-PROGRAM THEIR**
6 **SWITCHES TO RE-ROUTE THE TRAFFIC?**

7 A. With a few hours' work reprogramming their switches, those carriers can achieve
8 the same result; the only difference is that they have to take measures promptly
9 when they learn that Halo can no longer complete their calls to the AT&T ILEC,
10 or will soon become unable to do so. In Tennessee, my expectation was that the
11 carriers that deliver traffic to Halo (particularly carriers, if any, with switches that
12 were not already programmed to reroute traffic as I described above) were
13 monitoring the case, and would do the appropriate reprogramming before we
14 actually cut off Halo. Or if those carriers were not monitoring the case, I
15 expected that Halo (like any responsible carrier when it sees the writing on the
16 wall) would give them advance notice that they should reprogram their switches
17 or, at worst, that there might be a slight delay between our termination of service
18 to Halo and the implementation of measures to make sure that all calls
19 completed. So, for all of these reasons, I expected that when we terminated
20 service to Halo in Tennessee, there would be little or no effect on the completion
21 of incoming calls.

1 **Q. YOU SAID EARLIER THAT YOUR ACTUAL EXPERIENCE IN TENNESSEE**
2 **CONFIRMED YOUR EXPECTATIONS. PLEASE EXPLAIN.**

3 A. In order to determine whether there were blocked calls as a result of AT&T
4 Tennessee discontinuing its service to Halo, I consulted AT&T's Global Network
5 Operations Center, which monitors the AT&T network. The Center has the ability
6 to monitor AT&T's trunk groups for any blocked calls, and the person I spoke with
7 told me there had been no problems with blocked calls on AT&T Tennessee's
8 network. This confirmed that the calls that carriers were previously passing
9 through Transcom/Halo to AT&T Tennessee found alternate routes for
10 completion.

11 **Q. DO YOU EXPECT ANYTHING DIFFERENT TO OCCUR IN KENTUCKY IF THE**
12 **KENTUCKY COMMISSION AUTHORIZES AT&T KENTUCKY TO**
13 **DISCONTINUE SERVICE TO HALO?**

14 A. No.

15 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

16 A. Yes.

1037452

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 26, 2012

IN RE:)
)
BELLSOUTH TELECOMMUNICATIONS LLC D/B/A AT&T) **DOCKET NO.**
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.

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 Intellogic 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

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

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. MCI Metro 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

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 indicator 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

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*

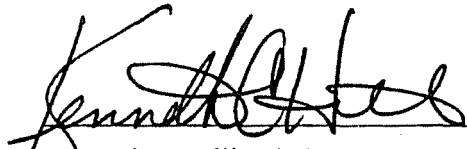
⁸⁵ *Palmerton Tel. Co. v. Global NAPS South, Inc., et al.*, PA PUC Docket No. C-2009-2093336, 2011 WL 1259661, at 16-17 (Penn. PUC, March 16, 2010). (“We find that Transcom does not supply GNAPS with ‘enhanced’ traffic under applicable federal rules”). Note that the Pennsylvania Public Utility Commission 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.*

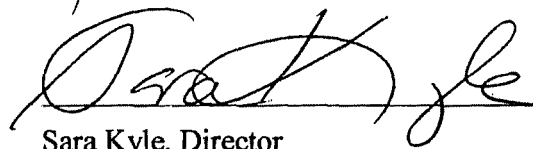
Companies to Determine Automatic Stay Inapplicable and for Relief From the Automatic Stay [Dkt. No. 13], issued by the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division, in Case No. 11-42464-btr-11 on October 26, 2011. AT&T Tennessee may pursue further action for the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

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**

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**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.

1 As my experience grew, I took on roles of increasing responsibility and leadership, often
2 crafting the regulatory policy for my company and presenting that position in meetings,
3 presentations, formal comments, and testimony.

4 My testimony and advocacy covered issues involving finance, economics, rate-of-
5 return, competitive entry, inter-carrier compensation and access. I have also been
6 involved with the startup, development, and funding of telecommunications companies
7 and other businesses.

8 Additionally, I have worked for the federal government in an energy regulatory
9 organization (U.S. Department of Energy), and as a public utility consumer advocate for
10 a county government in Virginia.

11 I hold a master's degree in Economics from George Mason University in Fairfax,
12 Virginia and a bachelor's degree in Economics from Georgetown University in
13 Washington, DC.

14 **Q. WHAT ARE YOUR RESPONSIBILITIES AT THE OFFICE OF REGULATORY**
15 **STAFF?**

16 A. As Telecommunications Program Manager, I am responsible for all
17 telecommunications activities of ORS including the certification of new
18 telecommunications entrants, regulation and oversight of existing telecommunications
19 companies, management of the state universal service and Interim LEC funds, and
20 administration of the Lifeline Program.

1 **Q. HAVE YOU PROVIDED TESTIMONY IN OTHER REGULATORY**
2 **PROCEEDINGS?**

3 A. Yes. I have provided testimony on a variety of issues in Alabama, Delaware,
4 Florida, Georgia, Louisiana, Mississippi, New York, North Carolina, Pennsylvania, South
5 Carolina, Tennessee, Vermont, and Virginia.

6 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

7 A. The purpose of my testimony is to provide the Commission with ORS' position
8 regarding the telecommunications services being offered by Halo Wireless, Incorporated
9 ("Halo") in South Carolina and our review of the interconnection agreement ("ICA")
10 between Halo and Bellsouth Telecommunications, LLC d/b/a AT&T South Carolina
11 ("AT&T"). More specifically, whether telecommunications traffic (telephone calls)
12 delivered by Halo to AT&T for termination to South Carolina residents or businesses are
13 wireless calls or are these telephone calls classified as wireline calls.

14 **Q. CAN YOU SUMMARIZE AT&T'S POSITION IN THIS CASE?**

15 A. Yes. Simply stated, AT&T alleges that Halo is delivering wireline originated
16 interstate and intrastate, interLATA calls to AT&T and refusing to pay terminating access
17 for these calls. Halo has a wireless ICA with AT&T. AT&T, however, claims that much
18 of Halo's traffic originates on traditional wireline phones, and that Halo is using an
19 access charge avoidance scheme to make these wireline calls appear to be wireless and
20 intraMTA.

1 More specifically, AT&T has identified four specific complaints against Halo in
2 its Complaint and Petition.

3 Count I – Breach of ICA: Sending wireline-originated traffic to AT&T South
4 Carolina.

5 Count II – Breach of ICA: Alteration or deletion of call detail.

6 Count III – Payment for termination of wireline-originated traffic.

7 Count IV – Breach of ICA: Non-Payment for facilities.

8 **Q. CAN YOU SUMMARIZE HALO’S POSITION IN THIS CASE?**

9 A. Yes. Halo states it is a wireless carrier; it receives wireless traffic from Transcom;
10 and it delivers wireless traffic to AT&T in accordance with its ICA.

11 **Q. IS HALO A WIRELESS CARRIER?**

12 A. Halo does have a wireless license for the Orangeburg, SC area, issued by the
13 Federal Communications Commission (“FCC”).

14 **Q. DOES THE FACT THAT HALO HAS A WIRELESS LICENSE INDICATE
15 THAT ALL TRAFFIC IT HANDLES MUST BE DEFINED AS WIRELESS?**

16 A. No, it does not. Other telecommunications companies operating in South
17 Carolina carry both wireless and wireline traffic in the state. Sprint, for example,
18 provides wireless service in South Carolina, while also operating as an interexchange
19 carrier (“IXC”) and providing wholesale telecommunications service to other carriers.

1 **Q. IN HALO'S PARTIAL MOTION TO DISMISS, THE COMPANY CLAIMS THE**
2 **COMMISSION LACKS THE JURISDICTION TO "DECIDE WHETHER HALO**
3 **IS ACTING WITHIN AND CONSISTENT WITH ITS FEDERAL LICENSE." IS**
4 **HALO CORRECT?**

5 A. No. Pursuant to S.C. Code Ann. § 58-11-100 (D) the Commission retains
6 jurisdiction to address and resolve issues relating to arrangements and compensation
7 between telecommunications carriers and commercial mobile service providers, pursuant
8 to 47 U.S.C. Sections 251 and 252.

9 Furthermore, the Commission has jurisdiction over intrastate telecommunications
10 traffic, and the authority to regulate those companies offering retail or wholesale
11 intrastate wireline telecommunications services. While not an issue raised in AT&T's
12 complaint, it is ORS's position that Halo appears to be providing wholesale intrastate
13 wireline telecommunications services in South Carolina without a certificate of public
14 convenience and necessity ("CPCN").

15 **Q. IS TRANSCOM AN END USER?**

16 A. No, not in the opinion of ORS. For traffic originated by end users and delivered
17 to Transcom by another carrier for delivery to a third carrier, or even an end user,
18 Transcom cannot be classified as an originating or terminating end user.

19 **Q. YOU USE SPRINT AS AN EXAMPLE OF A WIRELESS CARRIER WHICH**
20 **OPERATES AS AN IXC AND WHOLESALE CARRIER. WHAT THREE TYPES**
21 **OF SERVICES DOES SPRINT PROVIDE IN SOUTH CAROLINA? WHAT**

1 **APPROVALS OR LICENSES IS SPRINT REQUIRED TO HAVE FOR THOSE**
2 **SERVICES IN SOUTH CAROLINA?**

3 A. The first service Sprint offers is wireless service. Companies providing wireless
4 service obtain a license from the FCC for a specified geographic area. Most wireless
5 traffic is generated by end-user customers of the wireless license holder with mobile
6 wireless devices (e.g. cell phones or tablets). The key here is that the traffic is end-user
7 generated, and the end-user is a customer of the wireless company.

8 The second service Sprint offers is wireline IXC service. This is traditional
9 wireline-based long distance service. Companies providing this service in South Carolina
10 are required to obtain a CPCN from the Commission. Traffic here is again generated by
11 end-users who are the customers of the IXC.

12 The third service Sprint offers is wholesale telecommunications service. This
13 service is provided by one carrier to another carrier or multiple carriers. The wholesale
14 carrier has no contract or direct relationship with the end-user. Wholesale
15 telecommunications carriers are required to obtain a CPCN to operate in South Carolina.

16 **Q. IS HALO OPERATING SOLELY AS A WIRELESS SERVICE PROVIDER IN**
17 **SOUTH CAROLINA?**

18 A. No. According to the information filed in this proceeding, Halo has an FCC
19 license to operate in South Carolina as a wireless carrier, but it does not appear to ORS
20 that Halo is providing end-users with wireless service that the end-user accesses through

1 a mobile wireless device, and nearly all of its South Carolina traffic is wholesale
2 (provided to another carrier).

3 **Q. IF HALO IS NOT OPERATING AS A WIRELESS SERVICE PROVIDER, HOW**
4 **DOES ORS CLASSIFY THE SERVICE HALO IS PROVIDING?**

5 A. Halo apparently has one customer in South Carolina - Transcom. Halo has
6 informed ORS that it has no retail customers in South Carolina. Transcom appears to
7 aggregate wireline traffic from other carriers and delivers it to Halo over a wireless
8 connection. As I stated earlier, in this scenario, Halo appears to be a wholesale carrier or
9 a carrier's carrier operating without the necessary CPCN to sell wholesale intrastate
10 telecommunications services.

11 **Q. ACCORDING TO HALO, TRAFFIC IS RECEIVED FROM ITS CUSTOMERS**
12 **VIA A WIRELESS CONNECTION. BECAUSE HALO HAS A WIRELESS**
13 **LICENSE DOES THAT CLASSIFY HALO AS A WIRELESS CARRIER?**

14 A. No. Much of the traffic Halo transports originated as wireline telephone calls.
15 AT&T and Halo dispute the amount of traffic that originated as wireline telephone calls.
16 Halo then transports these calls to AT&T for termination to wireline customers of AT&T
17 and other South Carolina ILECs. Calls that originate on a wireline phone and terminate
18 on a wireline phone in South Carolina are intrastate wireline calls.

19 As for Halo's claim that it is a wireless carrier, based on the information I have
20 reviewed, Halo and Transcom have constructed a wireless facility for the exchange of
21 traffic.

1 Finally, the FCC in its recent Order (FCC 11-161) states in paragraph 1006:

2 We clarify that a call is considered to be originated by a CMRS provider
3 for purposes of the intraMTA rule **only if the calling party initiating the**
4 **call has done so through a CMRS provider.** Where a provider is merely
5 providing a transiting service, it is well established that a transiting carrier
6 is not considered the originating carrier for purposes of the reciprocal
7 compensation rules. Thus, we agree with NECA that the “re-origination”
8 of a call over a wireless link in the middle of the call path does not convert
9 a wireline-originated call into a CMRS-originated call for purposes of
10 reciprocal compensation and we disagree with HALO’s contrary position.
11 (Emphasis Added)

12 Thus, a call that originates on a wireline and terminates on a wireline is a wireline
13 call for purposes of inter-carrier compensation. For example, a call originating on a
14 wireline phone in North Carolina and terminating on an AT&T wireline phone in South
15 Carolina, is an interstate call, subject to interstate access charges, regardless of the means
16 of transport. A call originating on a wireline phone in Charleston, SC and terminating on
17 an AT&T wireline phone in Greenville, SC, is an intrastate interLATA call, subject to
18 intrastate access charges, regardless of the means of transport. A call originating on a
19 wireline phone in Charleston, SC and terminating on an AT&T wireline phone in
20 Charleston, SC, is a local call, subject to reciprocal compensation charges, regardless of
21 the means of transport. The FCC has reviewed other requests for exemption of access
22 charges where the means of transporting the call was altered but did not change the
23 fundamental nature of the call. See, *In the Matter of Petition for Declaratory Ruling that*
24 *AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC
25 Docket No. 02-361, FCC 04-97, 19 FCC Rcd 7457 (rel. April 21, 2004) (“AT&T
26 Declaratory Ruling” or “IP-in-the-Middle”). Importantly, the FCC held that there is “no

1 benefit in promoting one party's use of a specific technology to engage in arbitrage at the
2 cost of what other parties are entitled to under the statute and our rules, particularly
3 where, based on the record before us, end users have received no benefit in terms of
4 additional functionality or reduced prices." *Id.* at. ¶ 17 ORS agrees with the FCC's
5 position on this issue and sees no benefit to end users in the construction of the call flow
6 at issue in this proceeding.

7 **Q. IN PARAGRAPHS 14 AND 15 OF HALO'S PARTIAL MOTION TO DISMISS,**
8 **THE COMPANY COMPARES TELEPHONE TRAFFIC AT ISSUE IN THIS**
9 **CASE TO INTERNET TRAFFIC. IS THIS A PROPER COMPARISON?**

10 A. No, it is not. The ISP traffic being referred to by Halo in 2000 was dial-up
11 data/IP traffic being directed to the Internet that could be sent to multiple locations all
12 over the world simultaneously. Many of Transcom's so-called wireless/ESP
13 transmissions first originated as traditional telephone calls and were directed to one and
14 only one terminating telephone number. When the receiving party answered, one
15 individual spoke with another individual, a voice communication occurred. As the FCC
16 has stated in its recent Order (FCC 11-161, paragraph 1006), "the "re-origination" of a
17 call over a wireless link in the middle of the call path does not convert a wireline-
18 originated call into a CMRS-originated call for purposes of reciprocal compensation and
19 we disagree with Halo's contrary position." It is very clear that the FCC does not
20 consider the Transcom to Halo transmission to be a re-origination of the call, therefore,
21 the wireline-originated call and all of its IXC and network transiting components are

1 jurisdictionally identified by the true originating and terminating points of the telephone
2 call.

3 **Q. ARE THERE ANY BENEFITS TO THE ROUTING OF THIS TRAFFIC**
4 **THROUGH TRANSCOM AND HALO?**

5 A. I can think of one – avoidance of the higher priced switched access charges. It is
6 significant that Halo inserted a Charge Number (“CN”) on calls it sent AT&T in a given
7 MTA thereby ensuring that every call appeared to be wireless and intraMTA (Direct
8 Testimony of Neinast at p. 34, lines 3-8).

9 **Q. HAS HALO BREACHED ITS INTERCONNECTION AGREEMENT WITH**
10 **AT&T, BY SENDING WIRELINE-ORIGINATED TRAFFIC TO AT&T?**

11 A. Yes. It appears the AT&T and Halo ICA is specific to wireless traffic only, and a
12 significant amount of Halo’s traffic appears to be wireline-originated.

13 **Q. WHAT ARE YOUR RECOMMENDATIONS IN THIS CASE?**

14 A. ORS recommends the Commission do the following:

- 15 1. Authorize AT&T South Carolina to stop accepting traffic from Halo Wireless, Inc.
- 16 2. Require Halo, within ten (10) days, to identify all affiliated companies operating in
17 South Carolina, and for Halo and each of these affiliated companies to identify the
18 following:
 - 19 a. Whether the affiliate is offering local, long distance, or wholesale
20 telecommunications service in the state;

1 b. In which areas or communities Halo or the affiliate is providing
2 telecommunications service; and

3 c. The number of residential, business, and carrier customers Halo and each affiliate
4 is serving.

5 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

6 **A. Yes it does.**

DIRECT TESTIMONY
OF
DR. JAMES ZOLNIEREK

TELECOMMUNICATIONS DIVISION
ILLINOIS COMMERCE COMMISSION

ILLINOIS BELL TELEPHONE COMPANY AND HALO WIRELESS, INC.
COMPLAINT AS TO VIOLATIONS OF AN INTERCONNECTION AGREEMENT
ENTERED INTO UNDER 47 U.S.C. §§ 251 AND 252 AND PURSUANT TO
SECTION 10-0108 OF THE PUBLIC UTILITIES ACT.

DOCKET NO. 12-0182

May 25, 2012

TABLE OF CONTENTS

OVERVIEW 3

**COUNT I – BREACH OF ICA: SENDING WIRELINE-ORIGINATED TRAFFIC
TO AT&T ILLINOIS4**

**COUNT II – OBLIGATION TO PAY ACCESS CHARGES FOR TERMINATION
OF WIRELINE-ORIGINATED TRAFFIC10**

2 **Q. Please state your name and business address.**

3 A. My name is James Zolnierек and my business address is 527 East Capitol
4 Avenue, Springfield, Illinois 62701.

5

6 **Q. By whom are you employed and in what capacity?**

7 A. I am employed by the Illinois Commerce Commission ("Commission" or
8 "ICC") as the Director of the Policy Division within the Public Utility
9 Bureau.

10

11 **Q. Please state your education background and previous job
12 responsibilities.**

13 A. I earned my Doctor of Philosophy degree in economics from Michigan
14 State University in 1996. Prior to joining the Illinois Commerce
15 Commission, I was employed by the Federal Communications
16 Commission ("FCC") as an Industry Economist in the Common Carrier
17 Bureau, Industry Analysis Division.

18

19 **Overview**

20

21 **Q. What is the purpose of your testimony?**

22 A. Illinois Bell Telephone Company ("AT&T Illinois") asserts in its complaint
23 against Halo Wireless, Inc. ("Halo") that: (1) "[b]y sending landline-
24 originated traffic to AT&T Illinois, Halo is materially breaching the parties'

25 ICA [Interconnection Agreement]"¹; and (2) "all [landline-originated] traffic
26 sent to AT&T Illinois by Halo and terminated by AT&T Illinois to AT&T
27 Illinois' end users is ... subject to tariffed switched access charges."² In
28 my testimony, I will provide analysis of the issues in dispute and
29 recommendations to the Commission. Because I am not a lawyer, my
30 analysis of the ICA and a relevant FCC Order is based upon my own
31 layman's reading of those documents. Staff counsel will address these
32 issues further, where appropriate, in briefs.

33

34 **Count I – Breach of ICA: Sending Wireline-Originated Traffic to AT&T**
35 **Illinois**

36

37 **Q. Do the parties have an ICA in Illinois that was approved by the**
38 **Commission?**

39 A. Yes. On August 18, 2010, in Docket No. 10-0374, the Commission
40 approved an ICA ["Initial ICA"] between the parties (i.e., approved Halo's
41 adoption of the terms of an agreement between AT&T Illinois and T-
42 Mobile, USA, Inc.). On the same day, in Docket No. 10-0375, the
43 Commission approved an amendment ["Amendment"] to the ICA between
44 the parties. To my knowledge, the ICA and amendment adopted in these
45 two dockets comprise the entirety of the ICA between AT&T Illinois and
46 Halo in Illinois.

¹ Verified Complaint of Illinois Bell Telephone Company ("Complaint") at paragraph 7.
² *Id.*, at paragraph 10.

47

48 **Q. Are there traffic types that Halo is not authorized, under the ICA, to**
49 **send to AT&T Illinois?**

50 A. Yes. The Initial ICA specifies:

51 The following traffic is not subject to this Agreement:

52 (a) Traffic which does not qualify as Local
53 Telecommunications Traffic, including, but not limited
54 to, interMTA traffic and interstate access "roaming"
55 traffic;

56 (b) Non-CMRS Traffic.³

57

58 The Initial ICA further specifies "'Non-CMRS Traffic' means traffic which is
59 neither originated nor terminated on the wireless facilities of a CMRS
60 provider."⁴

61

62 Consistent with these provisions, the Amendment includes the following
63 language:

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

71

72 The parties agree that, with this language, the "parties' ICA authorizes
73 Halo to send only wireless-originated Commercial Mobile Service

³ Schedule JSM-4 attached to AT&T Illinois Exhibit 1.0 at Page 10 of 68.

⁴ *Id.*, at Page 7 of 68.

74 (“CMRS”) traffic to AT&T Illinois.”⁵

75

76 **Q. Is your understanding that Halo is adhering to these ICA terms?**

77 A. No.

78

79 **Q. Why do you believe that Halo is not complying with the terms of the**
80 **ICA?**

81 A. First, Halo does not limit traffic that it sends to AT&T Illinois to CMRS
82 Traffic as required under the terms of the ICA. As Mr. Wiseman, testifying
83 on behalf of Halo, states:

84 Most of the calls probably did start on other networks before
85 they came to Transcom for processing. It would not surprise
86 me if some of them started on the PSTN.⁶
87

88 Similarly, he states:

89 Halo is not saying that some calls ultimately sent to AT&T for
90 termination did not, or could not have, started on the PSTN.
91 As I said above, we have acknowledged that this could
92 happen.⁷
93

94 **Q. Why do you believe traffic starting on the PSTN is not traffic that is**
95 **authorized by the ICA?**

96 A. The Initial ICA requires that:

97 The origination point and termination point on Ameritech's
98 network shall be the end office serving the calling or called

⁵ *Id.*, at paragraph 6 and Verified Answer to Formal Complaint of Halo Wireless, Inc. (“Answer”) at paragraph 6.

⁶ Pre-Filed Testimony of Russ Wiseman on Behalf of Halo Wireless, Inc. at page 32 (footnote omitted).

⁷ *Id.*, at page 36

99 party. The origination point or termination point on Carrier's
100 network shall be the cell site or base station which services
101 the calling or called party at the time the call begins.⁸
102

103 Consistent with this language, when a call starts on the PSTN, and the
104 called party is served by a Local Exchange Carrier, it is the end office
105 serving the calling party that constitutes the origination point of the call
106 and the call is therefore not originated on wireless facilities. Therefore,
107 when the calling party uses a Local Exchange Carrier to originate a call
108 that Halo ultimately sends to a called party served by AT&T Illinois' end
109 office, that call would neither originate nor terminate on the wireless
110 facilities of a CMRS provider and, therefore, would be Non-CMRS traffic
111 under the ICA.

112

113 **Q. Are there any other instances where Halo is failing to comply with**
114 **the ICA?**

115 A. Yes. Halo does not limit traffic that it sends to AT&T Illinois under the
116 terms of the ICA to intraMTA traffic.

117

118 **Q. Why do you assert that Halo does not limit traffic that it sends to**
119 **AT&T Illinois under the terms of the ICA to intraMTA traffic?**

120 Q. Halo has a single paying customer in Illinois, which is Transcom, and no
121 retail customers in Illinois.⁹ As Mr. Johnson, testifying on behalf of Halo,

⁸ Schedule JSM-4 attached to AT&T Illinois Exhibit 1.0 at Page 10 of 68.

⁹ Pre-Filed Testimony of Russ Wiseman on Behalf of Halo Wireless, Inc. at page 10 and 17-18.

122 states: "Transcom does not deal with ultimate consumers and does not
123 provide any service to them. Transcom has no relationship with their
124 distant third parties at all."¹⁰ Therefore, as I understand it, Transcom is
125 not providing the end office, cell site, or base station which services the
126 calling party when the call begins. Therefore, the origination point for calls
127 that Halo sends to AT&T Illinois will be at the end office of a Local
128 Exchange Carrier serving the caller or at the cell site or base station of the
129 CMRS provider serving the caller. Halo, however, is operating as if
130 Transcom is the calling party, which is not the case.

131

132 **Q. In what way is Halo operating as if Transcom is the calling party?**

133 Q. As I understand the Halo witness's explanation, the Halo and Transcom
134 networks are configured so that each company has a presence within an
135 MTA and that Halo therefore considers traffic that Transcom sends to Halo
136 within an MTA and that Halo then sends to AT&T Illinois within that MTA
137 to be intraMTA traffic.¹¹ In this way Halo is treating Transcom as the
138 calling party and is acting as if Halo's cell sites and/or base stations are
139 servicing the calling party at the time the call begins. However, Transcom
140 is not the calling party for the call. As noted above, the calling party is
141 some distant third party which Transcom has no relationship with.

142

143 **Q. Has Halo identified where the calling parties at the origination point**

¹⁰ Pre-Filed Testimony of Robert Johnson on Behalf of Halo Wireless, Inc. at 8.

¹¹ Pre-Filed Testimony of Russ Wiseman on Behalf of Halo Wireless, Inc. at page 10.

144 **of the traffic it sends AT&T Illinois are located?**

145 A. No. As noted above, the calling parties are identified as being served by
146 distant third parties. Mr. Wiseman further states that “[m]ost of the calls
147 probably did start on other networks before they came to Transcom for
148 processing” and that “Halo is not in a position to determine where or on
149 what network a call started, and we have not asked our customer.”¹²
150 Based on this evidence, it is very likely that some of these calls are
151 initiated outside the MTA.

152

153 **Q. Is there any further evidence that Transcom passes traffic initiated**
154 **by a calling party through a landline provider other than Transcom to**
155 **Halo for termination by AT&T Illinois?**

156 A. Yes. Mr. Neinast provided evidence of several instances in which the
157 calling party’s number is a number associated in the Local Exchange
158 Routing Guide with a landline carrier.¹³

159

160 **Q. Do you agree with Halo that “using the calling party number to**
161 **identify the ‘originating network’ ... is not a reliable way to determine**
162 **the starting location of a call, or the carrier network that the call**
163 **started on”?**¹⁴

164 A. I agree that calling party numbers do not, in every instance, identify the

¹² *Id.*, at 32.

¹³ Schedule MN-5 attached to AT&T Illinois Ex. 2.0.

¹⁴ Pre-Filed Testimony of Russ Wiseman on Behalf of Halo Wireless, Inc. at page 10.

165 starting location of a call or the carrier network that the call started on. In
166 many instances, however, calling party numbers do identify the starting
167 location of a call or the carrier network that the call started on. Thus, I do
168 believe that such evidence coupled with the fact that Halo purposefully
169 does not take steps to limit traffic that it sends to AT&T Illinois under the
170 terms of the ICA to either CMRS or intraMTA traffic, requires Halo to
171 identify and ensure that the calls that its delivers to AT&T Illinois are not
172 Non-CRMS and are not interMTA.

173

174 **Q. Will you summarize your recommendation with respect to this issue?**

175 A. If Halo is unable to provide evidence that the traffic it receives from
176 Transcom and passes to AT&T Illinois does not come from calls initiated
177 by a calling party at the end-offices of local exchange carriers, or that such
178 traffic does not come from a call initiated by a calling party on cell sites
179 and/or base stations of CMRS providers outside of the MTA to which the
180 traffic is delivered, then the Commission should find Halo to be in breach
181 of ICA as alleged by AT&T Illinois.

182

183 **Count II – Obligation to Pay Access Charges for Termination of Wireline-**
184 **Originated Traffic**

185

186 **Q. Does the parties ICA govern rates, terms, and conditions for access**
187 **traffic?**

188 A. No. The Initial ICA states "Traffic which is not subject to Reciprocal
189 Compensation under this agreement shall continue to be charged at the
190 access rates set forth in the applicable tariff or contract."¹⁵

191

192 **Q. Should the Commission make any determination with respect to**
193 **whether Halo should be required to pay any interstate access**
194 **charges?**

195 A. No. The Commission should make no finding with respect to interstate
196 access charges. AT&T Illinois' interstate access charges are regulated by
197 the Federal Communications Commission ("FCC") and any dispute as to
198 whether Halo has or should have paid such charges is within the purview
199 of the FCC and not the Commission.

200

201 **Q. Should the Commission make any determination with respect to the**
202 **whether Halo should be required to pay any intrastate access**
203 **charges?**

204 A. Yes. Unlike interstate access charges, which are jurisdictionally regulated
205 by the FCC, intrastate access charges are regulated in Illinois by the
206 Commission.

207

208 **Q. Do you recommend that the Commission determine that Halo is**
209 **responsible for access charges?**

210 A. Yes. Mr. Neinast reports that during the period between 9/11/11 and

¹⁵ Schedule JSM-4 attached to AT&T Illinois Exhibit 1.0 at Page 10 of 68.

211 9/17/11, based upon LERG information, 8% of the traffic Halo sent to
212 AT&T Illinois was originated by calling parties through landline providers in
213 Illinois exchanges other than where the traffic was terminated.¹⁶ As
214 above, I believe that such evidence, coupled with the fact that Halo does
215 not take steps to limit traffic that it sends to AT&T Illinois under the terms
216 of the ICA to either CMRS or intraMTA traffic, requires Halo to identify and
217 ensure that the calls that its delivers to AT&T Illinois are not interexchange
218 calls that have an originating point at the end office of an Illinois Local
219 Exchange Carrier.

220

221 **Q. Is the recommendation you make consistent with your layman's**
222 **knowledge of the FCC's determination concerning Halo in its recent**
223 **intercarrier compensation order?**¹⁷

224 A. Yes. In its Connect America Fund Order, the FCC states that

225 Because the changes we adopt in this Order maintain,
226 during the transition, distinctions in the compensation
227 available under the reciprocal compensation regime and
228 compensation owed under the access regime, parties must
229 continue to rely on the intraMTA rule to define the scope of
230 LEC-CMRS traffic that falls under the reciprocal
231 compensation regime."¹⁸

232

233 The FCC further states:

¹⁶ Schedule MN-4 attached to AT&T Illinois Exhibit 2.0.

¹⁷ Federal Communications Commission, 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 Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund in WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, FCC 11-161, released November 18, 2011 ("Connect America Fund Order").

¹⁸ *Id.*, at paragraph 1004.

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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.¹⁹

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Consistent with these FCC findings, and the terms of the ICA between the parties, the Commission should find that when Halo receives traffic from Transcom that comes from calls initiated by a calling party served by end-offices of local exchange carriers located in different exchanges in Illinois and then passes that traffic to AT&T Illinois for termination in exchanges in Illinois, this process does not convert a wireline-originated call into a CMRS-originated call for purposes of reciprocal compensation. Consistent with this, the Commission should find that such traffic is subject to the access regime rather than the reciprocal compensation regime.

258
259
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262

- Q. Is it your opinion that Halo is inserting itself into the call path between telecommunications carriers serving calling parties and telecommunications carriers serving called parties for the purposes of regulatory arbitrage?**
- A. Yes. Halo asserts that it has "interpreted and applied telecommunications

¹⁹ *Id.*, at paragraph 1006.

263 laws and rules in a novel, but legal way, in order to bring real tangible
264 value to Illinois consumers.”²⁰ In my opinion Halo is actually operating in
265 breach of its contract and failing to pay access charges. While this
266 strategy may benefit Halo and/or its customers, it is at the expense of
267 companies and customers that Halo sends traffic to.

268

269 **Q. Will you summarize your recommendation with respect to this issue?**

270 A. If Halo is unable to provide evidence that the traffic it receives from
271 Transcom and passes to AT&T Illinois for termination in exchanges in
272 Illinois does not come from calls initiated by a calling party served by end-
273 offices of local exchange carriers located in different exchanges in Illinois,
274 then Commission should find Halo owes AT&T Illinois’ intrastate switched
275 access charges.

276

277 **Q. Does this conclude your direct testimony?**

278 A. Yes.

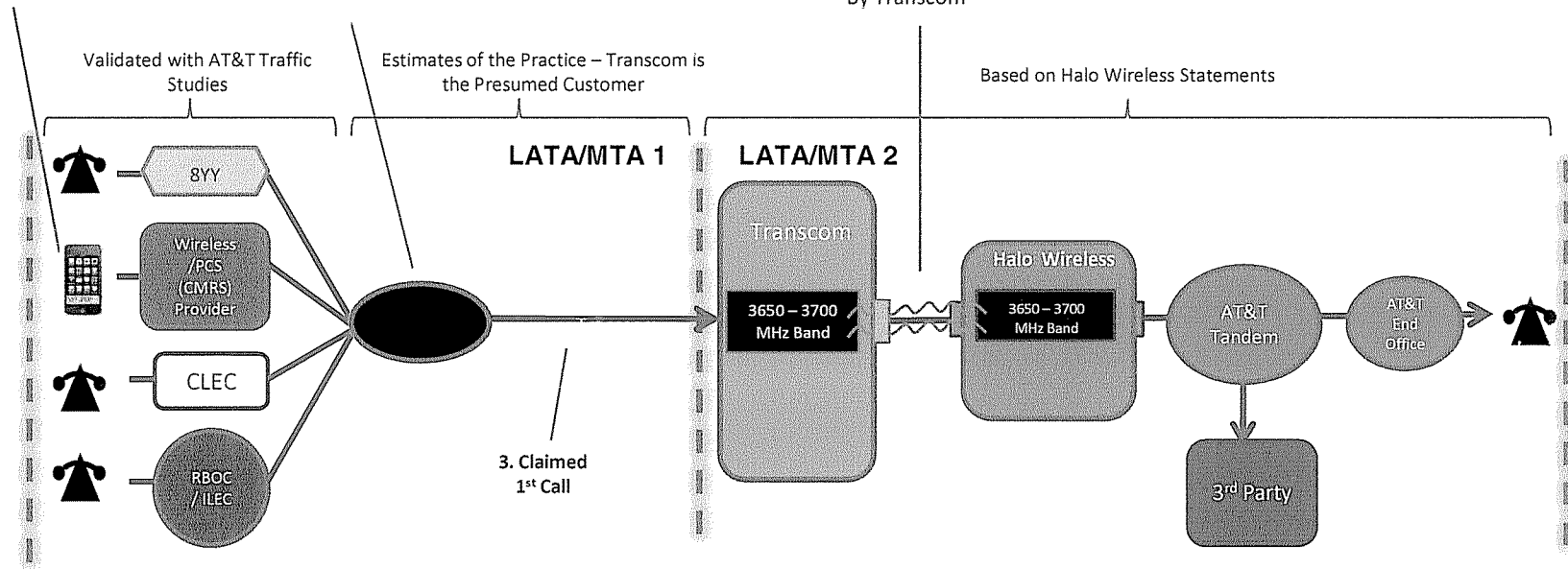
²⁰ Pre-Filed Testimony of Russ Wiseman on Behalf of Halo Wireless, Inc. at page 3.

Diagram of How Halo Sends Traffic To AT&T

1. RBOC, ILEC, CMRS, CLEC, 8YY end users make calls

2. Calls are route to Transcom

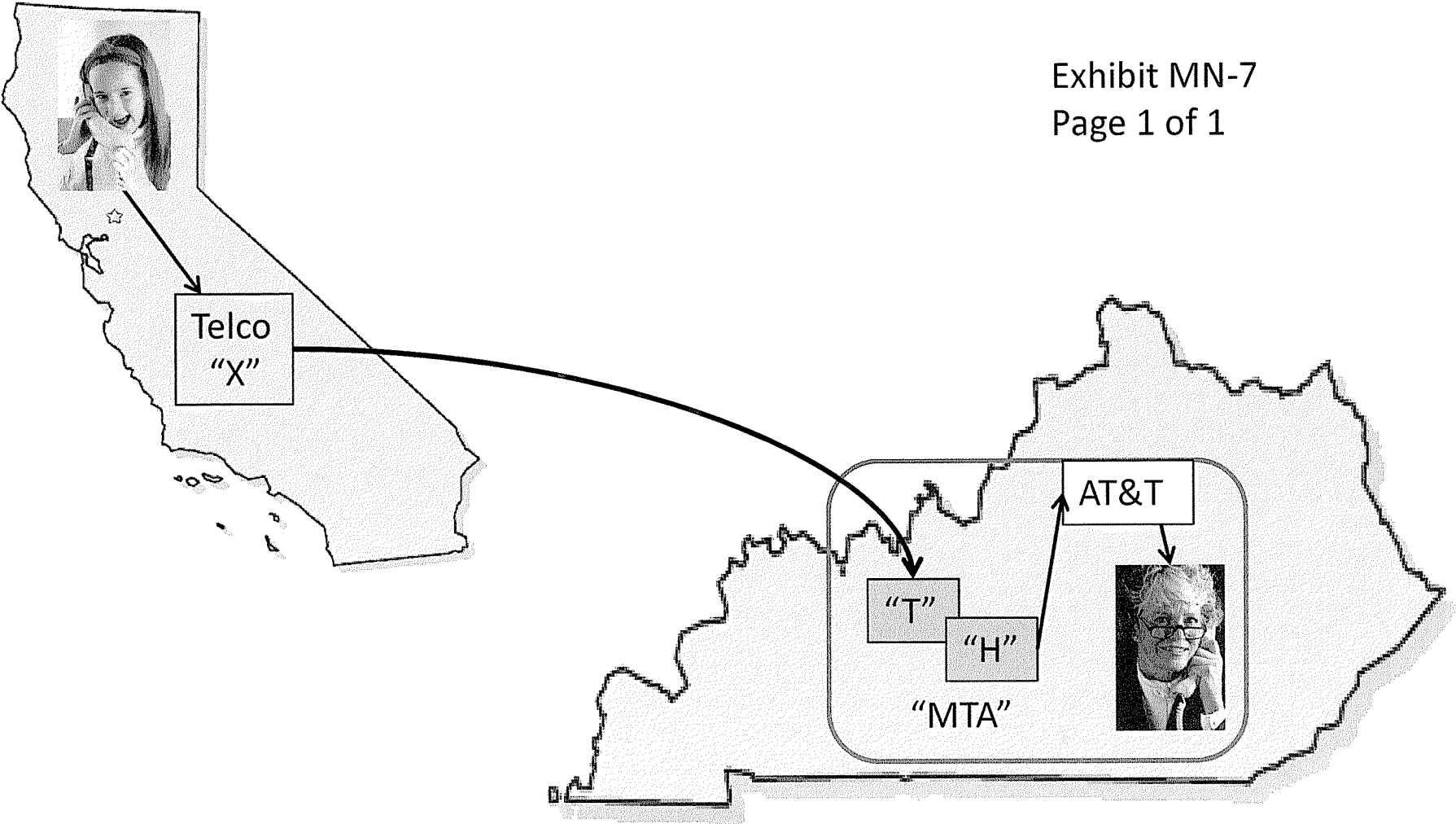
4. Claimed 2nd call allegedly "originated" By Transcom



Example of Halo Calls Terminating to BellSouth Telecomm Inc. (AT&T KY) with 50 State LNP and Split Number Range Look up
 e 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	OAKMAN TELEPHONE CO., INC.	ILEC	205-697-5XXX	AL	AT&T KY	606-639-2XXX	KY
429F	FRONTIER COMMUNICATIONS OF ALABAMA, LLC	ILEC	251-743-2XXX	AL	AT&T KY	270-687-7XXX	KY
429F	GT GROUP TELECOM SERVICES, CORP.	CLEC	250-483-5XXX	BC	AT&T KY	502-564-1XXX	KY
429F	PACIFIC BELL	RBOC	209-545-4XXX	CA	AT&T KY	502-458-7XXX	KY
429F	BROADWING COMMUNICATIONS, LLC - CA	CLEC	213-471-2XXX	CA	AT&T KY	270-843-2XXX	KY
429F	SPRINT COMMUNICATIONS COMPANY, L.P. - CA	CLEC	213-568-3XXX	CA	AT&T KY	270-684-0XXX	KY
429F	LEVEL 3 COMMUNICATIONS, LLC - CT	CLEC	203-687-4XXX	CT	AT&T KY	606-754-5XXX	KY
429F	VERIZON WASHINGTON, DC INC.	RBOC	202-529-9XXX	DC	AT&T KY	859-336-3XXX	KY
429F	RNK, INC.	CLEC	202-570-7XXX	DC	AT&T KY	270-771-0XXX	KY
429F	VERIZON DELAWARE, INC	RBOC	302-652-3XXX	DE	AT&T KY	502-452-4XXX	KY
429F	PEERLESS NETWORK OF DELAWARE, LLC - DE	CLEC	302-394-9XXX	DE	AT&T KY	606-432-3XXX	KY
429F	MCI WORLDCOM COMMUNICATIONS, INC. - FL	CLEC	239-599-3XXX	FL	AT&T KY	270-683-1XXX	KY
429F	WINDSTREAM GEORGIA COMMUNICATIONS CORP.	ILEC	229-263-8XXX	GA	AT&T KY	606-528-1XXX	KY
429F	QWEST CORPORATION	RBOC	208-322-8XXX	ID	AT&T KY	859-987-0XXX	KY
429F	ALBION TELEPHONE CO DBA ATC COMMUNICATIONS	ILEC	208-349-7XXX	ID	AT&T KY	859-987-3XXX	KY
429F	360NETWORKS (USA) INC. - ID	CLEC	208-346-7XXX	ID	AT&T KY	502-348-9XXX	KY
429F	ELECTRIC LIGHTWAVE, LLC DBA INTEGRA TELECOM - ID	CLEC	208-888-9XXX	ID	AT&T KY	270-926-9XXX	KY
429F	CITIZENS TELECOM CO ILLINOIS-FRONTIER CITIZENS -IL	ILEC	217-839-2XXX	IL	AT&T KY	606-573-3XXX	KY
429F	FRONTIER NORTH, INC. - IL	ILEC	217-896-2XXX	IL	AT&T KY	606-573-3XXX	KY
429F	MCLEODUSA TELECOMMUNICATIONS SERVICES, INC. - IL	CLEC	217-328-2XXX	IL	AT&T KY	502-570-9XXX	KY
429F	US XCHANGE OF ILLINOIS LLC DBA CHOICE ONE COMMIL	CLEC	219-864-3XXX	IL	AT&T KY	270-274-7XXX	KY
429F	FRONTIER NORTH, INC. - IN	ILEC	219-369-1XXX	IN	AT&T KY	859-498-5XXX	KY
429F	UNITED TEL. CO. OF INDIANA, INC. DBA CENTURYLINK	ILEC	219-866-3XXX	IN	AT&T KY	270-927-8XXX	KY
429F	BROADWING COMMUNICATIONS, LLC - IN	CLEC	219-979-2XXX	IN	AT&T KY	270-821-1XXX	KY
429F	VERIZON MARYLAND, INC	RBOC	240-629-8XXX	MD	AT&T KY	606-638-9XXX	KY
429F	NO NEW ENGLAND TEL OP DBA FAIRPOINT COMM - ME	RBOC	207-782-8XXX	ME	AT&T KY	859-623-9XXX	KY
429F	SACO RIVER TELEPHONE & TELEGRAPH CO.	ILEC	207-929-8XXX	ME	AT&T KY	606-395-5XXX	KY
429F	FRONTIER NORTH, INC. - MI	ILEC	231-853-9XXX	MI	AT&T KY	270-522-4XXX	KY
429F	SIGECOM, LLC - MI	CLEC	248-879-8XXX	MI	AT&T KY	606-353-7XXX	KY
429F	CONSOLIDATED TELEPHONE COMPANY - MN	CLEC	218-454-1XXX	MN	AT&T KY	270-691-3XXX	KY
429F	TEKSTAR COMMUNICATIONS, INC.	CLEC	218-862-3XXX	MN	AT&T KY	606-573-3XXX	KY
429F	CAROLINA TEL AND TEL CO., LLC DBA CENTURYLINK	ILEC	252-737-2XXX	NC	AT&T KY	270-264-4XXX	KY
429F	BUSINESS TELECOM INC. - NC	CLEC	252-291-4XXX	NC	AT&T KY	270-274-9XXX	KY
429F	XO NEW JERSEY, INC.	CLEC	201-328-3XXX	NJ	AT&T KY	270-684-6XXX	KY
429F	VERIZON NEW YORK, INC.	RBOC	212-319-5XXX	NY	AT&T KY	270-885-9XXX	KY
429F	MCIMETRO ACCESS TRANSMISSION SERVICES LLC	CLEC	212-457-8XXX	NY	AT&T KY	270-851-3XXX	KY
429F	SPRINT COMMUNICATIONS COMPANY, L.P. - OH	CLEC	234-600-5XXX	OH	AT&T KY	606-564-5XXX	KY
429F	VERIZON PENNSYLVANIA, INC	RBOC	215-633-0XXX	PA	AT&T KY	270-686-7XXX	KY
429F	INFINITE COMMUNICATION, LLC - PA	CLEC	215-396-9XXX	PA	AT&T KY	859-234-5XXX	KY
429F	XO TEXAS, INC.	CLEC	210-568-5XXX	TX	AT&T KY	502-624-1XXX	KY
429F	CAPROCK TELECOMMUNICATIONS CORP. - TX	CLEC	210-587-3XXX	TX	AT&T KY	606-639-2XXX	KY
429F	TEX-LINK COMMUNICATIONS, INC. - TX	CLEC	210-892-1XXX	TX	AT&T KY	270-687-2XXX	KY
429F	VERIZON VIRGINIA, INC.	RBOC	276-328-3XXX	VA	AT&T KY	606-789-1XXX	KY
429F	UNITED TELEPHONE-SOUTHEAST-VA DBA CENTURYLINK-VA	ILEC	276-628-8XXX	VA	AT&T KY	606-789-1XXX	KY
429F	MOUNTAINET TELEPHONE COMPANY-VA	CLEC	276-386-3XXX	VA	AT&T KY	606-789-1XXX	KY
429F	QWEST CORPORATION	RBOC	253-395-1XXX	WA	AT&T KY	606-789-9XXX	KY
429F	INTERNATIONAL TELCOM, LTD. - WA	CLEC	206-350-0XXX	WA	AT&T KY	502-564-7XXX	KY
429F	CALLERID4U - WA	CLEC	206-397-1XXX	WA	AT&T KY	270-926-8XXX	KY
429F	TDS METROCOM INC. - WI	CLEC	262-522-8XXX	WI	AT&T KY	606-663-2XXX	KY
429F	OVATION COMMUNICATIONS OF WISCONSIN, INC.	CLEC	262-946-1XXX	WI	AT&T KY	270-522-3XXX	KY

Kentucky 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	11%	6/14/11 - 6/20/11	33%	9/26/12 - 10/02/12	31%	1/18/12 - 2/14/12
		Landline Originated	89%		67%		69%	
Bandwith and Level 3 removed from Landline and moved to the Wireless bucket	Total Terminating	Wireless Originated	16%	6/14/11 - 6/20/11	41%	9/26/12 - 10/02/12	35%	1/18/12 - 2/14/12
		Landline Originated	84%		59%		65%	



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	208-322-8XXX	CA	859-249-1901	KY	859-987-0XXX	KY
429F	T	9/28/2011	202-529-9XXX	ME	859-249-1901	KY	859-336-3XXX	KY
429F	T	9/28/2011	219-369-1XXX	MI	859-249-1901	KY	859-498-5XXX	KY
429F	T	9/28/2011	207-782-8XXX	DC	859-249-1901	KY	859-623-9XXX	KY
429F	T	9/28/2011	215-396-9XXX	PA	859-249-1901	KY	859-234-5XXX	KY

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).