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July 5, 2012

VIA OVERNIGHT MAIL

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

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-reference case are the original and ten (10) copies of AT&T Kentucky's Memorandum in Opposition to Halo's Motion to Compel.

Please let me know if you have any questions.

Sincerely,

Mary K. Keyer

Enclosures

cc: Parties of Record

1039479

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.	)	

AT&T KENTUCKY'S MEMORANDUM
IN OPPOSITION TO HALO'S MOTION TO COMPEL

AT&T Kentucky[1] respectfully submits this Memorandum in Opposition to Halo's Motion to Compel, filed June 27, 2012. For the reasons stated herein, Halo's Motion should be denied in its entirety.

Although the procedural schedule agreed to by the Parties in this case did not provide for discovery, AT&T Kentucky provided substantive responses to Halo's discovery requests that were proper under Kentucky law. Many of Halo's discovery requests were objectionable, however, and AT&T Kentucky's objections, as demonstrated below, were sound. Moreover, AT&T Kentucky provided responses to several of the discovery requests to which Halo now seeks to compel responses. Halo's Motion with respect to those discovery requests must clearly be denied.

[1] BellSouth Telecommunications, LLC d/b/a AT&T Kentucky ("AT&T Kentucky")

Halo in its Motion discusses the discovery requests in batches. The Commission, however, will need to resolve each discovery request individually. Accordingly, AT&T Kentucky addresses separately each of the discovery requests that are the subject of the Motion. In each instance, AT&T Kentucky sets forth the request; then the response/objection that AT&T Kentucky provided; and finally, the reasons that the Motion with respect to that discovery request should be denied.

A. Interrogatories

Interrogatory 4: Identify all Documents which you reviewed prior to filing the Complaint.

Response: AT&T Kentucky objects to this Interrogatory on the grounds that it would be unduly burdensome for AT&T Kentucky to research the answer to the Interrogatory and that the information it seeks is (i) protected by the work product doctrine and (ii) neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

A party that propounds discovery needs to make reasonably clear what it is requesting. Halo failed to do that with this interrogatory. The interrogatory asks AT&T Kentucky to identify "all Documents which you reviewed prior to filing the Complaint." Taken at face value, that means each and every document that any employee or representative of AT&T Kentucky reviewed, *regardless of the subject matter*, at any time before July 25, 2011, which is when the Complaint was filed. Obviously, that is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, because employees or representatives of AT&T Kentucky reviewed myriad documents before July 25, 2011, the vast majority of which had nothing to do with this case.

Halo, of course, would say it did not mean to ask for *all* documents that AT&T Kentucky reviewed before July 25, 2011, and that is surely true. But that is what the interrogatory says, and AT&T Kentucky has no obligation to speculate as to what Halo actually intended to ask. Did Halo mean to ask for documents that AT&T Kentucky's lawyers relied on when they drafted the Complaint (in which case the work product objection clearly applies)? Did Halo mean to ask for all documents that relate to Halo that any AT&T Kentucky representative read before the Complaint was filed? For documents that relate to the claims in the case? The discovery rules do not require AT&T Kentucky to guess what Halo meant. Rather, AT&T Kentucky is entitled to take Halo's discovery requests at face value, especially when, as here, it is impossible to determine what Halo really had in mind.[2] And read at face value, the interrogatory is certainly overbroad, and it would be extraordinarily burdensome, if not impossible, for AT&T Kentucky to try to determine the response by investigating who looked at what documents before the Complaint was filed.[3]

AT&T Kentucky also objected to Interrogatory 4 on the ground that the information it seeks is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and that objection is perfectly sound. In fact, Halo does not even try to explain how the

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[2] AT&T Kentucky is not saying that it is always permissible to read a data request literally. For example, if Halo asked an interrogatory about the time period from July 25, 2011, to October 25, 3011, AT&T Kentucky would read the "3" as a typo, because it is obvious what was intended. Here, in contrast, Halo's interrogatory suffers from an utter failure to clearly communicate that AT&T Kentucky cannot cure for Halo.

[3] Halo contends, with no citation to any legal authority, that AT&T Kentucky must "quantify" the burden in order for its objection to be sustained. Motion at 3. There is no such requirement, and it would be impossible for AT&T Kentucky to comply with the requirement that Halo has invented. There is no way to determine how much effort, or how many hours, it would take to try to identify all documents that anyone at AT&T Kentucky reviewed on any and all subjects before July 25, 2011.

information could be used in this proceeding. Instead, Halo merely asserts, as a general proposition and without a word of explanation, that the information it seeks is relevant.[4] But it quite simply is not. Imagine that AT&T Kentucky could identify documents it reviewed prior to the filing of the Complaint (putting aside for the moment the still unanswered question of what that means, and bearing in mind that AT&T Kentucky would necessarily have to qualify its response by saying the list may not be complete). What use could Halo make of such an identification? None. The documents themselves may or may not be relevant, but Halo already has the relevant documents. And the mere fact that AT&T Kentucky reviewed certain documents before filing the Complaint is not relevant and cannot lead to the discovery of admissible evidence.

AT&T Kentucky's objection to Interrogatory 4 should be sustained.

Interrogatory 8: Define "end point" as used by AT&T and provide the source of the definition.

Response: AT&T Kentucky objects to this Interrogatory on the grounds that (i) the absence of context makes the Interrogatory vague and ambiguous; and (ii) to the best of AT&T Kentucky's knowledge, AT&T Kentucky has not used the term "end point" in this proceeding, with the exception of a reference to a use of that term by Halo.

As AT&T Kentucky's objection correctly states, this interrogatory is vague and ambiguous because of the absence of context. "End point" can mean many things.[5] Given the subject matter of the case, Halo probably meant to refer to the end point of a

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[4] Motion at 3.

[5] For example, according to Webster's Encyclopedic Unabridged Dictionary of the English Language (1996 ed.), it can mean "the point on each side of an interval marking its extremity on that side," or "a final goal or finishing point; terminus" or "the point in a titration usually noting the completion of a reaction and marked by a change of some kind as of the color of an indicator."

call; or the end point of a communication; or the end point of a telecommunication; or the end point of an IP session (all of which are arguably pertinent to this case). Instead of making clear what it intended, however, Halo again left AT&T Kentucky to guess what Halo had in mind.

AT&T Kentucky also objected on the ground that it had not, to the best of its knowledge, used the term "end point" in this proceeding, with the exception of a reference to a use of that term by Halo. Halo responds that AT&T Kentucky witness Neinast twice used the term "end-point" (with the hyphen) in his pre-filed testimony. If Halo wanted to ask what Mr. Neinast meant by "end-point" in those two instances, that is what Halo should have asked. And now that Halo has clarified that that is what it wants to know, the way to get the answer is obvious: look at Mr. Neinast's testimony or ask Mr. Neinast at the hearing. If anything about Halo's inquiry is relevant, it is what Mr. Neinast meant by "end-point" in the specific context of his testimony, not how AT&T Kentucky might define "end point" in the abstract.

Interrogatory 13: Describe in detail every step you contend Halo should have taken to avoid delivering intrastate "wireline" (as you define that term) "originated" (as you define that term) calls to AT&T.

Response: AT&T Kentucky objects to this Interrogatory on the grounds that it is unduly burdensome and the information it seeks is neither relevant to the subject matter of this proceeding nor reasonably likely to lead to the discovery of admissible evidence. Halo has breached its wireless ICA with AT&T Kentucky by delivering to AT&T Kentucky traffic that did not originate through wireless transmitting and receiving facilities. Halo took no step to avoid that breach of the ICA, and has denied any obligation to do so. It is not AT&T Kentucky's responsibility to counsel Halo on how to abide by its contractual obligations, and AT&T Kentucky has not undertaken to identify, and has no duty to identify, steps that Halo should have taken in order to do so.

Halo does not say anything in its Motion about why AT&T Kentucky should be required to respond to Interrogatory 13. AT&T Kentucky stands on its objection. So far, the two state commissions and the two additional state commission Staffs that have addressed the question have all concluded that Halo breached its interconnection agreements ("ICAs") with AT&T by delivering traffic that did not originate through wireless transmitting and receiving facilities, as the ICAs require.[6] And Halo did not do that accidentally. Rather, it made no effort to comply with the contract. Interrogatory 13 asks AT&T Kentucky to describe in detail what Halo should have done in order to avoid breaching its contract with AT&T Kentucky. The requested information is irrelevant, because regardless of what AT&T Kentucky might say Halo should have done, the inescapable and fatal fact of the matter is that Halo did nothing.

That said, AT&T Kentucky has, notwithstanding its valid objections, answered the interrogatory. The answer is that AT&T Kentucky has not identified (even internally) steps Halo should have taken in order to avoid sending wireline-originated traffic to AT&T Kentucky. The purpose of discovery is to get at existing information. AT&T Kentucky cannot properly be required to create information in order to provide it to Halo.

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[6] The Tennessee Regulatory Authority reached that conclusion in its Order of January 26, 2012, which is Exhibit MN-1 to the Direct Testimony of Mark Neinast on behalf of AT&T Kentucky, filed June 15, 2012. The South Carolina Public Service Commission reached the same conclusion in a Commission Directive of June 27, 2012, which is attached hereto. Pursuant to the Tennessee and South Carolina decisions, AT&T incumbent local exchange carriers in those two states have discontinued service to Halo. In addition, the Staffs of the Illinois Commerce Commission and the Missouri Public Service Commission have urged those commissions to authorize AT&T to discontinue service to Halo in those states based on their determinations that Halo has breached its ICAs.

B. Requests for Admission (RFAs)

RFA 1: It is possible for a single communication to involve more than one "origination" point (as you define that term).

Response: AT&T Kentucky objects to this Request for Admission on the grounds that (i) its use of the undefined term "communication" renders it vague and ambiguous; and (ii) it seeks a legal conclusion.

"Communication" can mean many things, and the parties have used the term with nuanced and sometimes differing meanings in their ongoing litigation in Kentucky and elsewhere. Accordingly, AT&T Kentucky's first objection to this Request for Admission is that its use of the undefined term "communication" renders it vague and ambiguous. Significantly, AT&T Kentucky did not make a mere boilerplate objection that the request was vague and ambiguous. Instead, it made its objection very specific by explaining precisely why it is vague and ambiguous.

Halo's motion fails to address the substance of the objection. Halo merely asserts, as if saying it makes it so, that in its vagueness objection to this and other Requests for Admission, "AT&T Kentucky is incorrect as it is obvious that the above RFAs are clearly stated and can be answered with a simple admission or denial, with a brief explanation if needed."[7] That is insufficient. AT&T Kentucky having explained precisely why this particular RFA is vague and ambiguous, Halo needed to give at least some explanation why it is not, rather than merely asserting that AT&T Kentucky is obviously wrong. For in fact, AT&T Kentucky is not wrong; "communication" can have differing meanings, even within the context of this case.

[7] Motion at 6-7.

AT&T Kentucky also objected to this RFA on the ground that it sought a legal conclusion. We discuss that objection below, in connection with RFA 2. Here we note only that Halo does not dispute, and cannot dispute, that RFA 1 sets forth a purely legal conclusion. Halo's motion to compel a response to RFA 1 should be denied.

RFA 2: If Transcom is an end user, the Transcom-related calls Halo delivers to AT&T in Kentucky fall within the definition of "Local Traffic" as defined in Section I.D. of the ICA.

Response: AT&T Kentucky objects to this Request for Admission on the ground that it seeks a legal conclusion.

This RFA asks a purely legal question; the question has nothing to do with getting at any real-world facts, or at how the law applies to such facts. Halo's Motion does not deny that. Instead, Halo argues that the Commission should require AT&T Kentucky to respond to requests for admission of propositions that are purely legal. Halo makes two points in support of that argument, and both points are irrelevant.

First, Halo notes that a request for admission is not objectionable on the ground that it "presents a genuine issue for trial."[8] But AT&T Kentucky did not object that a proposition Halo asked it to admit presents a genuine issue for trial. Rather, the objection is that the proposition is purely one of law, which is an entirely different matter.

Second, Halo notes that under Rule 36.01 of the Kentucky Rules of Civil Procedure, a party may serve a request for admission concerning a statement or opinion of fact "*or of the application of law to fact.*"[9] That is correct, but also irrelevant, because AT&T Kentucky's objection is not that RFA 2 inquires into the "application of law to fact." Rather, it is that RFA 2 (and many of Halo's other requests for admission)

[8] Motion at 6.

[9] *Id.* (Halo's emphasis).

concern pure propositions of law. And the law is clear that while requests for admission can be directed at the application of law and fact, they cannot be directed at pure questions of law as many of Halo's RFAs do.

The courts of Kentucky have long held that "[t]he request for an admission of a conclusion of law, rather than of facts, is improper." *Lyons v. Sponcil*, 343 S.W.2d 836, 838 (Ky. App. Ct. 1961) (*citing* 3 Ohlinger's Federal Practice, Rule 36, Note 1.2, p. 617). And this settled principle is not altered by the fact that Rule 36.01(1) allows for RFAs directed at "statements or opinions of fact or *of the application of law to fact.*" This is best demonstrated by looking to well-developed federal law governing the application of Federal Rule of Civil Procedure 36(a)(1)(A),[10] which is substantively identical to Kentucky Rule 36.01(1).[11]

The federal cases recognize that requests for admission that concern pure questions of law are improper, notwithstanding that requests for admission that concern the application of law to fact are permissible. *See, e.g. United States v. Petroff-Kline*, 557 F.3d 285, 293 (6th Cir. 2009) (*citing* 7 Moore's Federal Practice § 36.10[8] at 36–26 (3d ed. 2008) and 8A Charles Wright, Arthur Miller and Richard Marcus, Federal Practice and Procedure § 2255, at 534 & n. 8 (2d ed. 1994)) ("Requests for admission may relate to the application of law to fact. Such requests should not be confused with pure requests for opinions of law, which are not contemplated by the rule. Nor are requests seeking legal conclusions appropriate when proceeding under Rule

[10] "It is well established that Kentucky courts rely upon Federal case law when interpreting a Kentucky rule of procedure that is similar to its federal counterpart." *Birchwood Conservancy v. United Broth. of Carpenters*, 2011 WL 4632921, *7 & n.7 (Ky. App. Oct. 11, 2011) (citing cases).

[11] Fed. R. Civ. P. 36(a)(1)(A) provides that the scope of RFAs is limited to "facts, the application of law to fact, or opinions about either."

36."). *See also Powell v. Tosh*, 2011 WL 1740211, at *4 (W.D. Ky. May 5, 2011) (striking RFAs that required a legal conclusion); *Rutherford v. Credit Bureau of North America, LLC*, 2011 WL 2748726, *5 (E.D. Tenn. July 14, 2011). Even after the 1970 amendment of Federal Rule 36 to allow for requests applying law to fact, it remained "true . . . that one party cannot demand that the other party admit the truth of a legal conclusion." *Disability Rights Council v. Wash. Metro. Area*, 234 F.R.D. 1, 3 (D.D.C. 2006) ("For example, it would be inappropriate for a party to demand that the opposing party ratify legal conclusions that the requesting party has simply attached to operative facts.")

There can be no question but that RFA 2 sets forth a purely legal conclusion. Moreover, as noted above, Halo does not dispute that. Accordingly, AT&T Kentucky's objection must be sustained.

RFA 3: If Transcom is an end user, the Transcom-related calls Halo delivers to AT&T in Kentucky are consistent with the usage contemplated by the definition of "Local Interconnection" in Section I.E. of the ICA.

Response: AT&T Kentucky objects to this Request for Admission on the ground that it seeks a legal conclusion.

See discussion of RFA 2. Halo does not dispute, and cannot dispute, that RFA 3 sets forth a purely legal conclusion.

RFA 4: If Transcom is an end user, Halo is in compliance with the ICA Amendment provision requiring that its traffic "originates through wireless transmission and receiving facilities before Carrier delivers traffic to AT&T for termination."

Response: AT&T Kentucky objects to this Request for Admission on the ground that it seeks a legal conclusion.

See discussion of RFA 2. Halo does not dispute, and cannot dispute, that RFA 4 sets forth a purely legal conclusion.

RFA 7: When a call "originates" (as defined by you) in IP format and stays in IP format until it is converted to "TDM" by Halo prior to handoff to AT&T in Kentucky then the call "originates" on the Public Switched Telephone Network at Halo's Base Station.

Response: AT&T Kentucky objects to this Request for Admission on the ground that it seeks a legal conclusion.

See discussion of RFA 2. Halo does not dispute, and cannot dispute, that RFA 7 sets forth a purely legal conclusion.

RFA 8: It is AT&T's official position that telephone numbers are an accurate and appropriate way to rate calls for billing purposes.

Response: AT&T Kentucky objects to this Request for Admission on the ground that its reference to AT&T Kentucky's "official position" renders it vague and ambiguous. Subject to and without waiving its objection, AT&T Kentucky states that its position in this proceeding with respect to the appropriateness of using telephone numbers to rate calls for billing purposes is set forth in AT&T Kentucky's pre-filed testimony in this proceeding and in the pre-filed testimony filed by AT&T incumbent local exchange carriers in Parallel Proceedings in Tennessee, Wisconsin, Georgia, South Carolina, Florida, Illinois and Missouri and in post-hearing briefs submitted in the Tennessee, Wisconsin and Georgia proceedings.

As AT&T Kentucky stated in its objection, the reference to "AT&T's official position" renders this RFA vague and ambiguous. AT&T Kentucky simply does not know what Halo means by that reference, and under certain readings, the response is that AT&T Kentucky has no "official position." AT&T Kentucky has, however, set forth in some detail its position *in this proceeding* with respect to the appropriateness of using telephone numbers to rate calls for billing purposes, in its pre-filed testimony in this proceeding, and other AT&T incumbent local exchange carriers have done the same in pre-filed testimony and in post-hearing briefs in Parallel Proceedings. Accordingly, Halo's motion to compel a response to this RFA should be denied, either on the ground

that AT&T Kentucky's objection is well-taken or on the ground that AT&T Kentucky has provided a sufficient response to the RFA.

RFA 10: It is AT&T's official position that number porting, VoIP services, and mobile voice application services have not rendered call rating using telephone numbers obsolete, error prone, inaccurate and misleading.

Response: AT&T Kentucky objects to this Request for Admission on the ground that its reference to AT&T Kentucky's "official position" renders it vague and ambiguous. Subject to and without waiving its objections, AT&T Kentucky states that its position in this proceeding with respect to the stated proposition is set forth in AT&T Kentucky's pre-filed testimony in this proceeding and in the pre-filed testimony filed by AT&T incumbent local exchange carriers in Parallel Proceedings in Tennessee, Wisconsin, Georgia, South Carolina, Florida, Illinois and Missouri and in post-hearing briefs submitted in the Tennessee, Wisconsin and Georgia proceedings.

AT&T Kentucky's discussion of RFA 9 applies to RFA 10 as well.

RFA 11: AT&T contends its affiliate that provides voice over Internet Protocol (VoIP) service in association with U-Verse is not a telecommunications carrier.

Response: AT&T Kentucky objects to this Request for Admission on the grounds that (i) it seeks a legal conclusion and (ii) the information it seeks is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, AT&T Kentucky states that to the best of its knowledge, AT&T Kentucky has made no contention that the AT&T entity that provides VoIP service in association with U-Verse is or is not a telecommunications carrier.

AT&T Kentucky's objections are sound, and Halo's Motion does not even address the relevance objection. That said, AT&T Kentucky nevertheless responded to RFA 11. To the extent the import of the last sentence of the Response may not be entirely clear to Halo, it is a denial: AT&T Kentucky does not contend that the referenced affiliate is a telecommunications carrier, or that it is not a

telecommunications carrier. AT&T Kentucky has made, and makes, neither contention, and cannot properly be required to make a contention solely in order to respond to Halo's discovery request.

RFA 12: AT&T contends its affiliate that provides VoIP service in association with U-Verse is an Enhanced Information Service Provider, as defined by the FCC.

Response: AT&T Kentucky objects to this Request for Admission on the grounds that (I) it seeks a legal conclusion and (ii) the information it seeks is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, AT&T Kentucky states that to the best of its knowledge, AT&T Kentucky has made no contention that the AT&T entity that provides VoIP service in association with U-Verse is or is not an Enhanced Service Provider, as defined by the FCC.

The discussion of RFA 11 applies to RFA 12 as well.

RFA 13: For purposes of call rating, AT&T would not rate "toll" VoIP-TDM calls at the Interstate access price.

Response: AT&T Kentucky objects to this Request for Admission on the grounds that it (i) is vague and ambiguous; (ii) calls for speculation; and (iii) seeks information that is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, AT&T Kentucky states that it rates calls, including "toll" VoIP-TDM calls, in accordance with its applicable interconnection agreements and tariffs. AT&T Kentucky therefore further objects to this Request for Admission on the ground that it would be unduly burdensome to determine the response as it would apply to the many carriers that may deliver "toll" VoIP-TDM calls to AT&T Kentucky.

This is another instance in which Halo's motion does not address AT&T Kentucky's objections. For, example, Halo does not say a word about why it is relevant whether AT&T Kentucky would rate "toll" VoIP-TDM calls at the interstate access price. Apart from that, this is another instance in which AT&T Kentucky has fully responded to

the RFA, notwithstanding its objections. In short, the answer (as more fully spelled out in AT&T Kentucky's initial response) is that AT&T Kentucky rates calls in accordance with the terms of its interconnection agreements and tariffs.

RFA 14: For purposes of call rating, AT&T would treat a VoIP call starting on a wireless broadband connection as a "wireline" call if the calling number is designated as a wireline number in the Local Exchange Routing Guide (LERG).

Response: AT&T Kentucky objects to this Request for Admission on the grounds that it (i) is vague and ambiguous; (ii) calls for speculation; and (iii) seeks information that is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, AT&T Kentucky states that it rates calls, including VoIP calls starting on a wireless broadband connection, in accordance with its applicable interconnection agreements and tariffs. AT&T Kentucky therefore further objects to this Request for Admission on the ground that it would be unduly burdensome to determine the response as it would apply to the many carriers that may deliver VoIP calls starting on a wireless broadband connection to AT&T Kentucky.

The discussion of RFA 13 applies to RFA 14 as well.

RFA 16: An end user cannot be an "intermediate switching point" in a call.

Response: AT&T Kentucky objects to this Request for Admission on the grounds that it (i) seeks a legal conclusion and (ii) is vague and ambiguous because of its use of the phrase "intermediate switching point" in quotation marks without identifying the source of the quote.

See discussion of RFA 2. Halo does not dispute, and cannot dispute, that RFA 16 sets forth a purely legal conclusion. In addition, the Motion does not address, and Halo therefore waived its right to address, AT&T Kentucky's second objection. The RFA's use of "intermediate switching point," in quote marks, implies an undisclosed source of the quote.

RFA 17: An end user can be an "intermediate switching point" in a call.

Response: AT&T Kentucky objects to this Request for Admission on the grounds that it (i) seeks a legal conclusion and (ii) is vague and ambiguous because of its use of the phrase "intermediate switching point" in quotation marks without identifying the source of the quote.

The discussion of RFA 16 applies to RFA17 as well.

RFA 18: If the calls in issue do not "originate" on Halo's network, then the calls in issue meet the definition of "Intermediary Traffic" in Section I.C. of the ICA.

Response: AT&T Kentucky objects to this Request for Admission on the ground that it seeks a legal conclusion.

See discussion of RFA 2. Halo does not dispute, and cannot dispute, that RFA 18 sets forth a purely legal conclusion.

RFA 19: For the calls that AT&T asserts constitute a breach, Halo is providing "telephone exchange service" as defined in § 153(54) of the Communications Act.

Response: AT&T Kentucky objects to this Request for Admission on the ground that it seeks a legal conclusion.

See discussion of RFA 2. Halo does not dispute, and cannot dispute, that RFA 19 sets forth a purely legal conclusion.

RFA 20: For the calls that AT&T asserts constitute a breach, Halo is providing "exchange access service" as defined in § 153(20) of the Communications Act.

Response: AT&T Kentucky objects to this Request for Admission on the ground that it seeks a legal conclusion.

See discussion of RFA 2. Halo does not dispute, and cannot dispute, that RFA 20 sets forth a purely legal conclusion.

RFA 21: For the calls that AT&T asserts constitute a breach, Halo is providing "telephone toll service" as defined in § 153(55) of the Communications Act.

Response: AT&T Kentucky objects to this Request for Admission on the ground that it seeks a legal conclusion.

See discussion of RFA 2. Halo does not dispute, and cannot dispute, that RFA 21 sets forth a purely legal conclusion.

RFA 22: For the calls that AT&T asserts constitute a breach, Halo is providing "Interconnected VoIP Service" as defined in § 153(25) of the Communications Act.

Response: AT&T Kentucky objects to this Request for Admission on the ground that it seeks a legal conclusion.

See discussion of RFA 2. Halo does not dispute, and cannot dispute, that RFA 22 sets forth a purely legal conclusion.

C. Document Requests

Request 1: All Documents that evidence any communications between AT&T and the Commission, other than publicly filed documents listed on the docket in this proceeding.

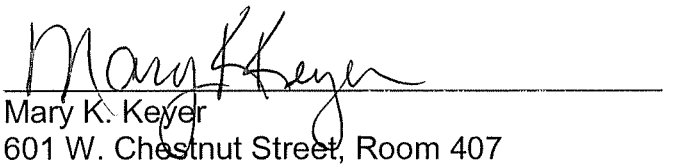
Response: AT&T Kentucky objects to this Request for production on the grounds that it is overly broad, lacks specificity, is unduly burdensome and seeks information that is neither relevant to the subject matter of this proceeding nor reasonably likely to lead to the discovery of admissible evidence. Subject to and without waiving its objections, AT&T Kentucky is producing the documents responsive to this request.

As AT&T Kentucky clearly stated in the last sentence of its response, AT&T Kentucky, notwithstanding its objections, produced the documents responsive to the request. In other words, AT&T Kentucky did not withhold documents based on its objections, so there is nothing to compel.

Conclusion

For the foregoing reasons, AT&T Kentucky respectfully requests that Halo's Motion to Compel be denied.

Respectfully submitted,



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

1039090

Action Item 8

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COMMISSION DIRECTIVE

ADMINISTRATIVE MATTER	☐	DATE	**June 27, 2012**
MOTOR CARRIER MATTER	☐	DOCKET NO.	**2011-304-C**
UTILITIES MATTER	☑	ORDER NO.	

SUBJECT:

DOCKET NO. 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 – A Hearing was Held on April 18, 2012. This Matter is Ready for Final Disposition.

COMMISSION ACTION:

In this complaint matter, I move that we hold that Halo has materially breached the interconnection agreement with AT&T by sending landline-originated traffic to AT&T, inserting incorrect Charge Number (CN) information on calls, and failing to pay for facilities that it has ordered pursuant to the interconnection agreement. I further move that, as a result of these breaches, AT&T should be excused from further performance under the interconnection agreement and may stop accepting traffic from Halo. In addition, I move that we find that Halo is liable to AT&T for access charges on the interstate and interLATA access traffic it has sent to AT&T, although the precise amount should be left up to the bankruptcy court to determine, and that Halo is liable to AT&T for interconnection facilities charges that it has refused to pay to AT&T, although, again, the precise amount should be left up to the bankruptcy court to determine.

PRESIDING: Howard SESSION: Regular TIME: 2:00 p.m.

	MOTION	YES	NO	OTHER	
FLEMING	☐	☐	☐	Not Voting	Sick Leave the Day of the Hearing
HALL	☐	☑	☐		
HAMILTON	☐	☑	☐		
HOWARD	☐	☑	☐		
MITCHELL	☑	☑	☐		
WHITFIELD	☐	☑	☐		
WRIGHT	☐	☐	☐	Absent	Attending MACRUC Conference in Hershey, PA

(SEAL) RECORDED

BY: J. Schmieding


PUBLIC SERVICE COMMISSION
SOUTH CAROLINA

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 5th day of July 2012.

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