

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

Halo Wireless, Inc.,	)	
	)	
Complainant	)	
	)	
v.	)	Case No. TC-2012-0331
	)	
Craw-Kan Telephone Cooperative, Inc. et al.,	)	
	)	
Respondents	)	

**ALMA TELEPHONE COMPANY ET AL. AND**  
**CRAW-KAN TELEPHONE COOPERATIVE ET AL.'S**  
**LIST OF APPLICABLE CASE LAW AND STATUTORY LAW**

COME NOW Respondents Alma Telephone Company et al. and Craw-Kan Telephone Cooperative, Inc. et al. ("Small Company Respondents") and provide the following List of Applicable Case Law and Statutory Law. The Small Company Respondents reserve the right to add supplemental case law or citations as may be necessary, relevant, or timely.

**LIST OF APPLICABLE CASE LAW**

**I. Missouri ERE Rule, Call Blocking, and Wireless Background Cases**

1. *Order of Rulemaking Adopting Enhanced Record Exchange Rule*, Missouri Register, Vol. 30, No. 12, pp. 1373-1401, June 15, 2005.
2. *Northeast Missouri Rural Tel. Co. v. Southwestern Bell Tel. Co. et al.*, Case No. TC-2002-57, *Order Regarding Subject Matter Jurisdiction*, Feb. 14, 2002.
3. *BPS Telephone et al. v. VoiceStream Wireless*, Case No. TC-2002-1077, *Report and Order*, Jan. 27, 2005 (access rates apply to interMTA traffic; discussion of LATAs and MTAs).
4. In the Matter of the Petition for *Arbitration of Unresolved Issues in a Section 251(b)(5) Agreement with T-Mobile USA, Inc.*, Case No. TO-2006-0147, *Arbitration Order*, March 23, 2006 (establishing reciprocal compensation rates for Craw-Kan et al. based on total element long run incremental costs (TELRIC); use of CPN as jurisdictional indicator).

## II. Halo Litigation

### A. Federal

1. *Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90 et al., *In the Matter of Connect America Fund*, rel. Nov. 18, 2011 (See also Staff filing EFIS Item #86.).
2. *Halo Wireless, Inc. v. Alenco Communications, Inc. et al.*, (5<sup>th</sup> Cir. 2012), Case No. 12-40122, slip opinion, June 18, 2012 (PSC proceedings not stayed by bankruptcy)(See Staff EFIS Filing Item #88.).

### B. Missouri

1. *Halo Wireless, Inc. v. Citizens Telephone Company of Higginsville et al.*, WD-Mo 11-cv-00682-FJG, *Gaitan Order Regarding Halo's Suggestion of Bankruptcy*, Aug. 22, 2011 (PSC action not stayed.).
2. *BPS Telephone Company et al. v. Halo Wireless*, WD-Mo 2-11-cv-04220-NKL, *Laughrey Order*, Dec. 21, 2011 ("The Commission has the authority to regulate the subject matter of this dispute, and the Court does not have jurisdiction over Plaintiff's claims until the Commission has rendered a decision for the Court to review.")

### C. Other States

1. *In re: BellSouth Telecommunications LLC d/b/a AT&T Tennessee v. Halo Wireless, Inc.*, Tennessee Regulatory Authority Docket No. 11-00119, *Order*, issued Jan. 26, 2012 (Halo not an ESP; AT&T allowed to terminate ICA and cease accepting traffic from Halo)
2. *In re: Complaint of Concord Telephone Exchange, Inc. et al. against Halo Wireless, Inc., Transcom Enhanced Services, Inc., and Other Affiliates for Failure to Pay Terminating Intrastate Access Charges for Traffic and Other Relief and Authority to Cease Termination of Traffic*, Tennessee Regulatory Authority Docket No. 11-00108, *Order*, issued April 18, 2012.

## III. Tariffs, Blocking, and Disconnection of Carriers and Traffic

1. *State ex rel. Sprint Spectrum v. Missouri PSC*, 112 S.W.3d 30 (Mo. App. WD) (history of wireless disputes; rural carriers have constitutional right to return on investment; "calculated inaction"; call blocking).
2. *Qwest v. Scott*, 380 F.3d 367, 374-75 (8<sup>th</sup> Cir. 2004)(filed tariff doctrine).

3. *Bauer v. Southwestern Bell*, 958 S.W.2d 568, 570 (Mo. App. 1997) (filed tariff doctrine; tariffs have force and effect of state law).
4. *State ex rel. Tel-Central of Jefferson City, Inc. v. Public Service Comm'n*, 806 S.W.2d 432 (Mo. App. 1991)(blocking/disconnection for non-payment).
5. *In the Matter of Tel-Central of Jefferson City, Missouri, Inc. v. United Telephone Company of Missouri*, File No. E-87-59, *Memorandum Opinion and Order*, 4 FCC Rcd 8338, rel. Nov. 29, 1989 (blocking/disconnection).
6. *Tel-Central of Jefferson City, Missouri, Inc. v. FCC*, 920 F.2d 1039 (D.C. Cir. 1990)(blocking/disconnection).

#### **IV. ESP, Internet, and Wireless-in-the-Middle**

1. *Palmerton Tel. Co. v Global NAPS South*, Pennsylvania Public Utility Commission Docket No. C-2009-2093336, *Opinion and Order*, March 16, 2010 (Transcom not an ESP).
2. *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).
3. *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, 20 FCC Rcd, 4826, ¶16, n. 28 (2005)(jurisdiction of calls based on originating and terminating end-points).

#### **V. Missouri PSC Continuing Authority over Interconnection Agreements**

1. *BellSouth Telecomms. v. MCImetro Access Transmission Servs.*, 317 F.3d 1270 (11<sup>th</sup> Cir. 2003) (Section 252 authority to approve or reject agreements carries with it the authority for the PSC to interpret and enforce agreements that have already been approved.).
2. *Southwestern Bell v. Connect Communs Corp.* 225 F.3d 942 (8<sup>th</sup> Cir. 2000)("The Act's "grant of power to state commissions necessarily includes the power to enforce the interconnection agreement.").
3. *Budget Prepay, Inc. v. AT&T*, 605 F.3d 273 (5<sup>th</sup> Cir. 2012)(State commissions have "power both to approve ICAs and to interpret and enforce their clauses.").
4. *Southwestern Bell. Tel. Co. v. Pub. Util. Comm'n of Tex.*, 208 F.3d 475 (5<sup>th</sup> Cir. 2000)(Section 252 grants state commissions "authority to interpret and enforce the provisions of agreements that state commissions have approved.")

## LIST OF APPLICABLE STATUTES AND RULES

### I. Federal Statutes

- A. 47 USC 251 – (Staff EFIS filing #89)
- B. 47 USC 252 (e) – (Staff EFIS filing #89)
- C. 47 USC 253 (b) and (e) – (Staff EFIS filing #89)
- D. 47 USC 332(d)(1) (defining mobile service)
- E. 47 USC 153(27) and (28) (defining “mobile service” and “mobile station”; mobile service can move and ordinarily does move; calls that don’t originate on mobile station do not qualify as CMRS calls).

### II. Federal Rules

- A. 47 CFR 20.3 (defining CMRS)
- B. 47 CFR 90.1309 (Halo 3650 MHz service licensed under part 90 is not per se CMRS)

### III. State Statutes

- A. Chapters 386 and 392 RSMo. (Staff EFIS filing #88)

### IV. State Rules

- A. *PSC Enhanced Record Exchange Rules*, 4 CSR 240-29.010 et seq. (Staff EFIS filing #83)

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**CERTIFICATE OF SERVICE**

I hereby certify that Copies of this document were served on the following parties by e-mail on June 25, 2012:

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