

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BELLSOUTH TELECOMMUNICATIONS, LLC	)	
D/B/A AT&T KENTUCKY	)	
	)	
COMPLAINANT	)	
	)	CASE NO.
V.	)	2011-00283
	)	
HALO WIRELESS, INC.	)	
	)	
DEFENDANT	)	

ORDER

This case is before the Commission on the complaint of BellSouth Telecommunications, LLC d/b/a AT&T Kentucky ("AT&T Kentucky") against Halo Wireless, Inc. ("Halo") accusing Halo of improper traffic routing whereby Halo was allegedly avoiding paying higher access fees by disguising wireline long-distance traffic as wireless traffic in breach of the parties' interconnection agreement. On August 8, 2011, Halo filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the Eastern District of Texas (Sherman Division). On July 19, 2012, Halo's bankruptcy was converted to a Chapter 7 liquidation. As a result, Halo is no longer doing business with AT&T Kentucky or any other entity in Kentucky.<sup>1</sup> The Trustee also has not participated in the case before the Commission; the case is now ripe for a decision.

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<sup>1</sup> On August 1, 2012, per the request of Halo's Court-appointed Trustees, AT&T disconnected Halo's trunks in all states in which Halo was conducting business.

## BACKGROUND

AT&T Kentucky and Halo entered into an interconnection agreement for wireless service.<sup>2</sup> Under this agreement, Halo was to send to AT&T Kentucky only wireless-originated calls, which AT&T Kentucky would either terminate to its end users or transit to third-party companies. Under the intercarrier compensation system at the time, Halo would pay reciprocal compensation charges for wireless-originated calls, charges much lower than access charges for long-distance landline-originated calls.

On July 26, 2011, AT&T Kentucky filed a formal complaint against Halo alleging that Halo Wireless had breached the parties' interconnection agreement by: (1) sending wireline-originated calls to AT&T Kentucky;<sup>3</sup> (2) altering or deleting call detail records to make wireline-originated calls appear to be wireless calls;<sup>4</sup> and (3) refusing to pay for facilities that Halo had ordered from AT&T Kentucky.<sup>5</sup> AT&T Kentucky stated that Halo must pay it for access charges for the wireline-originated calls, as well as for facilities that Halo had ordered. AT&T Kentucky requested that the Commission order Halo to cease altering call-detail records, cease sending wireline-originated traffic to AT&T Kentucky, and pay for facilities and applicable access charges.<sup>6</sup>

In its Answer, Halo asserted that it did not breach its interconnection agreement with AT&T Kentucky and that AT&T Kentucky was entitled to no money from Halo.<sup>7</sup>

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<sup>2</sup> Direct Testimony of J. Scott McPhee ("McPhee Direct") at 11, line 19-12, line 11; Exhibit JSM-4.

<sup>3</sup> AT&T Kentucky's Formal Complaint at 3.

<sup>4</sup> *Id.* at 4.

<sup>5</sup> *Id.* at 6.

<sup>6</sup> *Id.* at 6-7

<sup>7</sup> Answer of Halo Wireless, Inc. at 1.

Halo asserted that it is a wireless provider that sells telephone exchange service to Transcom Enhanced Services, Inc. ("Transcom"). Halo asserted that Transcom is an end user and an enhanced services provider ("ESP") and, as such, changes the content of every call that passes through it. Halo further argued that as an end user, even if the calls are wireline-originated calls, the calls should be billed as local wireless calls.<sup>8</sup>

On August 8, 2011, Halo filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United State Bankruptcy Court for the Eastern District of Texas, and on August 16, 2012, Halo filed with the Commission a Suggestion of Bankruptcy and Notice of Stay with the Commission. On September 14, 2011, Halo filed a Notice that it had removed the case to the United States District Court for the Eastern District of Kentucky. Halo also notified the Commission that under 28 U.S.C. § 1452, no further action could be taken in the administrative case without leave of the District Court.

On April 9, 2012, the District Court remanded the case back to the Commission with the expectation that the case would proceed expeditiously. On May 17, 2012, the Commission issued a Procedural Order and scheduled a formal hearing for July 18, 2012. On July 17, 2012 the Commission, on joint motion of the parties, cancelled the July 18, 2012 hearing and issued a briefing schedule.

On July 19, 2012, the Bankruptcy Court converted Halo's bankruptcy filing from Chapter 11 to Chapter 7 and named a trustee to manage the wind down. The Commission received notice of the conversion when AT&T Kentucky filed its brief with

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<sup>8</sup> *Id.* at 2.

the Commission on August 17, 2012.<sup>9</sup> Halo had filed neither a response brief nor any documents with the Commission by December 12, 2012, when AT&T Kentucky filed an Unopposed Motion to Enter Consent Order with which the Trustee consented.<sup>10</sup> The Commission has received nothing from Halo.

### DISCUSSION

AT&T Kentucky, in its brief, argues that Halo violated the parties' interconnection agreement by: (1) sending landline-originated traffic to AT&T Kentucky; (2) sending inaccurate call detail records; and, (3) refusing to pay for interconnection facilities provided by AT&T Kentucky. The arguments are addressed below.

1. Did Halo Breach the Interconnection Agreement by Sending Landline-Originated Traffic to AT&T Kentucky?

The parties' interconnection agreement requires Halo to send only wireless-originated traffic to AT&T Kentucky. The relevant portion of the agreement provides that:

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 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.**<sup>11</sup>

[Emphasis added.]

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<sup>9</sup> The Commission subsequently received the official notice from the Trustee on September 12, 2012.

<sup>10</sup> As discussed below, the Commission, by this Order, is granting the precise relief sought in the unopposed motion. Therefore, the Commission need not address the unopposed motion because it is moot.

<sup>11</sup> McPhee Direct at 12, lines 18-24; Exhibit JSM-5.

The wireless-traffic-only provision is important because wireless traffic and landline traffic are regulated differently. The geographic area to determine whether a call is local (and subject to reciprocal compensation charges) or non-local (and subject to access charges, which are higher) differs greatly for wireless and landline calls. Wireless traffic is classified as local if it originates and terminates within a Major Trading Area ("MTA"). Landline traffic is classified as local if it originates and terminates within a designated local calling area.

It is undisputed that Halo ordered trunks only for delivery of wireless traffic. AT&T Kentucky, therefore, billed Halo for termination of the traffic as if it were wireless traffic.<sup>12</sup> AT&T Kentucky claims that it quickly became apparent that Halo was sending wireline-originated, and not wireless, traffic to AT&T Kentucky.<sup>13</sup>

Halo admits that a portion of the traffic sent to AT&T Kentucky did originate on a landline.<sup>14</sup> AT&T Kentucky determined by studying the calling party number ("CPN") of the calls, that on a given month, allegedly between 67 percent to 89 percent of the traffic sent to AT&T Kentucky was wireline-originated.<sup>15</sup> Halo disputed AT&T Kentucky's calculation, claiming that the CPN was unreliable and could not be used to determine the origination point for any of Halo's calls.<sup>16</sup>

It is clear that the majority of the informational calls that Transcom sent through Halo to AT&T Kentucky was originated from a landline. Even Halo admits that the calls

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<sup>12</sup> Direct Testimony of Mark Neinast ("Neinast Direct") at 9, lines 3-4.

<sup>13</sup> *Id.* at 9, line 11-10, line 6.

<sup>14</sup> Prefiled Testimony of Russ Wiseman ("Wiseman Testimony") at 32, lines 5-6.

<sup>15</sup> Neinast Direct at 18, lines 2-5

<sup>16</sup> Wiseman Testimony at 27-32.

begin from landlines prior to being delivered to Transcom and traversing Halo's network.<sup>17</sup> Halo, however, argues that even though the call to Transcom may begin on a landline, once the call is acted upon by Transcom, Transcom becomes the originator of the wireless call, and the traffic should, therefore, be treated as wireless.

When a customer places a call to Transcom's service, Transcom acts on the call and delivers the traffic to Halo, and Halo then passes the call to AT&T Kentucky. Halo asserts that traffic generated from Transcom's customers, should be treated as originating from Transcom, an ESP and end-user of Halo's services, such that when Halo terminates a Transcom originated call to AT&T, the call then is a wireless call for the purposes of intercarrier compensation.

Halo and Transcom are separate companies, but have overlapping officers and ownership, and the largest investor in both companies is the same person.<sup>18</sup> Transcom, in fact, was the source of 100 percent of Halo's revenues nationwide.<sup>19</sup> In Kentucky, Halo and Transcom have equipment on the same tower in Paducah. Every call that came to Halo in Kentucky first passed through Transcom, whose end user originated the call at one of its four switching stations: Dallas, New York, Atlanta or Los Angeles.<sup>20</sup> Transcom sent the call to its equipment at the Paducah tower, where Transcom wirelessly transmitted to Halo's facilities 150 feet away. Halo then sent the call to AT&T

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<sup>17</sup> Wiseman Testimony at 32, lines 5-6.

<sup>18</sup> McPhee Direct at 6, lines 7-13, and at 9, line 17-10, line 2.

<sup>19</sup> *Id.* at 7, lines 9-15.

<sup>20</sup> Rebuttal Testimony of Raymond W. Dawse ("Dawse Rebuttal") at 6, line 4-7, line 3.

Kentucky's tandem switch for termination to an AT&T Kentucky end user or passed to a third-party carrier.<sup>21</sup>

AT&T Kentucky asserts that there is no technical reason for the 150-foot link between Halo and Transcom to be wireless, alleging that it is cheaper, more efficient, and more reliable to make the connection using a cable.<sup>22</sup> AT&T Kentucky accuses Halo and Transcom of constructing their facilities this way so that Halo could claim the calls were local wireless calls and subject to the lower charges of reciprocal compensation.<sup>23</sup>

Halo argues that Transcom is an ESP and, as such, its traffic should be treated as an end user of Halo for all purposes, including access charges. Halo argues that since Transcom is an end user of Halo, calls from customers of Transcom are deemed to terminate to Transcom and the traffic generated by Transcom is deemed to originate from Transcom.

As discussed below, Halo's arguments fail for several reasons.

First, the FCC has rejected Halo's theory. In its ICC/USF Order,<sup>24</sup> the FCC singled out Halo by name, described Halo's arrangement of having traffic pass through a purported ESP before reaching Halo, and rejected Halo's argument that this

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<sup>21</sup> *Id.* at 7, line 8-8, line 2.

<sup>22</sup> *Id.*

<sup>23</sup> AT&T Kentucky's Initial Brief at 10.

<sup>24</sup> 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 a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform: Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) ("ICC/USF Order").

“reoriginated” the call.<sup>25</sup> The FCC’s ICC/USF Order alone makes it clear that Halo’s arrangement with Transcom does not “reoriginate” the call or turn a wireline-originated call into a wireless call.

Second, ESPs do not originate every call they touch. There is no authority to support Halo’s argument that ESPs terminate every call that they touch and then originate the call when sending it to another company. The FCC has made it clear that ESPs are end users only for the purposes of applying access charges and applying access-charge rules.<sup>26</sup> The distinction goes only so far as to consider an ESP to be an end user for the purpose of exempting it from access charges. The exemption applies only to the ESP, and not to any carrier that serves the ESP. Therefore, even if Transcom is an ESP, Halo does not enjoy the benefit of the exemption.

Third, Transcom does not qualify as an ESP. To be an ESP, a carrier must offer “enhanced services,” which Transcom does not seem to provide. Enhanced services are services that utilize computer processing applications that enhance or change the fundamental nature of the content of a call—changes that change the service from the perspective of the end user.<sup>27</sup> Services that are not enhanced, and are deemed to be incidental to the transmission of the call, do not alter the fundamental character of the telephone service.<sup>28</sup> Halo argues that Transcom provides “comfort noise” during

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<sup>25</sup> *Id.* at ¶¶ 1003-1006.

<sup>26</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd. 9151, ¶ 11 (2001).

<sup>27</sup> *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934*, 11 FCC Rcd. 21905, ¶ 107 (1996).

<sup>28</sup> Order and Notice of Proposed Rulemaking, *In the Matter of AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, 20 FCC Rcd. 4826 (2005), *aff'd*, *AT&T Corp. v. FCC*, 454 F.3d 329 (D.C. Cir. 2006).

periods of silence so that the parties do not think that the call has been disconnected.<sup>29</sup>

<sup>30</sup> This does not alter or add to the content of any call, and the comfort noise cannot be considered an enhanced service. Therefore, Transcom cannot be considered an ESP.

Fourth, assuming, *arguendo*, that Transcom is an ESP, calls that originate on landline facilities should not be sent to AT&T Kentucky pursuant to the interconnection agreement. That traffic, whether it is wireline or wireless, originates in Dallas, Atlanta, New York or Los Angeles, as this traffic is long-distance in nature and thereby subject to access charges.

Based on the above, the Commission finds that Halo breached the interconnection agreement by sending wireline-originated traffic to AT&T Kentucky through facilities designated for wireless traffic only.

## 2. Did Halo Breach the ICA By Sending Inaccurate Call Detail Information?

AT&T alleges that Halo deliberately altered the CPN or charge number ("CN") of several calls that it sent to AT&T Kentucky in order to obscure the origins of the call.<sup>31</sup> AT&T Kentucky alleges that it discovered that until the end of 2011, Halo inserted inaccurate CNs on every call that Halo sent to AT&T Kentucky.<sup>32</sup> Halo acknowledges that it inserted a CN assigned to Transcom into the call record of every call that is sent

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<sup>29</sup> Pre-filed Testimony of Robert Johnson ("Johnson Testimony") at 14, lines 3-16, line 7.

<sup>30</sup> AT&T Kentucky argues that this is merely a different method of suppressing background noise, something every carrier engages in and is known as "line-conditioning" and is incidental to the provision of voice service.

<sup>31</sup> *Neinast Direct* at 30, lines 13-20

<sup>32</sup> *Id.* at 31, line 19-32, line 4.

to Halo.<sup>33</sup> In every case, the inserted CN was local to the same MTA, thus making it look like a local, wireless call for billing Halo.<sup>34</sup>

Halo justifies its insertion of the CN on the same argument as discussed above: that Transcom originates the calls.<sup>35</sup> However, if Transcom did originate the call, the number would appear as the CPN, and not the CN. The FCC, in the ICC/USF Order, prohibited this, stating that the CN field "may not contain or be populated with a number associated with an intermediate switch, platform, or gateway."<sup>36</sup> Because the FCC explicitly prohibited the type of behavior in which Halo acted, it is clear to the Commission that Halo breached the interconnection agreement by inserting Transcom's CN into the call information it sent to AT&T Kentucky.

3. Did Halo Breach the Interconnection Agreement by Refusing to Pay for Interconnection Facilities Provided by AT&T Kentucky?

AT&T Kentucky asserts that the parties' interconnection agreement, because it is a wireless interconnection agreement, requires that the parties share the cost of the interconnection facilities on an apportioned basis determined by the amount of traffic the parties send to each other. Halo had ordered interconnection facilities, but has refused to pay for the costs of the facilities.

Halo argues that the cost responsibility for the interconnection facilities ends at the point of interconnection ("POI"), which is a typical arrangement for landline carriers. AT&T Kentucky, however, contends that because Halo is a wireless carrier, the wireless

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<sup>33</sup> Wiseman Testimony at 52, lines 15-17.

<sup>34</sup> Neinast Direct at 32, lines 4-8.

<sup>35</sup> Wiseman Testimony at 54, lines 4-11.

<sup>36</sup> ICC/USF Order at ¶ 714.

interconnection agreement applies.<sup>37</sup> The interconnection agreement provides, in pertinent part, that:

[The parties] will share the cost of the two-way trunk group carrying both Parties [sic] traffic proportionally when purchased via this Agreement . . . 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 . . . , and Carrier will provide or bear the cost of the two-way trunk group for all other traffic . . . .<sup>38</sup>

The interconnection agreement also provides that:

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.<sup>39</sup>

Under the interconnection agreement, there is joint responsibility for the costs of the facility. Halo, in the case before the Commission, is responsible for 100 percent of the traffic traveling over the interconnection facilities and should pay for the use of the facilities pursuant to the interconnection agreement. Therefore, the Commission finds that Halo breached the interconnection agreement by not paying for the interconnection facilities and finds that Halo is responsible for the costs associated with the interconnection facilities.

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<sup>37</sup> McPhee Direct at 12, lines 6-7.

<sup>38</sup> The Interconnection Agreement between BellSouth Telecommunications, LLC and Halo Wireless, Inc., at Section V.B.

<sup>39</sup> *Id.* at Section VI.2.b.

## CONCLUSIONS AND FINDINGS

Based on the evidence contained in the record as described above and as similarly determined in decisions of the FCC and numerous state commissions, it is clear that Halo breached its interconnection agreement with AT&T Kentucky. It also appears that Halo engaged in its arrangement with Transcom for the sole purpose of avoiding paying access charges to AT&T Kentucky. Therefore, the Commission makes the following findings:

1. Halo has breached the parties' interconnection agreement by: (1) sending landline-originated traffic to AT&T Kentucky; (2) inserting incorrect CN information on calls; and (3) failing to pay for facilities it has ordered under the interconnection agreement.

2. As a result of Halo's breach of the interconnection agreement, AT&T Kentucky no longer has to perform under the interconnection agreement and may stop accepting traffic from Halo.

3. Halo is liable to AT&T Kentucky for access charges on the non-local traffic it has delivered to AT&T Kentucky for termination to AT&T Kentucky end users.

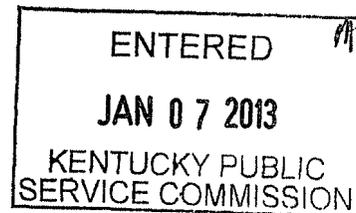
4. Halo is liable to AT&T Kentucky for interconnection facility charges that Halo has refused to pay to AT&T Kentucky.

The above findings are consistent with every state commission that has addressed the issues complained of in this proceeding. Halo engaged in a deliberate scheme to avoid paying access charges, thereby harming Kentucky carriers by depriving them of significant revenues.

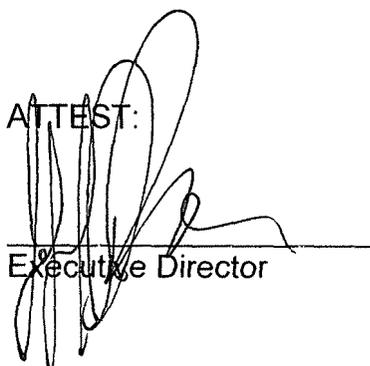
IT IS THEREFORE ORDERED that:

1. AT&T Kentucky is excused from further performance under the interconnection agreement.
2. Halo is liable to AT&T Kentucky for access charges on the non-local traffic it has delivered to AT&T Kentucky for termination to AT&T Kentucky end users.
3. Halo is liable to AT&T Kentucky for interconnection facility charges that Halo has refused to pay to AT&T Kentucky.
4. All other motions are denied as moot.
5. This case is closed and removed from the Commission's docket.
6. This is a final and appealable Order.

By the Commission



ATTEST:

  
Executive Director

Case No. 2011-00283

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