BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Halo Wireless, Inc.,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	
Craw-Kan Telephone Cooperative, Inc.,	)	
Ellington Telephone Company,	)	
Goodman Telephone Company,	)	
Granby Telephone Company,	)	
Iamo Telephone Company,	)	
Le-Ru Telephone Company,	)	
McDonald County Telephone Company,	)	**File No: TC-2012-0331**
Miller Telephone Company,	)	
Ozark Telephone Company,	)	
Rock Port Telephone Company,	)	
Seneca Telephone Company,	)	
Alma Communications Company, d/b/a	)	
Alma Telephone Company,	)	
Choctaw Telephone Company;	)	
MoKan Dial, Inc.,	)	
Peace Valley Telephone Company, Inc., and,	)	
Southwestern Bell Telephone Company, d/b/a	)	
AT&T Missouri	)	
	)	
Respondents.	)	

HALO WIRELESS, INC.'S POSITION STATEMENTS

COMES NOW Halo Wireless, Inc. ("Halo") and presents its Position Statements on the issues in dispute in the proceedings consolidated for hearing in the above referenced docket.

A. Blocking Under the Missouri ERE Rule

(1) Does 4 CSR 240-29.010 et seq., (the "Missouri ERE Rules"), apply to Halo's traffic?

No, the ERE rules do not apply and cannot be applied to Halo or Halo's traffic. The plain terms of the rules on their face exclude Halo and its traffic. Further, any reading that would apply the rules would be pre-empted by federal law.

(2) What specific portions of the ERE Rules, if any, apply to Halo or Halo's traffic?

No specific portion of the rules can be applied because Halo and its traffic do not fit any of the applicable definitions. To the extent any individual definition or any of the substantive rules and requirements in the ERE rules do apply the plain meaning of those definitions and requirements cannot be read in a way that would authorize blocking.

(3) Have the parties seeking to block traffic shown that Halo's traffic is "compensable traffic" as defined in 240-29.10(8) that may be blocked under 240-29.130((2)?

No. In order to prove that the traffic is "compensable traffic" the Respondents would have to prove that they are entitled to payment for this traffic under both state and federal law. Even more specifically they have failed to prove that they are entitled to payment under FCC rule 20.11(d) and/or (e) as it existed at the time the traffic was exchanged. Further they have failed to plead or prove each of the specific tests under the "Constructive Ordering Doctrine" have been met. They have not done so. In particular, but without limitation, the Respondents have not shown that the actual terms and conditions and service descriptions in their access tariffs can be read to match up with the actual arrangements that are in place. In sum, the Respondents have failed in their burden of proving that Halo is or can be constructively deemed to be a "Customer" of any particular access service and that they actually provided that particular access service. Therefore they "are not entitled to financial compensation" for the traffic and it is not "compensable traffic."

(4) Does the arrangement between Halo and AT&T fit within any of the definitions for "protocol" types defined in 240-29(11)-(14)?

No. The interconnection arrangement between Halo and AT&T is not Feature Group A, B, C or D protocol.

(5) Does the current arrangement between AT&T and the RLECs fit within the definition of "LEC-to-LEC network" as defined in 240-29.010 and 240-29.020(18)?

No. Regardless of the facilities or routing that are used to transmit any of the traffic, since the traffic in issue does not "originate in Feature Group C protocol" by definition the current arrangement does not meet either definition as it pertains to the traffic in issue.

(6) Have the parties seeking to block traffic shown that the traffic in issue is "LEC-to-LEC traffic" as defined in 240-29.020(19)?

No, because the traffic does not occur "over the LEC-to-LEC network" as defined in 240-29.010 and 240-29.020(18).

(7) Are the incumbent local exchange carriers involved in "Meet Point Billing" as defined in 240-29.020(22)?

Based on the descriptions provided by the Respondents it appears they are engaged in some form of meet point billing. Halo, however, is not a "switched access customer" and Halo has not ordered and is not receiving Feature Group B or D.

(8) Is the traffic in issue "IntraMTA telecommunications traffic" as defined in 240-29.020(24)(A)?

To the extent that Halo is deemed to be or is treated as if it is the originating carrier for purposes of any part of the ERE rules, then the traffic is intraMTA as defined in 240-29.020(24)(A).

If Halo is not the originating carrier for purposes of the ERE rules, then the Respondents cannot use these rules to justify blocking.

(9) Is the traffic in issue "InterMTA telecommunications traffic" as defined in 240-29.020(24)(B)?

To the extent that Halo is deemed to be or is treated as if it is the originating carrier for purposes of any part of the ERE rules, then no traffic is interMTA as defined in 240-29.020(24)(A).

If Halo is not the originating carrier for purposes of the ERE rules, then the Respondents cannot use these rules to justify blocking.

(10) When a carrier is interconnected with an ILEC, does presentation of accurate information in the SS7 ISUP IAM CPN parameter constitute "Originating caller identification" as defined in 240-29.020(28)?

To the extent the Respondents assert that Halo's customer is not the originating user, then they cannot rely on the ERE rules to justify blocking traffic from a carrier other than the originating carrier. Nonetheless, Halo signals the information in the CPN parameter that Halo receives from its customer. AT&T receives this information at AT&T's STP. If the non-AT&T ILECs are using SS7 signaling for call control on the traffic in issue, then their STP is receiving this information from AT&T's STP – unless AT&T is stripping the CPN content.

(11) When a carrier is interconnected with an ILEC, does presentation of accurate information in the SS7 ISUP IAM CPN and/or parameter constitute delivery of "the telephone number of the end user responsible for originating the telephone call" for purposes of 240-29.040(6)?

To the extent the Respondents assert that Halo's customer is not the originating user, then they cannot rely on the ERE rules to justify blocking traffic from a carrier other than the originating carrier. Nonetheless, Halo signals the information in the CPN parameter that Halo receives from its customer. Between late February 2011 and December 30, 2012 Halo signaled a Halo-assigned number associated with Halo's customer in the CN parameter because Halo's customer was (and still is) the financially responsible party. AT&T receives Halo signaling

content at AT&T's STP. If the non-AT&T ILECs are using SS7 signaling for call control on the traffic in issue, then their STP is receiving this information from AT&T's STP – unless AT&T is stripping the information.

(12) Is Halo the "originating carrier" for purposes of 240-29.020(29)?

The ERE rules do not apply. The Respondents, however, claim that the ERE rules do apply. They must make up their mind whether Halo is or is not the originating carrier because they cannot have it both ways. If Halo is the originating carrier then the traffic is intraMTA under 240-29.020((24)(A) and no compensation was due. If Halo is not the originating carrier then it must be a transiting provider and once again no compensation was due from Halo because transit providers are not responsible for termination charges associated with a third party provider's originating traffic. Even the ERE rules provide for this result; transiting carriers are only required to provide call detail to the terminating carrier so the terminating carrier can invoice the originating telecommunications company. To the extent the Respondents contend the ERE result is overruled by state law such as, *e.g.* RSMo 392.140, the state law is preempted by federal law, which provides that transit providers are not responsible for termination charges. *Rural Iowa Indep. Tel. Ass'n v. Iowa Utils. Bd.*, 476 F.3d 572, 576 (8th Cir. Iowa 2007); *Iowa Network Services, Inc. v. Qwest Corp.*, 466 F.3d 1091 (8th Cir. 2006).

(13) Is the Point of Interconnection associated with Halo's interconnection with AT&T a "Point of Presence" for purposes of 240-29.020(31)?

No, because Halo is not an IXC and does not connect to AT&T or any of the non-AT&T ILECs "through the use of Feature Group A, B [or] D protocols."

(14) Is Halo's switch a "tandem switch" as defined in 240-29.020(33)?

The Respondents claim that Halo is an intermediate carrier. Halo, however is not a "telecommunications company" and has no connections to any "central office" (end office, *see* 240-29.020(10)).

(15) Is Halo a "Telecommunications Company" as defined in 240-29.020(34)?

No. Halo is operating pursuant to an FCC Radio Station Authorization that denotes it is for "common carrier" and therefore "interconnected" service. Therefore, under RSMo 386.020(52) and 54(c), Halo does not fall within the definition of "Telecommunications Company." The Respondents cannot collaterally attack, and this Commission is barred by binding federal and state precedent from inquiring whether, Halo's operations are within the scope of Halo's federal RSA. *See Holland Industries, Inc. v. Division of Transp.*, 763 S.W.2d 666 (Mo. 1989), *citing Service Storage & Transfer Co. v. Commonwealth of Virginia*, 359 U.S. 171, 3 L. Ed. 2d 717, 79 S. Ct. 714 (1959). Thus, for purposes of this case, and until the FCC rules otherwise, Halo is not a "telecommunications company" as defined in 240-29.020(34), since that definition refers to a statutory definition that expressly excludes FCC-licensed wireless providers.

(16) Are each of the incumbent local exchange carriers a "Terminating carrier" for purposes of 240-29.020(37)?

No, because they are not "providing call completion on the LEC-to-LEC network."

(17) Is AT&T a "terminating tandem carrier" for purposes of 240-29.020(37)?

No, because the traffic in issue does not traverse the LEC-to-LEC network.

(18) Is AT&T a "transiting carrier" for purposes of 240-29.020(39)?

No, because the traffic in issue is not transmitted over the LEC-to-LEC network.

(19) Is Halo a "transiting carrier" for purposes of 240-29.020(39)?

According to ¶ 1006 of the *Connect America* order Halo is providing transit. That is why the FCC held that the traffic is not subject to the intraMTA rule – Halo is not the originating provider because it is providing transit. Nonetheless, the traffic in issue is not transmitted over the LEC-to-LEC network, so the answer is no.

(20) Is the traffic in issue "transiting traffic" as defined in 240-29.020(40) before Halo delivers the traffic to AT&T?

According to ¶ 1006 of the *Connect America* order Halo is providing transit. That is why the FCC held that the traffic is not subject to the intraMTA rule – Halo is not the originating provider because it is providing transit. Nonetheless, the traffic in issue is not transmitted over the LEC-to-LEC network, so the answer is no.

(21) Is the traffic in issue "transiting traffic" as defined in 240-29.020(40) after Halo delivers the traffic to AT&T?

No, because the traffic in issue does is not transmitted over the LEC-to-LEC network.

(22) Is Halo an "originating wireline carrier" that has "placed interLATA traffic on the LEC-to-LEC network?"

Halo's connection to its customer is wireless. Halo is not providing "wireline communications." This Commission is barred under federal law from inquiring into, or deciding whether, Halo is not acting within the scope of its FCC CMRS license. As noted above, the Respondents must be required to take a position on whether Halo is, or is not, the originating carrier.

(23) Has Halo "terminate[d] traffic on the LEC-to-LEC network, when such traffic was originated by or with the use of feature group A, B or D protocol trunking arrangements?"

Halo is not the terminating carrier for any of the traffic in issue, so the answer is no. Further the traffic is not "on the LEC-to-LEC network." Finally there is no evidence that any of

the traffic in issue "originated by or with the use of feature group A, B or D protocol trunking arrangements." The answer is no.

(24) Is Halo a "telecommunications company" that has "originate[d] traffic over the Local Exchange Carrier-to-Local Exchange Carrier (LEC-to-LEC) network" but did not "deliver originating caller identification with each call that is placed on the LEC-to-LEC network" for purposes of 240-29.040(1)?

Halo has provided proper signaling information. The Respondents have the burden of showing Halo is the originating carrier. The traffic is not being transmitted over the LEC-to-LEC network. Halo is not a "telecommunications companyh" as defined in the ERE rules.

(25) Is Halo a "telecommunications carrier" that has "transit[ed] traffic "for another carrier" and did not "deliver originating caller identification to other transiting carriers and to terminating carriers" for purposes of 240-29.040(2)?

Halo has provided proper signaling information. The Respondents have the burden of showing Halo is the originating carrier. If Halo is not the originating carrier then it must be providing transit, although not as defined in the ERE rules. The traffic is not being transmitted over the LEC-to-LEC network. Halo is not a "telecommunications carrier" as defined in the ERE rules.

(26) Since AT&T has used Halo's OCN to identify Halo's traffic to the other ILECs in order to comply with 240-29.040(4) and as part of the "Use of Terminating Record Creation" process prescribed by 240-29.080, which the non-AT&T ILECs have used to bill Halo under 240-29.080, is Halo the originating telecommunications carrier for the traffic in issue?

The tandem records AT&T provided identified Halo as the originating carrier. The other ILECs used those records to generate their bills. They are using the ERE rules relating to an originating telecommunications company to justify blocking. At the same time, all of the Respondents rely on the FCC order for the proposition that Halo is not the originating carrier for purposes of the intraMTA rule. AT&T asserts Halo is not the originating carrier for purposes of its Post-ICA dispute. Halo asserts that the ERE rule does not apply.

(27) Assuming that Halo is the "originating carrier" has Halo "failed to fully compensate the terminating carrier for terminating compensable traffic" for purposes of 240-29.130(2)?

No, because the Respondents are not "the terminating carrier" for purposes of the rule and the traffic is not "compensable." No compensation is due.

(28) Is Halo delivering "originating caller identification" to Respondents?

Halo has provided appropriate signaling information, but the ERE rules do not apply.

(29) Is some of the traffic in issue jurisdictionally interstate traffic subject to the exclusive jurisdiction of the FCC?

Yes. Even under the Respondents' theory, some of the traffic is jurisdictionally interstate. Halo agrees that some, if not all, of the traffic is jurisdictionally interstate.

(30) Would blocking Halo's traffic under the ERE rules constitute an unjust or unreasonable practice under §201 of the Communications Act?

Yes. The FCC made that crystal clear in the *Connect America* order, and specifically mentioned the ERE rule with disfavor. The FCC held that the ERE rule only applied to intrastate traffic.

(31) To the extent any blocking would include jurisdictionally interstate traffic must the Respondents seek permission from the FCC to cease interchanging traffic with Halo pursuant to rules 63.60-63.601 before they may block any interstate traffic?

Yes. Any Respondent's action blocking interstate traffic without advance FCC permission would violate FCC rules and § 214 of the federal Act.

(32) Would blocking constitute a violation of the Respondents' duty to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers" under § 251(a) of the Communications Act?

Yes, because they would be refusing to indirectly interconnect with Halo.

(33) Should the Commission order or authorize the Respondents to institute blocking of Halo's traffic pursuant to the ERE rules? If so, should there be any conditions or limitations on the scope of the traffic that may be blocked?

No. But in the alternative, and without waiver, any blocking authorization can only extend to jurisdictionally intrastate traffic.

B. AT&T's ICA Complaint

(1) Has Halo delivered traffic to AT&T Missouri that was not "originated through wireless transmitting and receiving facilities" as that phrase is used and intended to be interpreted and applied in the parties' ICA?

No. Halo's connection with its customer is wireless; the customer uses wireless customer premises equipment ("CPE"), and the traffic originates with that CPE for purposes of the provision in issue.

(2) Has Halo paid the compensation prescribed by the parties' ICA to AT&T Missouri?

Yes. Halo has paid the $0.0007 contract price to AT&T. As a result of the "ISP amendment," all § 251(b)(5) traffic is subject to that price, regardless of whether it is deemed to be intraMTA or interMTA.

(3) Has Halo committed a material breach of its ICA with AT&T Missouri? If so, should AT&T Missouri be authorized to discontinue performance under the ICA?

No and No.

C. Alma, *et al.* and Craw-Kan *et al.* Petition for Rejection

(1) Does § 252(e) allow a state commission to "reject" a negotiated agreement it has already approved?

No. The Commission approved the agreement and cannot now "reject" the agreement pursuant to § 252(e).

(2) Is § 252(e)(6) the sole vehicle for challenging or seeking review of a state commission's approval of a negotiated agreement?

If the Petitioners believe the Commission erred when it originally approved the agreement their only available course of action was to file an action in federal district court under § 252(e)(6).

(3) Do the terms of the negotiated agreement discriminate against the Petitioners?

The Petitioners discrimination arguments fail. If they want the terms of the ICA, then they are free to adopt it. If they are not within the class of entities that could adopt the ICA for some reason then the Petitioners are not "like" Halo or any entity that can have those terms and thus different treatment is not discrimination.

(4) May a state commission "unapprove" or "reject" an agreement that has already been implemented based on a finding that "the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity?"

The ICA has already been implemented. Thus, the public interest prong in the applicable test for approval of a negotiated ICA simply cannot apply since that prong clearly applies only to agreements that have not been implemented.

(5) Would "the implementation of the AT&T/Halo negotiated agreement or portion" be "not consistent with the public interest, convenience, and necessity?"

The question is moot; the ICA has already been implemented.

DATED: June 22, 2012

Respectfully submitted,

DANIEL R. YOUNG
Missouri State Bar No. 34742
LOUIS A. HUBER, III

Missouri State Bar No. 28447
SCHLEE, HUBER, MCMULLEN & KRAUSE, P.C.
4050 Pennsylvania, Suite 300
P.O. Box 32430
Kansas City, MO 64171-5430
Telephone: (816) 931-3500
Facsimile: (816) 931-3553

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

W. SCOTT MCCOLLOUGH
Texas State Bar No. 13434100
MATTHEW A. HENRY
Texas State Bar No. 24059121
MCCOLLOUGH|HENRY PC
1250 S. Capital of Texas Hwy., Bldg. 2-235
West Lake Hills, TX 78746
Phone: 512.888.1112
Fax: 512.692.2522

Attorneys for Halo Wireless, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of June, 2012, true and correct copies of the foregoing have been served upon all counsel of record by U. S. Mail, postage prepaid, and by electronic mail.

Daniel R. Young