BEFORE THE PUBLIC SERVICE COMMISSION
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, 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,	§	CASE NO. TC-2012-0331
	§	
Respondents.	§	

HALO WIRELESS, INC.'S FIRST AMENDED FORMAL COMPLAINT
IN RESPONSE TO BLOCKING NOTICES

EXPEDITED RELIEF REQUESTED

HALO WIRELESS, INC. ("Halo") hereby files its First Amended[1] Formal Complaint

[1] This amended version of Halo's Complaint is filed out of an abundance of caution in response to the Johnson Respondents' (incorrect) assertion that Halo failed to request expedited relief. This amended complaint includes the request for expedited relief in the caption above, and makes similar alterations in paragraphs 62 through 66 in order to ensure compliance with the Commission's rules. In addition, at paragraphs 119 through 122, the amended version of Halo's Complaint anticipates, addresses, and refutes a technical issue concerning caller identification information. This issue has been raised by some Respondents who mistakenly blame Halo for AT&T's actions. Halo believes this is an opportune time to set the record straight as the issue will likely come up in Respondents' arguments on the merits. *See* Halo's Motion to Amend filed concurrently herewith.

(the "Complaint"), under protest and out of abundance of caution, in response to blocking notices from the Respondents, Southwestern Bell Telephone Company, Inc. d/b/a AT&T Missouri ("AT&T Missouri"); 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; Miller Telephone Company; Ozark Telephone Company; Peace Valley Telephone Company, Inc.; Rock Port Telephone Company; Seneca Telephone Company; Alma Communications Company d/b/a Alma Telephone Company; Choctaw Telephone Company; and MoKan Dial, Inc. (collectively, the "Non-AT&T Respondents" and collectively with AT&T Missouri, the "Respondents").

I.

SUMMARY

1. The Missouri Public Service Commission (the "Commission") is already aware of much of the procedural background behind the instant dispute. Halo is a wireless commercial mobile radio service ("CMRS") provider operating under a Radio Station Authorization issued by the Federal Communications Commission ("FCC"). Halo's high-volume customer is Transcom Enhanced Services, Inc. ("Transcom"), which has been declared by courts of competent jurisdiction, on four separate occasions, to be an enhanced service provider ("ESP") and an End User rather than a carrier.

2. AT&T Missouri, through an interconnection agreement ("ICA") with Halo, provides transit for Halo's calls to downstream carriers (such as incumbent local exchange carriers, competitive local exchange carriers, and other CMRS providers).Under federal law, a "bill and keep" arrangement exists with the downstream carriers, whereby the downstream carriers are not entitled to any compensation unless and until they initiate and complete certain

federally-prescribed procedures. Rather than following the federally-prescribed procedures, a host of local exchange carriers ("LECs") instead demanded that Halo compensate them at "access" rates, presumably out of their switched access tariffs.[2] And, such LECs instituted multiple, near-simultaneous regulatory proceedings with state commissions around the country.

3. Due to these multiplicative proceedings, Halo was forced to seek Chapter 11 protection in the United States Bankruptcy Court for the Eastern District of Texas on August 8. In October 2011, the Bankruptcy Court entered three rulings (the "Stay Orders") to the effect that the automatic bankruptcy stay was not applicable to various regulatory proceedings, but made clear that such exemption was very limited in scope. The Stay Orders are on appeal to the Fifth Circuit, and oral argument is scheduled for May 1, 2012.

4. Despite the limited scope of the Bankruptcy Court's Stay Orders, the Non-AT&T Respondents began instituting self-help collection activities in February and March 2012. More specifically, the Non-AT&T Respondents sent requests to AT&T Missouri for blocking of Halo's traffic under Missouri's Enhanced Record Exchange ("ERE") Rules, and AT&T Missouri provided notice of such requests on February 23, March 13, and March 26, 2012, respectively. In such notices, AT&T Missouri stated that it intends to comply with these requests and begin blocking Halo traffic to the Non-AT&T Respondents on April 3, April 12, and April 24, 2012, respectively. Moreover, on March 19, 2012, AT&T Missouri sent Halo its own notice of intent to block Halo traffic under a different provision of the ERE Rules, with blocking to begin on April 25, 2012. In all cases, AT&T notified Halo that blocking would begin automatically unless

[2] Halo denies that the Respondents' state or federal switched access tariffs did or do apply. They cannot apply as a matter of law for any period prior to December 29, 2011. For traffic on and after December 29, 2011 their tariffs could lawfully apply in theory, but only to the extent that Halo's traffic is deemed to be toll "PSTN-VoIP" traffic under the FCC's new rules. Halo also asserts that the Respondents' tariffs also could not be read to apply given the actual terms in those tariffs.

Halo filed a formal complaint with this Commission. AT&T Missouri's blocking notices to Halo are attached as **Exhibits A through D** and are incorporated by reference.

5. Halo has been in direct contact with the Respondents regarding its objections to the notices but the Parties have been unable to resolve their disputes.

6. The Respondents' attempts to block Halo's traffic do not fall within the provisions of the Bankruptcy Court's Stay Orders. As such, they violate the automatic stay provisions of the Bankruptcy Code, as well as the Stay Orders themselves. Accordingly, Halo is contemporaneously filing a notice of stay violation with the Bankruptcy Court.

7. Nevertheless, because the notices indicate that AT&T Missouri will automatically begin blocking Halo traffic as early as April 3, 2012, Halo is filing the instant complaint, under protest and out of abundance of caution, solely to prevent such blocking. Halo does not voluntarily seek relief from this Commission; rather, the complaint is being filed only as an ostensibly-required response to the Respondents' blocking attempts. As those attempts violate the automatic stay and Bankruptcy Court Stay Orders, this action must be stayed until the Bankruptcy Court rules on the violation or lifts the stay.

8. The Respondents have asserted that this Commission has jurisdiction over their blocking requests and this Complaint under the ERE rules. However, Halo asserts that this Commission has no jurisdiction or authority to allow blocking of traffic as requested by the Respondents under the ERE rules or any other applicable law. Thus, Halo is filing this Complaint under protest and out of abundance of caution, solely to prevent such blocking by requesting that this Commission declare that it lacks the jurisdiction or authority to enter any blocking order against Halo and deny the blocking requested by on that basis.

9. In the alternative, if the Bankruptcy Court lifts the stay, or determines the stay is not applicable, and allows the Respondents' self-help remedies to continue, then the Commission alternatively should deny the Respondents' attempt to block Halo traffic as discussed below, because (1) the ERE Rules do not apply on their face, (2) the application of the ERE Rules to Halo would violate federal law, and (3) the Respondents' contentions are without merit.

II.

PARTIES

10. Halo is a Texas corporation with its principal place of business at 2351 West Northwest Highway, Suite 1204, Dallas, Texas 75220. Matters regarding this Complaint may be addressed to: Louis A. Huber, III, Schlee, Huber, McMullen, & Krause, P.C., 4050 Pennsylvania, Suite 300, Kansas City, Missouri 64111, telephone (816) 931-3500, facsimile (816) 931-3553, email *lhuber@schleehuber.com*.

11. Craw-Kan Telephone Cooperative, Inc. ("Craw-Kan") is a Kansas corporation with its principal place of business at P.O. Box 100, 200 North Ozark, Girard, Kansas 66743. Craw-Kan may be served with process by serving its registered agent, Brydon Registered Agent, Inc., 312 E. Capitol Ave., P.O. Box 456, Jefferson City, Missouri 65102-0456. Craw-Kan claims to be an "Incumbent Local Exchange Carrier" as defined by 47 U.S.C. § 251(h).

12. Ellington Telephone Company ("Ellington") is a Missouri corporation with its principal place of business at P.O. Box 400, 200 College Avenue, Ellington, Missouri 63638. Ellington may be served with process by serving its registered agent, William McCormack Dee McCormack, 200 College Avenue, P.O. Box 400, Ellington, Missouri 63638. Ellington claims to be an "Incumbent Local Exchange Carrier" as defined by 47 U.S.C. § 251(h).

13. Goodman Telephone Company ("Goodman") is a Missouri corporation with its

principal place of business at P.O. Box 592, Seneca, Missouri 64865. Goodman may be served with process by serving its registered agent, W. Jay Mitchell, 15 Oneida Ave., Seneca, Missouri 64865. Goodman claims to be an "Incumbent Local Exchange Carrier" as defined by 47 U.S.C. § 251(h). Goodman is an affiliate or subsidiary of Defendant Seneca.

14. Granby Telephone Company ("Granby") is a Missouri corporation with its principal place of business at P.O. Box 200, Granby, Missouri 64844. Granby may be served with process by serving its registered agent, Jon C. Stoffer, 126 S. Beaver Ave., P.O. Box 200, Granby, Missouri 64844. Granby claims to be an "Incumbent Local Exchange Carrier" as defined by 47 U.S.C. § 251(h).

15. Iamo Telephone Company ("Iamo") is a Missouri corporation with its principal place of business at P.O. Box 368, 104 Crook Street, Coin, Iowa 51636. Iamo may be served with process by serving its registered agent, Jack Jones, Jr., 22192 Valley View Road, Maryville, Missouri 64468. Iamo claims to be an "Incumbent Local Exchange Carrier" as defined by 47 U.S.C. § 251(h).

16. Le-Ru Telephone Company ("Le-Ru") is a Missouri corporation with its principal place of business at P.O. Box 147, Stella, Missouri 64867-0147. Le-Ru may be served with process by serving its registered agent, Robert L. Hart, P.O. Box 147, Stella, Missouri 64867-0147. Le-Ru claims to be an "Incumbent Local Exchange Carrier" as defined by 47 U.S.C. § 251(h).

17. McDonald County Telephone Company ("McDonald County") is a Missouri corporation with its principal place of business at P.O. Box 207, 704 Main Street, Pineville, Missouri 64856-0207. McDonald County may be served with process by serving its registered agent, Vicki Jo Babbitt, 704 N. Main, P.O. Box 207, Pineville, Missouri 64856-0207. McDonald

County claims to be an "Incumbent Local Exchange Carrier" as defined by 47 U.S.C. § 251(h).

18. Miller Telephone Company ("Miller") is a Missouri corporation with its principal place of business at P.O. Box 7, 213 East Main Street, Miller, Missouri 65707. Miller may be served with process by serving its registered agent, Debbie Choate, P.O. Box 7, 213 East Main Street, Miller, Missouri 65707. Miller claims to be an "Incumbent Local Exchange Carrier" as defined by 47 U.S.C. § 251(h).

19. Ozark Telephone Company ("Ozark") is a Missouri corporation with its principal place of business at P.O. Box 547, Seneca, MO 64865. Ozark may be served with process by serving its registered agent, W. Jay Mitchell, 816 Oneida Street, Seneca, Missouri 64865. Ozark claims to be an "Incumbent Local Exchange Carrier" as defined by 47 U.S.C. § 251(h). Ozark is an affiliate or subsidiary of Defendant Seneca.

20. Rock Port Telephone Company ("Rock Port") is a Missouri corporation with its principal place of business at P.O. Box 147, 214 South Main, Rock Port, Missouri 64482. Rock Port may be served with process by serving its registered agent, Raymond Henagan, 214 South Main, Rock Port, Missouri 64482. Rock Port claims to be an "Incumbent Local Exchange Carrier" as defined by 47 U.S.C. § 251(h).

21. Seneca Telephone Company ("Seneca") is a Missouri corporation with its principal place of business at P.O. Box 329, Seneca, Missouri 64865. Seneca may be served with process by serving its registered agent, W. Jay Mitchell, 816 Oneida Street, Seneca, Missouri 64865. Seneca claims to be an "Incumbent Local Exchange Carrier" as defined by 47 U.S.C. § 251(h). Seneca is the owner or an affiliate of Respondents Goodman and Ozark.

22. Respondents Craw-Kan, Ellington, Goodman, Granby, Iamo, Le-Ru, McDonald County, Miller, Ozark, Rock Port, Seneca, are collectively referred to herein as the "**England**

Respondents" because they have individually and collectively used "W.R. England III" ("England") as their authorized representative in their dealings with Halo.

23. Alma Communications Company d/b/a Alma Telephone Company ("Alma") is a Missouri corporation with its principal place of business at 131 S. County Road, Alma, Missouri 64001. Alma may be served with process by serving its registered agent, Adolf L. Heins, 113 S. County Road, P.O. Box 127, Alma, Missouri 64001. Alma claims to be an "Incumbent Local Exchange Carrier" as defined by 47 U.S.C. § 251(h).

24. Choctaw Telephone Company ("Choctaw") is a Missouri corporation with its principal place of business at 204 W. Main, Halltown, Missouri 63552. Choctaw may be served with process by serving its registered agent, Craig S. Johnson, 304 E. High St., Suite 100, P.O. Box 1606, Jefferson City, Missouri 65101. Choctaw claims to be an "Incumbent Local Exchange Carrier" as defined by 47 U.S.C. § 251(h).

25. MoKan Dial, Inc. ("MoKan Dial") is a Missouri corporation with its principal place of business at 112 South Broadway, Louisburg, Kansas 66053. MoKan Dial may be served with process by serving its registered agent, Craig S. Johnson, 304 E. High St., Suite 100, P.O. Box 1606, Jefferson City, Missouri 65101. MoKan Dial claims to be an "Incumbent Local Exchange Carrier" as defined by 47 U.S.C. § 251(h).

26. Respondents Alma, Choctaw, and MoKan Dial are collectively referred to herein as the "**Johnson Respondents**" because they have individually and collectively used "Craig S. Johnson" ("Johnson") as their "authorized representative" in their dealings with Halo.

27. Peace Valley Telephone Company, Inc. ("Peace Valley") is a Missouri corporation with its principal place of business at P.O. Box 9, 7101 State Route W., Peace Valley, Missouri 65788. Peace Valley may be served with process by serving its registered

agent, Maurice Bosserman, 7101 State Route W., P.O. Box 9, Peace Valley, Missouri 65788. Peace Valley claims to be an "Incumbent Local Exchange Carrier" as defined by 47 U.S.C. § 251(h). Like the England Respondents, Peace Valley has used W.R. England III as its representative in its dealings with Halo, but it is referenced separately herein, because its blocking request was sent several weeks after the requests from the England Respondents.

28. Southwestern Bell Telephone Company, Inc. D/B/A AT&T Missouri ("AT&T Missouri") is a Missouri corporation with its principal place of business at One AT&T Plaza, 208 South Akard Street, Ste. 110, Dallas, Texas 75202. Southwestern Bell may be served with process by serving its registered agent, CT Corporation System at 350 N. St. Paul St., Ste. 2900, Dallas, Texas75201.

III.

BACKGROUND

A. Regulatory Framework

29. The FCC has exclusive original jurisdiction over communications by wire or radio that are interstate. *See* 47 U.S.C. § 152. Additionally, under section 152 (also called "Section 2 of the Act"), the FCC has exclusive original jurisdiction over the authorization to communicate by radio on an interstate or intrastate basis and then the exclusive jurisdiction over regulation of radio communications themselves. *See, e.g.*, 47 U.S.C. §§ 152(a), 201, 202, 203, 214, 332.

30. Section 152(b) originally reserved rights to the states to regulate intrastate communication service by wire or radio. Section 332(c)(3) (passed in 1993) expressly preempted state regulation over market entry and the rates charged by mobile service providers. Section 332(c)(7) allows state and local governments to retain some zoning authority over

"siting" of "personal wireless service facilities," but section 332(c)(7)(B)(i)(II) expressly denies any state or local government the power to take any action that prohibits or has the effect of prohibiting the provision of personal wireless services. Halo provides personal wireless services, and thus, no state or local government may prohibit or take action that has the effect of prohibiting Halo's provision of its service.

31. The Respondents are each expressly or implicitly contending that Halo lacks authority to provide its personal wireless service (CMRS), and they are effectively seeking a state commission order that Halo "cease and desist" from using its already-installed facilities to provide its personal wireless services. Therefore, the Respondents are requesting that a state prohibit, or take action having the effect of prohibiting, Halo's wireless service.

32. States have no authority, and have never had the authority, to authorize or regulate the use of radio spectrum. The FCC has exclusive original jurisdiction over radio matters, including whether to authorize the use of radio spectrum, for what purpose any spectrum is used. If a party contends that a spectrum licensee is acting in a manner inconsistent with the scope of its radio station authorization, then the sole and exclusive venue to resolve and address that contention is the FCC. The Respondents, however, are each contending, in various ways, that Halo lacks authority to use spectrum under its federal license, or that its license does not contemplate or authorize the services Halo is providing. The Respondents are implicitly requesting that the Commission "interpret" the scope of Halo's federal license and constrain, regulate or prohibit Halo's exercise of its federal rights to use radio spectrum and/or provide jurisdictionally interstate service.

33. State regulatory authorities do not have and may not assume the power to interpret the boundaries of federally issued certificates or to impose sanctions upon operations

assertedly unauthorized by the federal certificate. *See Service Storage & Transfer Co. v. Virginia,* 359 U.S. 171, 178-79 (1959). The FCC is the exclusive "first decider" and must be the one to interpret, in the first instance, certificates it has issued. *See Id.* at 177; *see also Gray Lines Tour, Co. v. Interstate Commerce Com.*, 824 F.2d 811, 815 (9th Cir. 1987)[3] and *Middlewest Motor Freight Bureau v. ICC*, 867 F.2d 458, 459 (8th Cir. 1989).[4]

34. The FCC has exclusive original jurisdiction to "authorize" the offering of purely or predominately interstate telecommunications service. 47 U.S.C. § 214(a)-(d). The FCC's rules implementing this part of section 214 give automatic and advance permission for a common carrier to provide interstate telecommunications service by wire or radio so long as the common carrier has the necessary authorization for any radio frequencies that it uses to do so. Unlike many states overseeing intrastate services, the FCC does not require prior application for or receipt of a "certificate." *See* 47 C.F.R. § 63.01(a).[5]

35. State commissions have some residual jurisdiction over purely intrastate communications under section 152(b). That authority, however, was considerably reduced by the passage of the 1993 amendments to the Act which preempted state entry and rate regulation over wireless services. Further, the 1996 amendments to the Act even further circumscribed state

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[3] "State regulatory authorities may not assume the power to interpret the boundaries of federally issued certificates or to impose sanctions upon operations assertedly unauthorized by the federal certificate. *Service Storage & Transfer Co. v. Virginia, 359 U.S. 171, 178-79, 3 L. Ed. 2d 717, 79 S. Ct. 714 (1959).* The [federal issuing agency] is entitled to interpret, in the first instance, certificates it has issued. *Service Storage*, 359 U.S. at 177."

[4] "[I]interpretations of federal certificates [which on their faces cover the operations] should be made in the first instance by the authority issuing the certificate and upon whom the Congress has placed the responsibility of action."

[5] Authority for all domestic common carriers.
(a) Any party that would be a domestic interstate communications common carrier is authorized to provide domestic, interstate services to any domestic point and to construct or operate any domestic transmission line as long as it obtains all necessary authorizations from the Commission for use of radio frequencies.

commission authority, even for purely intrastate activity. *See AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 378, n. 6 (1999).[6]Congress delegated only certain duties and powers to state commissions as part of the 1996 amendments, and then required that when states are exercising these limited duties they are required to only implement the FCC's rules.

B. Halo's Business

36. On January 27, 2009, Halo was awarded an RSA to register and operate fixed and base stations in the 3650-3700 MHz band (a particular "slice" of FCC-controlled radio spectrum) and to support "mobile," "portable," and "fixed" subscriber stations throughout the domestic United States.

37. Halo's CMRS includes "broadband data" and Internet capabilities, but it also includes real-time, two-way switched voice service support that is interconnected with the public switched network. *See* 47 C.F.R. § 20.3 (supplying definitions of "commercial mobile radio service," "interconnected," "interconnected service" and "public switched network"). The RSA recognizes and adopts Halo's declaration and intent to provide service as a common carrier, and as a consequence, expressly states that Halo's services are "common carrier." The "common

[6] "JUSTICE BREYER appeals to our cases which say that there is a "'presumption against the pre-emption of state police power regulations,'" post, at 10, *quoting from Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 518, 120 L. Ed. 2d 407, 112 S. Ct. 2608 (1992), and that there must be "'clear and manifest' showing of congressional intent to supplant traditional state police powers," *post*, at 10, *quoting from Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 91 L. Ed. 1447, 67 S. Ct. 1146 (1947). But the question in these cases is not whether the Federal Government has taken the regulation of local telecommunications competition away from the States. With regard to the matters addressed by the 1996 Act, it unquestionably has. The question is whether the state commissions' participation in the administration of the new *federal* regime is to be guided by federal-agency regulations. If there is any "presumption" applicable to this question, it should arise from the fact that a federal program administered by 50 independent state agencies is surpassing strange. The appeals by both JUSTICE THOMAS and JUSTICE BREYER to what might loosely be called "States' rights" are most peculiar, since there is no doubt, even under their view, that if the federal courts believe a state commission is not regulating in accordance with federal policy they may bring it to heel. This is, at bottom, a debate not about whether the States will be allowed to do their own thing, but about whether it will be the FCC or the federal courts that draw the lines to which they must hew. To be sure, the FCC's lines can be even more restrictive than those drawn by the courts -- but it is hard to spark a passionate "States' rights" debate over that detail." (emphasis added)

carrier" designation entitles Halo to "interconnect" with other carriers for the purpose of exchanging traffic. *See* 47 U.S.C. § 332(c)(1)(B); 47 C.F.R. § 20.11(a).

38. Halo provides "telephone exchange service" (as defined at 47 U.S.C. § 153(47)) and "exchange access" (as defined at 47 U.S.C. § 153(16)). Halo also provides "personal wireless service" (as defined at 47 U.S.C. § 332(c)(7)(C)(i)), because Halo provides "commercial mobile services," "common carrier wireless exchange access services" and/or "unlicensed wireless services" (as defined in 47 U.S.C. § 332(c)(7)(C)(iii)).

39. Halo has entered into ICAs with the AT&T family of companies for the entire AT&T incumbent local exchange carrier ("ILEC") footprint, with the applicable ICA being with AT&T Missouri for Missouri Traffic. The ICA provides for direct interconnection with AT&T Missouri. The interconnection then facilitates the exchange of traffic with AT&T Missouri and all other carriers that are also interconnected with AT&T Missouri.

40. Halo maintains a wireless base station in each Major Trading Area ("MTA") where it collects traffic from its customers' wireless CPE (a customer-owned or leased "station"), which is also located in that MTA and sufficiently proximate to the base station to be able to communicate wirelessly with that base station. Under the Halo configuration, only calls coming from a customer connected to a base station in an MTA will be routed over interconnection for transport and termination in the same MTA. In other words, when a LEC receives a Halo call for termination in an MTA, the call will have been processed by the base station in that same MTA. Halo has a base station in each MTA that covers the areas where the

Respondents operate. Any calls processed by a base station destined for termination in a different MTA are not routed over interconnection arrangements.[7]

41. Unlike many other commercial radio networks, Halo's network is all "Internet Protocol" ("IP") based, which means that it incorporates the most modern technology. The network supports both "voice" service and "broadband" Internet or private IP network based services. The network uses what is known as "Wi-Max," which is one of the two competing "Fourth Generation" ("4G") IP-based radio based services (the other being "LTE").

42. Halo sells CMRS-based telephone exchange service to Transcom,[8] Halo's high volume customer. On four separate occasions, courts of competent jurisdiction have ruled that Transcom is an ESP *even for phone-to-phone calls*[9] because Transcom changes the content of every call that passes through its system, often changes the form, and also offers enhanced capabilities (the "ESP Rulings"). The court 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. Three of these decisions were reached after the so-called "IP-in-the-Middle"

[7] One of the base stations serving "MTA 34," which covers a large portion of Missouri is located in Junction City, Kansas. The traffic processed by this base station that terminates in Missouri therefore traverses state lines.

[8] Halo has other CMRS customers as well, but it is does not appear that the Respondents' contentions address those customers.

[9] Transcom also has a very significant and growing amount of calls that do not start on the PSTN.

and "AT&T Calling Card" orders[10] and expressly took them into account. The courts ruled that Transcom is an end user, not a carrier. AT&T was a party in connection with two of those four rulings and is bound by those decisions.

43. All of the communications at issue originate from end user wireless CPE (as defined in the Act, 47 U.S.C. § 153(14))[11] that is located in the same MTA as the terminating location. The bottom line is that not one minute of the relevant traffic is subject to access charges. It is all "reciprocal compensation" traffic and subject to the "local" charges in the ICA. Further, and equally important, the ICA uses a factoring approach that allocates as between "local" and "non-local." Halo has paid AT&T Missouri for termination applying the contract rate and using the contract factor.

44. As part of its ICAs, and to support its "voice" application, Halo is able to collect inbound voice calls originating on other parts of the public switched network that are addressed to Halo's customers, to deliver calls to AT&T Missouri for transport and termination to AT&T Missouri end users, and to obtain "transit" whereby calls from Halo customers can be routed by AT&T Missouri to other, downstream carriers (other incumbent LECs, competitive LECs, and CMRS providers) with whom Halo does not have ICAs for transport and termination (collectively, the "Downstream Carriers" and individually a "Downstream Carrier"). The Non-

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[10] *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*").

[11] 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.

AT&T Respondents in this action are Downstream Carriers. Halo has thus secured "indirect interconnection" with many carriers, including all of the Non-AT&T Respondents.

45. Under the FCC's rules, when carriers are indirectly interconnected, all "non-access" traffic is subject to a "no compensation" regime unless and until the indirectly interconnected carriers enter into a written ICA.[12] The FCC has promulgated a rule allowing ILECs (but not "CLECs") to send a written "request for interconnection" that "invoke[s] the negotiation and arbitration procedures contained in section 252 of the Act" to a CMRS provider. *See* 47 CFR § 20.11(e). At that point, the carriers must negotiate terms implementing their respective duties under section 251(a), (b) and, if applicable, (c). If the parties are unable to resolve all issues through negotiation, the incumbent may request that the CMRS provider "submit to arbitration by the state commission." *See* 47 C.F.R. § 20.11(e).

46. Because Halo has deployed and is seeking to use the kind of "new technologies and services" addressed by 47 U.S.C. § 157, which are presumptively in the public interest, the FCC is the sole entity that can resolve any questions about whether Halo has the "authority" to provide services using this technology. Under section 157(a), "[a]ny person or party (other than the [FCC]) who opposes a new technology or service proposed to be permitted under this Act shall have the burden to demonstrate that such proposal is inconsistent with the public interest." 47 U.S.C. § 157(a). The FCC (not the states) has exclusive original jurisdiction to "determine whether any new technology or service proposed in a petition or application is in the public interest within one year after such petition or application is filed." *Id.* at § 157(b).

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[12] *T-Mobile Order* note 57, *supra.*

47. Further, Halo's new technology also supports "broadband" information service. The FCC has declared that wireless-based broadband information services are jurisdictionally interstate and subject to the FCC's exclusive original jurisdiction, to the exclusion of the states.

C. Dispute with Respondents

48. The Johnson Respondents are ILECs that deliberately refused to invoke the FCC-prescribed remedies. Peace Valley and the England Respondents are ILECs that purported to invoke the FCC-prescribed remedies, but failed to comply with the requirements thereof.

49. Instead, these Non-AT&T Respondents began billing Halo at "access" rates and initiated proceedings with this commission in File Nos. TC-2011-0404, IC-2011-0385, and TO-2012-035. As part of the Respondents' tactics, they denied that Halo is "wireless" and/or "CMRS" and they also asserted that the traffic is not "non-access" traffic, and therefore, not subject to the 20.11(d) prohibition. In other words, the Non-AT&T Respondents filed *state commission* proceedings seeking extraordinary relief based on their interpretations of Halo's *federal* authorizations and Halo's insistence that the Respondents honor the *federal* rules.

50. In addition to the Non-AT&T Respondents, scores of other LECs near-simultaneously began billing for access charges and initiating proceedings before state commissions. Indeed, some LECs began unilaterally blocking Halo traffic, in violation of federal law. Moreover, after the LECs began initiating these proceedings, the AT&T companies, including AT&T Missouri, began intervening or filing separate proceedings related to the ICAs with Halo.

51. Due primarily to the burdens of having to defend multiple, simultaneous commission proceedings in multiple states, Halo was forced to seek Chapter 11 protection in the Eastern District of Texas on August 8, 2011. And, Halo notified this Commission of the

bankruptcy on August 10, 2011. Due to the provisions of the bankruptcy code, the state proceedings and other collection activities were automatically stayed.

52. On October 26, 2011, the Bankruptcy Court issued the Stay Orders, which held that the state commission proceedings—including the proceedings before the Missouri PSC—were actions "by" governmental units to enforce their police or regulatory powers. Copies of the Stay Orders are attached **Exhibits E and F** and are incorporated by reference. However, the Bankruptcy Court's Stay Orders were limited to the regulatory proceedings in respect of the matters described in the parties' motions, which did not include any attempts to invoke self-help remedies such as those provided by the ERE Rules. Moreover, the Stay Orders were further limited in that they prohibited (even in any already-existing 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[.]

See Exhibits E and F.

53. Despite the limited nature of the Bankruptcy Court's Stay Orders, the Johnson RLECs requested blocking under 4 CSR 240.29.130 on February 22, 2012. The England RLECs followed suit on March 9, 2012. And, Peace Valley requested blocking on March 23, 2012.

54. AT&T Missouri then notified Halo of the respective blocking requests on February 23, March 13, and March 26, 2012, respectively. Such notices provided that (unless Halo filed a formal complaint with this Commission) AT&T Missouri would begin blocking Halo traffic to the Johnson RLECs on April 3, to the England RLECs on April 12, and to Peace Valley on April 24, 2012. *See* Exhibits A through C.

55. In addition to the blocking notices based on requests from the RLEC, AT&T Missouri sent its own notice of blocking under 4 CSR 24-29.120. Such notice stated blocking would begin on April 25 if Halo did not file a formal complaint with this Commission. *See* Exhibit D.

IV.

CLAIMS

A. The Respondents' blocking attempts should be stayed, as such blocking attempts violate the automatic stay and the Bankruptcy Court's orders.

56. 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).

57. Pursuant to Section 362 of the Bankruptcy Code, the filing of the petition operated as a stay of:

a. The commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other proceeding against the Debtor that was or could have been commenced before the commencement of the case under this Title, or to recover a claim against the Debtor that arose before the commencement of the case under this Title;

b. The enforcement, against the Debtor or against property of the estate, of a judgment obtained before the commencement of the case under this Title;

c. Any act to obtain possession of property of the estate or property from the estate or to exercise control over property of the estate;

d. Any act to create, perfect, or enforce any lien against property of the estate;

e. Any act to create, perfect, or enforce against property of the Debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this Title, except to the extent provided in section 362(b);

f. Any act to collect assets, or recover a claim against the Debtor that arose before the commencement of the case under this title;

g. The set off of any debt owing to the Debtor that arose before the commencement of the case under this Title against any claim against the Debtor; and

h. The commencement or continuation of a proceeding before the United States Tax Court concerning the Debtor.

58. Accordingly, pursuant to the provisions of 11 U.S.C. § 362, the automatic stay prohibited further action against Halo in any existing proceedings and prohibited the initiation of any new collection activities or attempts to exercise control over property of the estate of Halo. In this case, Halo's ICA with AT&T is an executory contract that is property of its estate.

59. Although the Bankruptcy Court entered the Stay Orders ruling that the state commission proceedings were partially exempt from the automatic stay, nothing in such orders could in any way be construed as authorizing the imposition of self-help remedies such as blocking of Halo traffic, which purport to control Halo's executory contract with AT&T. *See* Exhibits E and F. As such, the Respondents' blocking notices clearly constitute continuing collection activities and attempts to exercise control over property of Halo's estate that are barred by the automatic stay.

60. Moreover, regardless of the provision section 362, the Respondents' blocking notices violate the Bankruptcy Court's Stay Orders. More specifically, the Stay Orders explicitly prohibit "any action which affects the debtor-creditor relationship between the Debtor and any creditor or potential creditor." *See* Exhibits E and F. As such, the Stay Orders and the Bankruptcy Code expressly prohibit further activity in this action unless and until the Bankruptcy Court lifts the automatic stay specifically to allow this action to proceed. Halo in no way waives the automatic stay by filing this action to prevent self-help unlawful blocking by

Respondents. To the contrary, Halo requests that the Commission affirm, on an expedited basis, that this action is stayed until the Bankruptcy Court rules on the propriety of the blocking notices.

61. Alternatively, if the stay is lifted, or determined to be inapplicable to this action, then Halo seeks expedited consideration of the blocking notices, per 4 CSR 240-29.120(5) and -29.130(9).

62. On March 15, 2012, in an effort to resolve the dispute, Halo responded to the Respondents explaining that the proposed blocking was unauthorized by state and federal telecommunications law. Halo requested that the Respondents respond to its letter no later than March 30, 2012. A copy of this letter is attached as **Exhibit G** and is incorporated herein by reference. None of the Respondents provided the courtesy of any response to Halo's March 15, 2012 letter.

63. Accordingly, on April 2, 2012, Halo filed its Complaint in this matter. That request included a request for expedited treatment as required by 4 CSR 240.29.130(9).

64. Halo moved expeditiously in filing this Complaint when it became clear that the Respondents were unwilling to enter into negotiations, or even a principled dialogue regarding the blocking notice as requested by Halo's March 15, 2012. Halo filed its Complaint on the next business day after the time for discussions expired on March 30, 2012. At no time prior did the Respondents notify Halo of their intention not to negotiate.

65. Expedited treatment of a Complaint under 4 CSR 240.120(5) and .130(9) is necessary and in the public interest because the threat to block Halo's traffic necessarily presents the risk to the convenience, rights and safety of Halo's customers and to the general public to whom Halo's customers wish to communicate. AT&T Missouri's threat to unilaterally block

Halo's traffic (at the insistence of the other Respondents) would peremptorily cut off hundreds of customers from their principal access to telecommunications services. Moreover, AT&T Missouri's threat to block Halo traffic, whether acted upon or not, materially diminishes Halo's ability to compete in the telecommunications market and deprives the general public of the healthy competition which is the cornerstone of state and federal telecommunications policy.

66. In such case, the blocking notices should be denied for the reasons set forth below.

B. Alternatively, AT&T's blocking notice should be denied, as the ERE Rules cannot apply to any dispute between Halo and AT&T Missouri.

67. The ERE Rules, laid out in 4 CSR 240-29, cannot apply to any dispute between Halo and AT&T Missouri, as those parties have in place an ICA that lays out all the rights and obligations associated with their relationship. Indeed, AT&T Missouri's blocking notice is explicitly premised on alleged violations of the ICA.

68. Once an ICA is in place, the ERE Rules do not apply, as established by the ERE Rules themselves. For instance, section 240-29.120(1) provides that "[i]n all instances of traffic blocking, originating carriers and traffic aggregators may utilize alternative methods of delivering the blocked traffic to terminating carriers." 4 CSR 240-29-.120(1). And "[s]uch methods may include interconnection agreement negotiations for transiting traffic..." *Id.* Section 240-29.130 contains equivalent provisions.

69. Thus, the ERE Rules on their face are only available to parties that have not already availed themselves of the provisions of the Telecommunications Act of 1996 and negotiated an ICA. This is consistent with the federal law. *See State ex rel. Sprint Spectrum L.P. v. Missouri Pub. Serv. Comm'n*, 112 S.W.3d 20, 25-26 (Mo. Ct. App. 2003). In other words, once an ICA has been negotiated, the ERE Rules are preempted and no longer apply. *See*

id.; Law Offices of Curtis V. Trinko, L.L.P. v. Bell Atl. Corp., 305 F.3d 89, 104-105 (2d Cir. 2002) *rev'd and remanded on other grounds sub nom. Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398 (2004) (holding that an ICA encapsulates the entirety of the relationship between the parties to an ICA);*Mich. Bell Tel. Co. v. MCImetro Access Trans. Servs., Inc.*, 323 F.3d 348, 359 (6th Cir. 2003) *Michigan Bell Tel. Co. v. Strand.*, 305 F.3d 580,582 (6th Cir. 2003). AT&T cannot lawfully use some artifice external to the ICA as an excuse to commit a breach of the ICA.

70. In the present case, an ICA has been fully negotiated and is in place between Halo and AT&T Missouri, as admitted by AT&T Missouri's own blocking notice. Therefore, this Commission should deny AT&T blocking notice *ab initio.*

C. Alternatively, blocking should be denied because the ERE blocking rules are facially inapplicable to Halo.

71. The asserted ERE Rules are facially inapplicable, as they apply only to the blocking of calls from "originating carriers" and/or "traffic aggregators":

> (2) A terminating carrier may request the originating tandem carrier to block, and upon such request the originating tandem carrier shall block, the originating carrier's Local Exchange Carrier-to-Local Exchange Carrier (LEC-to-LEC) traffic, if the originating carrier has failed to fully compensate the terminating carrier for terminating compensable traffic, or if the originating carrier has failed to deliver originating caller identification.[13] 4 CSR 240-29.130(2).
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> (2) A transiting carrier may block any or all Local Exchange Carrier-to-Local Exchange Carrier (LEC-to-LEC) traffic it receives from an originating carrier and/or traffic aggregator who fails to fully compensate the transiting carrier or who fails to deliver originating caller identification to the transiting carrier. 4 CSR 240-29.120(2).

[13] 4 CSR 240-29.130(2).

72. But, Halo is not, and cannot be, an "originating carrier" or "traffic aggregator" under the express definitions of the ERE Rules, which require such entities to be "telecommunications compan[ies].For instance, an "originating carrier" is defined as:

> (29) Originating carrier means the telecommunications company that is responsible for originating telecommunications traffic that traverses the LEC-to-LEC network. A telecommunications company whose retail telecommunications services are resold by another telecommunications company shall be considered the originating carrier with respect to such telecommunications for purposes of this rule. A telecommunications company performing a transiting traffic function is not an originating carrier. 4 CSR 240-29.020(29).
>
> (38) Traffic aggregator means a telecommunications company who, at an end-office location, places traffic on the LEC-to-LEC network on behalf of another telecommunications company. A traffic aggregation function differs from a transiting function, in that traffic aggregation occurs at an end office, whereas a transiting traffic function occurs at a tandem office. 4 CSR 240-29.020(38).

73. Halo is not a "telecommunications company." The definition of a "telecommunications company" is provided in 4 CSR 240-29.020(34), which was adopted by the Commission to address comments from certain wireless carriers. After a notice of proposed rulemaking containing the text of the proposed rule 4 CSR 240-29.020(34) was published in the Missouri Register on January 3, 2005, the Commission received comments. In the Order of Rulemaking on 4 CSR 240-29.020, T-Mobile, Nextel, and Cingular commented that "the Commission has no right to include wireless carriers in its rule definitions."[14] The Commission responded "[w]e will amend our definition to be entirely consistent with Missouri statutes,"[15] and

[14] Orders of Rulemaking, Missouri Register, June 15, 2005, Vol. 30, No. 12, p. 1381.

[15] *Id.*

specifically noted that "[w]e have deleted wireless carriers from the definition of a telecommunications company as stated in 4 CSR 240-29 .020(34)."[16]

74. To accomplish this deletion, the Commission changed the text of the rule to read "Telecommunications Company means those companies as set forth by Section 386.020(51), [17] RSMo Supp, 2004."[18] Under the cited Missouri statutory provision:

> (52) "Telecommunications company" includes telephone corporations as that term is used in the statutes of this state and every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling or managing any facilities used to provide telecommunications services for hire, sale or resale within this state;[19]

75. This definition clearly provides that an entity is a "Telecommunications company" only if it provides a "telecommunications service."[20] The statute later defines the term "telecommunications service" in subpart (54):

> (54) "Telecommunications service", the transmission of information by wire, radio, optical cable, electronic impulses, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. Telecommunications services do not include:
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> ...
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> (c) The offering of radio communication services and facilities when such services and facilities are provided under a license granted by the Federal Communications Commission under the commercial mobile radio services rules and regulations;[21]

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[16] *Id.* at 1382.

[17] The rule cites to subsection (51), but the correct reference is obviously subsection (52).

[18] 4 CSR 240-29.020(34).

[19] 386.020(52), RSMo Supp. 2004 (emphasis added).

[20] *See id.*

[21] *Id.* at 386.020(54).

76. Reading the relevant Commission rules together with section 386.020(52) and (54), RSMo Supp, 2004, the Commission purposefully and specifically excepted wireless carriers from the definition of "originating carrier" within the ERE Rules.

77. Halo is operating pursuant to an RSA that grants federal permission to offer radio-based interconnected common carrier service on a nationwide basis, *e.g.* CMRS. Under the Missouri statute's definition, this is not a "telecommunications service."[22] Halo is engaged in the "offering of radio communication services and facilities when such services and facilities are provided under a license granted by the Federal Communications Commission under the commercial mobile radio services rules and regulations," and thus Halo's service falls under the exception to "telecommunication service" in section 386.020(54), RSMo Supp, 2004. Halo is not a "telecommunications company," and as a consequence, cannot be an "originating carrier" or "traffic aggregator" under the ERE Rules.

78. In addition, *if* the Respondents' allegations regarding Halo's traffic were correct, then the ERE definitions would be inapplicable to Halo for another reason. As discussed elsewhere, Halo contends that traffic received from Transcom (Halo's largest customer) constitutes intraMTA traffic as Transcom is an ESP.

79. Conversely, the Respondents contend that traffic received from Halo constitutes interMTA wireline traffic that is subject to access charges. The Respondents base this contention largely on paragraph 1006 of a recent FCC decision. However, paragraph 1006 held that Halo (under the assumptions accepted by the FCC) is providing "transit" services. And

[22] *See id.*

transit services, by FCC definition, are "non-access" services.[23]More importantly, transit services are expressly excluded from the definitions of "originating carrier" and "traffic aggregator" under the asserted ERE Rules. *See* 4 CSR 240-29.020(29), (38).

80. Thus, *if* the Respondents were correct in their contentions, they would be precluded from using the ERE rules for this separate and independent reason.

81. Accordingly, Halo requests in the alternative that this Commission declare that the asserted ERE Rules are facially inapplicable to Halo and deny blocking on that basis.

82. Further, to the extent that any of the ERE Rules could be construed as requiring Halo to pay any costs associated with any of the unjustified blocking notices at issue, Halo requests that such costs be denied because the ERE Rules are inapplicable.

D. Alternatively, blocking should be denied because this Commission has no authority to order or allow such blocking, which would violate federal law.

83. If blocking is not stayed or denied for the reasons above, the Commission still would have no authority to block Halo's traffic, as the ERE blocking Rules are preempted by federal law.

84. Call blocking is an unjust and unreasonable practice under section 201(b), and the FCC has long made clear that carriers cannot block interstate traffic absent specific FCC authorization.[24]Moreover, the FCC recently reaffirmed this "longstanding prohibition on call

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[23]*See,* Order and Further Notice of Proposed Rulemaking, *Connect America Fund et al.*, WC Docket No. 10-90 et al., FCC 11-161¶¶ 1006, 1311) (rel. Nov. 18, 2011) (*USF/ICC Transformation Order*), corrected by Erratum (rel. Feb. 6, 2012), modified by Order on Reconsideration (FCC 11-189) (rel. Dec. 23, 2011) clarified by Order, DA-1247 (rel. Feb. 3, 2012),pets. for review pending, *Direct Commc'ns Cedar Valley, LLC v. FCC*, No. 11-9581 (10th Cir. filed Dec. 18, 2011) (and consolidated cases).

[24]*See, e.g.*, Declaratory Ruling and Order, *In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers, Call Blocking by Carriers*, WC Docket No. 07-135, DA 07-2863, ¶¶ 5-6, 22 FCC Rcd 11629 (rel. June 28, 2007);[24] Memorandum Opinion and Order, *Telecommunications Research and Action Center and Consumer Action v. Central Corporation et al.*, File Nos. E-88-104, E-88-105, E-88-106, E-88-107, E-88-108, DA 89-237, ¶¶ 12, 15, 4 FCC Rcd 2157, 2159 (1989) (Common Carrier Bureau).

blocking" and "declined to adopt any remedy that would condone, let alone expressly permit, call blocking."[25] The FCC expressly mentioned the ERE rules (and somewhat similar rules in Ohio) with strong disfavor in ¶ 734 and note 1277. This Commission indisputably lacks the authority to approve any blocking that would affect interstate traffic. Halo also notes that even if and to the extent the blocking would involve only "intrastate" traffic the blocking would still violate Halo's *federal interconnection rights* under § 332(c)(1)(B). The FCC has long possessed and maintains plenary jurisdiction over CMRS-LEC interconnection[26] and preempted the states from regulating the kinds of interconnection to which CMRS providers are entitled in 1994.[27]

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[25] *See,* Order and Further Notice of Proposed Rulemaking, *Connect America Fund et al.*, WC Docket No. 10-90 et al., FCC 11-161¶¶ 734 (and notes 1278, 1279, 1280, 1306), 839 (and note 1601), 973-974.) (rel. Nov. 18, 2011) (*USF/ICC Transformation Order*), corrected by Erratum (rel. Feb. 6, 2012), modified by Order on Reconsideration (FCC 11-189) (rel. Dec. 23, 2011) clarified by Order, DA-1247 (rel. Feb. 3, 2012),pets. for review pending, *Direct Commc'ns Cedar Valley, LLC v. FCC*, No. 11-9581 (10th Cir. filed Dec. 18, 2011) (and consolidated cases).

[26] Declaratory Ruling, *In the Matter of The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, Report No. CL-379, FCC 87-163, ¶¶ 12, 17, 2 FCC Rcd 2910, 2911-2912 (rel. May 18, 1987) ("*RCC Interconnection Order*") (emphasis added):

> 12. Based on our review of the jurisdictional issues, we find that the physical plant used in interconnection of cellular carriers to landline carriers is within our plenary jurisdiction because the identical plant serves both intrastate and interstate cellular services. The charges for interconnection, however, are severable between the jurisdictions because the underlying costs of interconnection are segregable. Charges for switching of interconnected calls are also subject to dual jurisdiction. Further, we find that the Commission has plenary jurisdiction over NXX codes, as well as jurisdiction to require interconnection negotiations to be conducted "in good faith."
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> ...
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> 17. In light of the above, we find that the Commission has plenary jurisdiction, based on Sections 2(a) and 201 of the Act, over the physical plant used in the interconnection of cellular carriers. Section 201 provides the Commission with express authority over "physical connections with other carriers." Cellular physical plant is inseparable and thus Section 2(b) does not limit our jurisdiction in this area. Like telephone terminal equipment, the interconnected trunk lines and equipment of a cellular system are used to make both interstate and intrastate calls. Moreover, it would not be feasible to require one set of trunk lines and equipment for intrastate calls and another for interstate calls. We further believe that any state regulation in this area would substantially affect the development of interstate communications; without a nationwide policy governing the reasonable interconnection of cellular systems, many of those systems may be barred from the interstate public telephone network. A nationwide policy will also help prevent increased costs and diminished signal quality among cellular systems, as we will explain below.

85. In this case, the blocking notices would unquestionably affect interstate traffic, as most of the traffic is jurisdictionally interstate, IP-originated, or both. Indeed, if the Respondents' contentions were correct, and Halo is not conceding here that they are, then most of the traffic at issue would be interstate traffic for the purposes *of compensation* as well—that is at the heart of the Respondents' arguments. This Commission no jurisdiction or authority to allow blocking of such traffic.

86. Moreover, leaving aside the prohibition in section 201, blocking would be prohibited by other federal laws. For instance, section 332(c)(3) of the Act prevents the Commission from authorizing or ordering the blocking of the traffic at issue here. Section 332(c)(3) of the Communications Act provides, "Notwithstanding sections 152(b) and 221(b) of this title, no State ... shall have *any authority to regulate* the entry of ... any commercial mobile service."[28]Halo is conducting business pursuant to federal authority – Halo's RSA, and the traffic in issue is subject to the FCC's rules and requirements for interconnection. This Commission's authorization or ordering of the blocking contemplated by the Respondents would clearly prevent Halo's entry and operation and thus would be unlawful.

87. Moreover, blocking without advance FCC permission is also a violation of the FCC's rules implementing section 214 of the Act (47 C.F.R. §§ 63.60(b)(5), 63.62(b) and (e) and 63.501). Part 63 Rules address a carrier's desire to cease the interchange of traffic with another carrier, and that is precisely what has occurred here. Under FCC rules, a carrier that wants to cease interchanging traffic must seek advance permission from the FCC to do so, and there are

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[27]Second Report and Order, *Implementation of Sections 3(n) and 332 of the Communications Act and Regulatory Treatment of Commercial Mobile Radio Service*, GN Docket No. 93-252, 9 FCC Rcd 1411 (1994) ("*Second CMRS Report and Order*").

[28] 47 U.S.C. § 332(c)(3)(A)(emphasis added).

specific showings that must be made. *See, e.g.*, 47 C.F.R. § 63.60(b)(5), § 63.62(b) and (e), § 63.501. In this regard, the applicant must state whether any other carriers consent (section 63.501(p)). And, Halo does not consent.

88. Finally, intercarrier connection and compensation are governed by the provisions of 47 C.F.R § 20.11 and related statutes and regulations. These statutes and regulations form a comprehensive scheme that may not be added to or altered by state regulations, except where authorized by federal law. And, blocking for even "intrastate" traffic would frustrate Halo's federal right to interconnect, regardless of the actual jurisdiction of any particular call.

89. Accordingly, Halo alternatively requests that this Commission declare that it lacks the jurisdiction or authority to enter any blocking order and that the Commission deny blocking on that basis.

E. Alternatively, blocking should be denied because, on information and belief, the "LEC-to-LEC network" as defined in the ERE rules no longer exists.

90. Halo has reason to believe that the method used by the Respondents to exchange the traffic in issue does not fit the definition of the "LEC-to-LEC network" in the ERE rules. If this case goes forward (which it should not) Halo reserves the right to conduct discovery to determine the exact methods used by the Respondents to exchange the traffic in issue and, after receipt of such discovery, to contend that the ERE rules cannot apply because the Respondents do not use the "LEC-to-LEC network" as it is defined in the ERE rules to exchange the traffic in issue.

F. Alternatively, blocking should be denied because blocking would be inconsistent with the federal "bill and keep" regulatory structure.

91. Alternatively, if the Commission could validly block traffic in some instances, it could not so in this case, which is based on allegations that Halo undercompensated the Non-

AT&T Respondents. Indeed, the Respondents' blocking notices wholly ignore the default arrangement provided by law—"bill and keep"—and (if allowed) would turn this process on its head.

92. Under the FCC's rules, when carriers are indirectly interconnected, all "non-access" traffic is subject to a "no compensation" regime unless and until the indirectly interconnected carriers enter into a written ICA.[29] The FCC has promulgated a rule allowing ILECs to send a written "request for interconnection" that "invoke[s] the negotiation and arbitration procedures contained in section 252 of the Act" to a CMRS provider. *See* 47 CFR § 20.11(e). At that point, the carriers must negotiate terms implementing their respective duties under section 251(a), (b) and, if applicable, (c). If the parties are unable to resolve all issues through negotiation, the incumbent may request that the CMRS provider "submit to arbitration by the state commission." *See* 47 C.F.R. § 20.11(e).

93. The Non-AT&T Respondents have either flatly refused or failed to comply with these requirements. As a result, they are not entitled to any compensation from Halo, and they cannot coerce compensation under the threat of blocking. Accordingly, Halo requests a declaration that any blocking order under these circumstances would be preempted by the "bill and keep" framework of federal law and that blocking be denied on this basis.

G. Alternatively, blocking should be denied as this Commission lacks jurisdiction to determine that Halo does not provide "wireless" service or is not a "CMRS" provider.

94. In prior proceedings, the Respondents have attempted to circumvent the preemptive aspects of federal law by asserting that Halo does not provide "wireless" service and that Halo is not a CMRS provider. And, in AT&T's blocking notice, it expressly asserts that

[29] *T-Mobile Order* note 57, *supra.*

Halo's traffic is "non-wireless originated." Such arguments are without merit, but more importantly, they are beyond the jurisdiction of this Commission to decide.

95. The courts have agreed that state commissions cannot attempt to impose rate or entry regulation on wireless providers, and in particular, state commissions cannot issue "cease and desist" orders on wireless providers. *Motorola Communications & Electronics, Inc. v. Mississippi Public ServiceCom.*, 515 F. Supp. 793, 795-796 (S.D. Miss. 1979), *aff'd Motorola Communications v. Mississippi Public Service, Comm.*, 648 F.2d 1350 (5th Cir. 1981). Further, Halo has a *federally*-granted right to interconnect and the FCC has asserted "plenary" jurisdiction over CMRS interconnection and expressly pre-empted any state authority to deny interconnection. *RCC Interconnection Order supra.*

96. The regulatory classifications for Halo and Transcom are defined and governed exclusively by *federal* law. For example, the ESP Rulings hold that Transcom is *not* a carrier, is *not* an interexchange carrier ("IXC"), and its traffic is *not* subject to access charges. The ESP Rulings hold, instead, that Transcom is an ESP and therefore an "end user" and is entitled to obtain "telephone exchange service" as an end user rather than "exchange access" as an IXC.

97. CMRS carriers – like Halo here – predominately provide "telephone exchange service" to end users.[30] States are pre-empted from imposing rate or entry regulation on CMRS. *See* 47 U.S.C. § 332(c)(3). Nor can states or local governmental authorities take action that will "prohibit or have the effect of prohibiting the provision of personal wireless services."[31] 47

[30] See First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, ¶¶ 1004, 1006, 1008, 11 FCC Rcd 15499, 16045 (1996) ("Local Competition Order") (subsequent history omitted) (finding that CMRS predominately provides "telephone exchange service").

[31] "Personal Wireless Service" is defined in § 332(c)(7)(C)(i) and includes CMRS.

U.S.C. § 332(c)(7)(B)(i)(II). The FCC has *exclusive* jurisdiction over wireless licensing, market entry by private and commercial wireless service providers and the rates charged for wireless services.

98. The Supreme Court and several courts of appeals have consistently held that state commissions cannot undertake to interpret or enforce federal licenses because "a multitude of interpretations of the same certificate" will result.[32] *See Service Storage & Transfer Co. v. Virginia*, 359 U.S. 171, 178-79 (1959). The FCC is the exclusive "first decider" and must be the one to interpret, in the first instance, whether a particular activity falls within the certificates it has issued. *See id.* at 177; *see also Gray Lines Tour, Co. v. Interstate Commerce Com.*, 824 F.2d 811, 815 (9th Cir. 1987) and *Middlewest Motor Freight Bureau v. ICC*, 867 F.2d 458, 459 (8th Cir. 1989). If the Respondents believe that a federally-licensed entity is engaging in some "scheme" or "subterfuge" through its practices, the proper forum is the FCC. Similarly, if any state commission has a concern, its remedy is to petition the federal licensing body for relief. *Service Storage*, 359 U.S. at 179. A state commission cannot take any action that would "amount to a suspension or revocation" of a federal license. *Castle, Attorney General v. Hayes Freight Lines*, 348 U.S. 61, 64 (1954).[33]

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[32] "It appears clear that interpretations of federal certificates of this character should be made in the first instance by the authority issuing the certificate and upon whom the Congress has placed the responsibility of action. * * * Thus the possibility of a multitude of interpretations of the same federal certificate by several States will be avoided and a uniform administration of the Act achieved." *Service Storage & Transfer Co. v. Com. of Va.*, 359 U.S. 171, 177 (1959).

[33] "Under these circumstances, it would be odd if a state could take action amounting to a suspension or revocation of an interstate carrier's commission-granted right to operate. ... It cannot be doubted that suspension of this common carrier's right to use Illinois highways is the equivalent of a partial suspension of its federally granted certificate."

99. Therefore, the FCC has exclusive jurisdiction under 47 U.S.C. § 152(a) over the qualifications and authorization of a party to do anything by radio (whether it is interstate or intrastate), and whether Halo is a wireless carrier goes to the heart of whether it is properly qualified and authorized. As such, this Commission lacks jurisdiction to make any ruling as to whether Halo provides wireless service or is a CMRS provider. Such resolution is preempted by section 332(c)(3), (c)(7)(A), and (c)(7)(C). Likewise, section 157 preempts the Commission's authority to decide these issues, at least in this context, as Halo's services are based on new technology, and states cannot determine whether such technology is in the public interest or should be banned or prohibited. Finally, these issues cannot be subject to state consideration when it is used by opponents seeking a state-level order that bans service provision because doing so would constitute an illegal barrier to entry subject to preemption by the FCC under section 257.

100. As such, if blocking is not stayed or denied as discussed above, Halo requests that this Commission:

a. declare that it lacks jurisdiction to determine whether Halo's services constitute a wireless service;

b. declare that it lacks jurisdiction to determine whether Halo is a CMRS provider;

c. deny blocking on those bases; and

d. declare that Halo is not required to pay any costs associated with any of the unjustified blocking notices at issue.

H. Alternatively, if the Commission could address the blocking notices on the merits, blocking must be denied.

101. Finally, if the Commission had the authority under state and federal law to address the merits of the blocking notices, blocking would have to be denied because blocking is

improper under federal law and the ERE rules themselves. Contrary to the Respondents' contentions, Halo is a CMRS provider that provides wireless services to its customers, particularly Transcom. In turn, Transcom is an end user that has been declared to be an ESP on four separate occasions by courts of competent jurisdiction, and Halo is entitled to rely on such rulings. As an ESP end user, Transcom's traffic to Halo originates within the same MTA in which it terminates (at least for compensation purposes), and such traffic is not subject to access charges. Moreover, whether or not such traffic is subject to access charges, Halo is not required to provide *any* compensation to the Non-AT&T Respondents unless and until they comply with the FCC requirements, which they have not done. Finally, Halo has not failed to provide caller information and has not placed traffic on any "LEC-to-LEC network", as discussed below.

1. Blocking must be denied because Respondent RLECs are not entitled to any compensation.

102. The Respondent RLECs base their blocking attempts primarily on the assertion that Halo has failed to fully compensate them. However, the right to compensation is determined under the federal "bill and keep" framework set forth in 47 U.S.C §§ 251-252, 47 CFR § 20.11, etc. And, since blocking would conflict with that framework, this Commission lacks jurisdiction to block traffic, as discussed previously.

103. Nevertheless, if the Commission could decide the merits of the blocking requests, the Respondent RLECs' failure to comply with section 20.11 would be dispositive of the compensation issue. Accordingly, if the merits are reached, then the Commission should declare that the RLECs are not entitled to any compensation from Halo and should deny blocking on that basis.

2. Blocking must be denied because the traffic in issue is not "compensable traffic" as to the Non-AT&T Respondents.

104. ERE rule 24.29.020(8) defines "compensable traffic as "(8) Compensable traffic is telecommunications traffic that is transited or terminated over the LEC-to-LEC network, for which the transiting and/or terminating carrier is entitled to financial compensation."

105. The Non-AT&T Respondents are not entitled to any payment for this traffic, since it is non-access traffic and there is no interconnection agreement between any of the Non-AT&T Respondents and Halo. Therefore they cannot demand blocking under ERE Rule 240-29.130.

3. Blocking must be denied because Halo is not the carrier that chose to place the traffic on the alleged "LEC-to-LEC" network.

106. As noted, ERE rule 240-29.020(20) defines "originating carrier": Originating carrier means the telecommunications company that is responsible for originating telecommunications traffic that traverses the LEC-to-LEC network. A telecommunications company whose retail telecommunications services are resold by another telecommunications company shall be considered the originating carrier with respect to such telecommunications for the purposes of this rule. A telecommunications company performing a transiting traffic function is not an originating carrier." Halo is not the carrier that is placing the traffic on the alleged "LEC-to-LEC" network. Halo delivers the traffic to AT&T over interconnection trunks, and never requested that AT&T use any "LEC-to-LEC network" as the means by which it provides transit. AT&T is the one that unilaterally chooses to route the traffic on the alleged "LEC-to-LEC" network." Halo therefore cannot be held responsible, or involuntarily subjected to the ERE rules.

4. Blocking must be denied because the traffic in issue, by definition, cannot be traversing the alleged "LEC-to-LEC network.

107. "Feature Group C protocol" is defined in ERE Rule 240-29.020(13). Halo's traffic does not "originate via the use of feature group C protocol." Therefore, Halo traffic cannot be deemed to be traversing the "LEC-to-LEC network" because the definition of "LEC-to-LEC network" in ERE Rule 240-29.020(18) applies only to traffic that "originates via the use of feature group c protocol."

5. Blocking must be denied because Halo has not sent landline-originated traffic to AT&T for termination by the RLECs

108. AT&T Missouri asserts that Halo is sending landline-originated traffic to AT&T Missouri. More specifically, AT&T Missouri asserts that Halo has violated a provision of the ICA that provides the ICA "will only to . . . "traffic that originates through wireless transmitting and receiving facilities before [Halo] delivers traffic to AT&T for termination . . ." Ex. D at 2. Similar allegations have been made by the other Respondents in connection with the assertions that Halo has failed to compensate them for traffic. As noted above, AT&T Missouri is not entitled to block traffic under the ERE Rules, since the ERE Rules are inapplicable where services are provide pursuant to an ICA, and blocking is likewise improper for the other reasons previously discussed. In any case, there is no merit to the Respondents' contentions on this issue.

109. Contrary to the Respondents' assertions, the traffic in issue *does* originate "through wireless transmitting and receiving facilities before [Halo] delivers traffic to AT&T." *See* Ex. D at 2. The network arrangement in every state and every MTA is the same. Halo has established a 3650 MHz base station in each MTA. Halo's customer has 3650 MHz wireless stations – which constitute CPE as defined in the Act – that are sufficiently proximate to the base

station to establish a wireless link with the base station. When the customer wants to initiate a session, the customer originates a call using the wireless station that is handled by the base station, processed through Halo's network, and ultimately handed off to AT&T Missouri for termination or transit over the interconnection arrangements that are in place as a result of the various ICAs.

110. Respondents appear to be claiming that Halo is merely "re-originating" traffic and that the "true" end points are elsewhere on the PSTN. In making this argument, however, Respondents 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 an ESP is an "origination" and "termination" endpoint for intercarrier compensation purposes (as opposed to *jurisdictional* purposes, which does use the "end-to-end" test).

111. The traffic here goes to Transcom where there is a "termination." Transcom then "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 section 251(g) and is covered by section 251(b)(5)), the call *to* the PSTN is also immune.[34] Enhanced services

[34] The ILECs incessantly assert that the ESP Exemption only 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."

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.[35] 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.

112. 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.[36] 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." 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.

113. In other proceedings, the Respondents have pointed to certain language in paragraph 1006 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 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

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[35] *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).

[36] *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"].

the FCC's characterization in the same paragraph of 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 paragraph 1311 of the recent rulemaking.[37] Halo simply cannot be said to be providing "transit" when it has an end user as the customer on one side and a carrier on the other side. Any other construction necessarily leads to the conclusion that the FCC has decided that the D.C. Circuit was wrong in *Bell Atlantic*.

114. Halo agrees that a call handed off from a Halo carrier customer would not be deemed to originate on Halo's network.[38] But, Transcom is not a carrier, it is an ESP. 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.[39]

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[37] "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)

[38] *See* § 252(d)(2)(A)(i), which imposes the "additional cost" mandate on "calls that originate on the network facilities of the other carrier."

[39] *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); *Gerri 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

115. 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"). This arrangement matches up exactly with the requirement in the recital that AT&T Missouri relies on.

116. Moreover, AT&T Missouri is barred from asserting that Halo's customer is not an end user. Halo's "High Volume" customer whose traffic is at issue is Transcom. Transcom and AT&T were directly involved in litigation, and the court twice held – over AT&T's strong opposition – that Transcom is an ESP and end user, is not a carrier, and access charges do not apply to Transcom's traffic. This specific set of rulings was incorporated into the Confirmation Order in Transcom's bankruptcy case. AT&T was a party and is bound by these holdings. AT&T is barred from raising any claim that Transcom is anything other than an ESP and end user qualified to purchase telephone exchange service from carriers, and cannot now collaterally attack the bankruptcy court rulings. Transcom's status as an end user is not subject to debate.

117. Moreover, even if AT&T Missouri were not bound by these decisions, Halo would still be entitled to rely on them. Although district court opinions are not binding precedent (except to the parties involve, *etc.*), federal court rules and decision confirm that unpublished opinion—and even vacated opinions—are still persuasive authority. *See, e.g., Barrent v. Harrington*, 130 F.3d 246, 258 n.18 (6th Cir. 1997) ("Because this Court only looks to the case as persuasive authority, it is irrelevant that the case has been vacated"); *United States v.*

(S.D. Cal. 1995); *AT&T Corp. v. Fleming & Berkley*, 1997 U.S. App. LEXIS 33674 *6-*16 (9th Cir. Cal. Nov. 25, 1997).

Barona, 56 F.3d 1087, 1093 n.1 (9th Cir. 1995) ("[T]he reasoning of a vacated opinion may be looked to as persuasive authority if its reasoning is unaffected by the decision to vacate."). In the absence of any decision by a court of competent jurisdiction to the contrary—and there are not such decisions—Halo is entitled to rely on the prior determinations that Transcom is an ESP.

118. Once it is clear that Transcom is Halo's telephone exchange service end user customer, then all of the Respondents' contentions simply fail. End users originate calls. The calls at issue are "end user" calls, so the Respondents' assertions are flatly incorrect and the claims are based on the incorrect premise that Halo's customers are not "end users" purchasing telephone exchange service in the MTA.

6. Blocking must be denied because Halo has not provided incorrect originating caller identification.

119. Finally, Respondents assert that Halo is not providing correct originating caller identification. This is flatly untrue and AT&T Missouri fully knows this is the case. *If* and to the extent that the Respondent RLECS are receiving incorrect originating caller identification it is because AT&T Missouri is changing the information it receives from Halo.

120. Halo did populate the Called Party Number ("CPN") parameter with the billing number of the financially responsible party in addition to the CPN contents. The Commission cannot premise a violation of rules that do not apply on the fact that Halo provided more information than would be required by the rules if they applied.

121. And, to the extent that the Respondents are talking about the tandem records as opposed to signaling, once again it is AT&T Missouri changing the information it receives from Halo. Still, the rules do not require CPN information in the tandem records.

122. As such, *if* the Commission could decide this issue on the merits, blocking must be denied.

123. Accordingly, if blocking is not stayed or denied as discussed above, then Halo requests that the Commission:

a. declare that Halo is entitled to rely on rulings that Transcom is an ESP;

b. declare that Halo's traffic is therefore intraMTA traffic under binding precedent from the D.C. Circuit;

c. deny blocking on the merits; and

d. declare that Halo is not required to pay any costs associated with any of the unjustified blocking notices at issue.

V.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Halo prays:

A. That the Commission affirm, on an expedited basis, that this action is stayed until the Bankruptcy Court rules on the propriety of the blocking notices;

B. In the alternative, if the stay is lifted, or determined to be inapplicable in this action, that Commission grant expedited consideration of the blocking notices and this Complaint, per 4 CSR 240-29.120(5) and -29.130(9).

C. Alternatively, that the Commission declare that the ERE Rules cannot apply to any dispute between Halo and AT&T Missouri and deny blocking on that basis;

D. Alternatively, that the Commission declare that the ERE Rules are facially inapplicable to Halo and deny blocking on that basis;

E. Alternatively, that the Commission declare that is has no authority to order or allow blocking, declare that the ERE Rules' blocking provisions are preempted by federal law, and deny blocking on that basis;

F. Alternatively, that the Commission declare that blocking based on an alleged failure to compensate would conflict with the federal "bill and keep" regulatory structure, and deny blocking on that basis;

G. Alternatively, that the Commission declare that it lacks jurisdiction to determine that Halo does not provide "wireless" service or is not a "CMRS" provider, and deny blocking on that basis; and/or

H. Alternatively, that the Commission:

(1) Declare that the Respondent RLECs are not entitled to any compensation from Halo based on the Respondent RLECs' failure to comply with section 20.11;

(2) Declare that Halo is entitled to rely on court decisions determining that Transcom is an ESP;

(3) Declare that Halo's traffic is therefore intraMTA traffic; and

(4) Deny blocking on the merits; and

I. That the Commission declare that Halo is not required to pay any costs associated with any of the unjustified blocking notices at issue.

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
(petition for leave to appear and participate forthcoming)
Texas State Bar No. 19868890
TROY P. MAJOUE
(petition for leave to appear and participate forthcoming)
Texas State Bar No. 24067738
JENNIFER M. LARSON
Texas State Bar No. 24071167
(petition for leave to appear and participate forthcoming)
McGUIRE, CRADDOCK & STROTHER, P.C.
2501 N. Harwood, Suite 1800
Dallas, TX 75201
Telephone: (214) 954-6800
Facsimile: (214) 954-6850

W. SCOTT MCCOLLOUGH
(petition for leave to appear and participate forthcoming)
Texas State Bar No. 13434100
McCOLLOUGH|HENRY, P.C.
1250 S. Capital of Texas Hwy, Bldg 2-235
West Lake Hills, TX 78746
Telephone: (512) 888-1112
Facsimile: (512) 692-2522

Attorneys for Halo Wireless, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document has been filed with the Missouri Public Service Commission electronic filing system and has been e-mailed to the following counsel of record this 10th day of April, 2012:

Craig S. Johnson
Johnson & Sporleder, LLP
304 E. High Street, Suite 200
P.O. Box 1670
Jefferson City, MO 65102
cj@cjaslaw.com

Leo J. Bub
General Attorney
AT&T Missouri
One AT&T Center, Room 3518
St. Louis, MO 63101
leo.bub@att.com

Office of the Public Counsel
Lewis Mills
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opcservice@ded.mo.gov

AT&T Missouri
Jeffrey E Lewis
One AT&T Center, Room 3520
St. Louis, MO 63101
jeffrey.e.lewis@att.com

AT&T Missouri
Robert Gryzmala
909 Chestnut Street
St. Louis, MO 63101
robert.gryzmala@att.com

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
gencounsel@psc.mo.gov

Brian McCartney
William R. England III
Brydon, Swearengen & England
312 E. Capital Avenue
P.O. Box 456
Jefferson City, MO 65102
bmccartney@brydonlaw.com
trip@brydonlaw.com

Missouri Public Service Commission
Cully Dale
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
cully.dale@psc.mo.gov

DANIEL R. YOUNG

at&t

Leo J. Bub
General Attorney

AT&T Missouri
One AT&T Center
Room 3518
St. Louis, Missouri 63101

T: 314.235.2508
F: 314.247.0014
leo.bub@att.com

VIA CERTIFIED U.S. MAIL NO. 7011 1150 0000 5809 8666 & E-MAIL

February 23, 2012

Mr. John Marks
General Counsel
Halo Wireless, Inc.
3437 W. 7th Street, Suite 127
Fort Worth, Texas 76107

Re: Blocking Request from:
Alma Communications Company d/b/a/ Alma Telephone Company
Choctaw Telephone Company
MoKan Dial Inc.

Dear Mr. Marks:

We are writing to notify you that we have received and are required to implement demands from Alma Telephone Communications Company d/b/a Alma Telephone Company, Choctaw Telephone Company and MoKan Dial Inc. (collectively "Alma/Choctaw/MoKan Dial"), which are located in Missouri, to block your company's traffic that transits Southwestern Bell Telephone Company, d/b/a AT&T Missouri's network and terminates to Alma/Choctaw/MoKan Dial's exchanges.

Alma/Choctaw/MoKan Dial have made this request pursuant to the Missouri Public Service Commission's Enhanced Record Exchange Rule which provides that:

> A terminating carrier may request the originating tandem carrier to block, and upon such request the originating tandem carrier shall block, the originating carrier's Local Exchange Carrier-to-Local Exchange Carrier (LEC-to-LEC) traffic, if the originating carrier has failed to fully compensate the terminating carrier for terminating compensable traffic, or if the originating carrier has failed to deliver the originating caller identification to the transiting and/or terminating carriers.

4 CSR 240-29.130(2). The rule further provides that following the notification required by the rule and on written request by a terminating carrier:

> . . . the originating tandem carrier will be required to block LEC-to-LEC traffic of an originating carrier and/or traffic aggregator to the terminating carrier. Such requests shall be based on the terminating carrier's representation that the originating carrier and/or traffic aggregator has failed

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Exhibit A

> to fully compensate the terminating carrier for terminating compensable traffic. . . .

4 CSR 240-29.110(5). The Commission's rules define "LEC-to-LEC" traffic as "that traffic occurring over the LEC-to-LEC network. LEC-to-LEC traffic does not traverse through an interexchange carrier's point of presence." 4 CSR 240-29.020(19). Similar denial of service provisions are contained in AT&T's interstate switched access service tariff, FCC No. 73, Section 2.1.3(c).

Please be aware that the Commission's Enhanced Record Exchange Rules contain provisions enabling originating carriers to dispute the blocking by filing a formal complaint with the Commission. Upon such a filing, all blocking is to cease while the dispute is resolved by the Commission. 4 CSR 240-29.130(9) and (10). Otherwise, unless the Missouri Commission or other authority with competent jurisdiction issues an order staying the blocking of Halo's traffic, we believe we are bound to follow Alma/Choctaw/MoKan Dial's directive. We are beginning to perform the work necessary to implement this directive and will be in a position to commence the blocking on April 3, 2012.

Please call me with questions or if you need further information.

Very truly yours,

Leo J. Bub

cc: Via E-Mail
Mr. Craig S. Johnson
Mr. John Van Eschen, MoPSC Telecom. Dept. Mgr.
Mr. Scott McCollough
Mr. Louis A. Huber, III
Mr. Steven H. Thomas
Mr. Todd Wallace, CTO
Mr. Russ Wiseman, Secretary Treasurer
Mr. Jason Menard, Consultant

USA Proud Sponsor of the U.S. Olympic Team

at&t

Leo J. Bub
General Attorney

AT&T Missouri
One AT&T Center
Room 3518
St. Louis, Missouri 63101

T: 314.235.2508
F: 314.247.0014
leo.bub@att.com

VIA CERTIFIED U.S. MAIL NO. 7011 1150 0000 5809 8673 & E-MAIL

March 13, 2012

Mr. John Marks
General Counsel
Halo Wireless, Inc.
3437 W. 7th Street, Suite 127
Fort Worth, Texas 76107

Re: Blocking Request from:
Craw-Kan Telephone Cooperative, Inc.
Ellington Telephone Company
Granby Telephone Company
Iamo Telephone Company
Le-Ru Telephone Company
McDonald County Telephone Company
Miller Telephone Company
Rock Port Telephone Company
Senecca Telephone Company
Goodman Telephone Company
Ozark Telephone Company

Dear Mr. Marks:

We are writing to notify you that we have received and are required to implement demands from Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Granby Telephone Company, Iamo Telephone Company, Le-Ru Telephone Company, McDonald County Telephone Company, Miller Telephone Company, Rock Port Telephone Company and Seneca Telephone Company, Goodman Telephone Company and Ozark Telephone Company (collectively the "Requesting ILECs"), which are located in Missouri, to block your company's traffic that transits Southwestern Bell Telephone Company, d/b/a AT&T Missouri's network and terminates to the Requesting ILECs' exchanes

The Requesting ILECs have made this request pursuant to the Missouri Public Service Commission's Enhanced Record Exchange Rule which provides that:

> A terminating carrier may request the originating tandem carrier to block, and upon such request the originating tandem carrier shall block, the originating carrier's Local Exchange Carrier-to-Local Exchange Carrier (LEC-to-LEC) traffic, if the originating carrier has failed to fully compensate the terminating

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Exhibit B

> carrier for terminating compensable traffic, or if the originating carrier has failed to deliver the originating caller identification to the transiting and/or terminating carriers.

4 CSR 240-29.130(2). The rule further provides that following the notification required by the rule and on written request by a terminating carrier:

> . . . the originating tandem carrier will be required to block LEC-to-LEC traffic of an originating carrier and/or traffic aggregator to the terminating carrier. Such requests shall be based on the terminating carrier's representation that the originating carrier and/or traffic aggregator has failed to fully compensate the terminating carrier for terminating compensable traffic. . . .

4 CSR 240-29.110(5). The Commission's rules define "LEC-to-LEC" traffic as "that traffic occurring over the LEC-to-LEC network. LEC-to-LEC traffic does not traverse through an interexchange carrier's point of presence." 4 CSR 240-29.020(19). Similar denial of service provisions are contained in AT&T's interstate switched access service tariff, FCC No. 73, Section 2.1.3(c).

Please be aware that the Commission's Enhanced Record Exchange Rules contain provisions enabling originating carriers to dispute the blocking by filing a formal complaint with the Commission. Upon such a filing, all blocking is to cease while the dispute is resolved by the Commission. 4 CSR 240-29.130(9) and (10). Otherwise, unless the Missouri Commission or other authority with competent jurisdiction issues an order staying the blocking of Halo's traffic, we believe we are bound to follow the Requesting ILECs' directives. We are beginning to perform the work necessary to implement this directive and will be in a position to commence the blocking on April 12, 2012.

Please call me with questions or if you need further information.

Very truly yours,

Leo J. Bub

cc: Via E-Mail
Mr. William R. England
Mr. John Van Eschen, MoPSC Telecom. Dept. Mgr.
Mr. Scott McCollough
Mr. Louis A. Huber, III
Mr. Steven H. Thomas
Mr. Todd Wallace, CTO
Mr. Russ Wiseman, President
Mr. Jason Menard, Consultant

USA Proud Sponsor of the U.S. Olympic Team

Leo J. Bub
General Attorney

AT&T Missouri
One AT&T Center
Room 3518
St. Louis, Missouri 63101

T: 314.235.2508
F: 314.247.0014
leo.bub@att.com

VIA CERTIFIED U.S. MAIL NO. 7011 1150 0000 5809 8710 & E-MAIL

March 26, 2012

Mr. John Marks
General Counsel
Halo Wireless, Inc.
3437 W. 7th Street, Suite 127
Fort Worth, Texas 76107

Re: Blocking Request from:
Peace Valley Telephone Company, Inc.

Dear Mr. Marks:

We are writing to notify you that we have received and are required to implement demands from Peace Valley Telephone Company, Inc. ("Peace Valley"), which is located in Missouri, to block your company's traffic that transits Southwestern Bell Telephone Company, d/b/a AT&T Missouri's network and terminates to Peace Valley's exchanges.

Peace Valley has made this request pursuant to the Missouri Public Service Commission's Enhanced Record Exchange Rule which provides that:

> A terminating carrier may request the originating tandem carrier to block, and upon such request the originating tandem carrier shall block, the originating carrier's Local Exchange Carrier-to-Local Exchange Carrier (LEC-to-LEC) traffic, if the originating carrier has failed to fully compensate the terminating carrier for terminating compensable traffic, or if the originating carrier has failed to deliver the originating caller identification to the transiting and/or terminating carriers.

4 CSR 240-29.130(2). The rule further provides that following the notification required by the rule and on written request by a terminating carrier:

> . . . the originating tandem carrier will be required to block LEC-to-LEC traffic of an originating carrier and/or traffic aggregator to the terminating carrier. Such requests shall be based on the terminating carrier's representation that the originating carrier and/or traffic aggregator has failed to fully compensate the terminating carrier for terminating compensable traffic. . . .

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Exhibit C

4 CSR 240-29.110(5). The Commission's rules define "LEC-to-LEC" traffic as "that traffic occurring over the LEC-to-LEC network. LEC-to-LEC traffic does not traverse through an interexchange carrier's point of presence." 4 CSR 240-29.020(19). Similar denial of service provisions are contained in AT&T's interstate switched access service tariff, FCC No. 73, Section 2.1.3(c).

Please be aware that the Commission's Enhanced Record Exchange Rules contain provisions enabling originating carriers to dispute the blocking by filing a formal complaint with the Commission. Upon such a filing, all blocking is to cease while the dispute is resolved by the Commission. 4 CSR 240-29.130(9) and (10). Otherwise, unless the Missouri Commission or other authority with competent jurisdiction issues an order staying the blocking of Halo's traffic, we believe we are bound to follow Peace Valley's directive. We are beginning to perform the work necessary to implement this directive and will be in a position to commence the blocking on April 25, 2012.

Please call me with questions or if you need further information.

Very truly yours,

Leo J. Bub

cc: Via E-Mail
Mr. William R. England, III
Mr. John Van Eschen, MoPSC Telecom. Dept. Mgr.
Mr. Scott McCollough
Mr. Louis A. Huber, III
Mr. Steven H. Thomas
Mr. Todd Wallace, CTO
Mr. Russ Wiseman, Secretary Treasurer
Mr. Jason Menard, Consultant

USA Proud Sponsor of the U.S. Olympic Team

Leo J. Bub
General Attorney

AT&T Missouri
One AT&T Center
Room 3518
St. Louis, Missouri 63101

T: 314.235.2508
F: 314.247.0014
leo.bub@att.com

VIA EMAIL & U.S. CERTIFIED U.S. MAIL NO. 7011 1150 0000 5809 8680

March 19, 2012

Halo Wireless, Inc.
c/o Mr. E. P. Keiffer
Wright Ginsberg Brusilow, P.C.
Republic Center, Suite 4150
325 N. St. Paul Street
Dallas, Texas 75201
pkeiffer@wgblawfirm.com

Re: Notice of Intent to Begin Blocking of Halo Wireless, Inc. Traffic Terminating to AT&T Missouri Pursuant to the Missouri Public Service Commission Enhanced Record Exchange Rules.

Dear Mr. Keiffer:

Please be advised that Southwestern Bell Telephone Company d/b/a AT&T Missouri intends to and will begin blocking Halo Wireless, Inc. ("Halo") traffic terminating to AT&T Missouri pursuant Missouri Public Service Commission Rule 4 CSR 240-29.120 (the "Rule") and subject to the operation of applicable law, including the United States Bankruptcy Code and any orders issued in connection with Case No. 11-42464, *In re Halo Wireless, Inc., Debtor,* pending in the United States Bankruptcy Court for the Eastern District Texas. In accordance with the requirements of the Rule, this letter sets out the reasons for the traffic blocking, the date the traffic blocking will begin, and the actions Halo can take to avoid the traffic blocking.

Reasons for Blocking

Halo is sending AT&T Missouri large volumes of access traffic on which it is not paying access charges. Halo has been aggregating large amounts of interexchange landline-to-landline traffic and other third-party traffic that Halo then routes to AT&T Missouri as if it were wireless-originated traffic. As a result, Halo has failed to fully compensate AT&T Missouri for transporting and terminating Halo traffic.

In material breach of the parties' Interconnection Agreement ("ICA"), Halo Wireless continues to send AT&T Missouri non-wireless-originated traffic, *i.e.*, landline-originated traffic, despite AT&T Missouri's demands that Halo cease doing so. The following Whereas Clause, which the parties added through an amendment to the ICA when Halo adopted the ICA, makes clear that Halo's sending this type of traffic constitutes a violation of the ICA:

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Exhibit D

> 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.* (Emphasis added).

The ICA is designed solely for traffic originated on wireless facilities. *See* Whereas Clause quoted above, and ICA §§ 3.1.1, 3.2.1, 3.2.3.3. Halo, however, has continued to send AT&T Missouri substantial volumes of traffic that is landline-originated. Halo's transmitting interLATA wireline traffic over the LEC-to-LEC network in Missouri also violates Section 4 CSR 240-29.010(1) of the Commission's Rules.

Landline-originated interexchange traffic is compensable at lawful switched access rates. Halo has failed to pay AT&T Missouri appropriate access rates for terminating Halo's landline-originated interexchange traffic. The FCC has rejected Halo's claim that landline toll traffic can be converted to intraMTA wireless traffic by inserting a wireless connection at its "base stations," concluding "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."[1]

Date Traffic Is To Be Blocked

April 24, 2012

Actions Halo Can Take To Prevent Blocking

Pursuant to 4 CSR 240-29.120, Halo may take any of the following actions to prevent the implementation of blocking:

a. Agreeing with AT&T Missouri and obtaining any applicable Bankruptcy Court approval of arrangements for the payment of appropriate switched access charges on all Halo post-bankruptcy petition landline-originated interexchange traffic terminated to AT&T Missouri.
b. File a formal complaint with the Missouri Public Service Commission providing all relevant evidence refuting any stated reasons for blocking;
c. Any other means of prevention set forth in Chapter 29 of the Missouri Public Service Commission Rules, 4 CSR 240-29.010, et seq.

[1] *Connect America Fund et al.*, WC Docket No. 10-90 et al., *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161, paras. 1005-1006 (rel. Nov. 18, 2011), *Pets. for review pending, Direct Commc'ns Cedar Valley, LLC vs. FCC*, No. 11-9581 (10th Cir. filed Dec. 18, 2011) (and consolidated cases).

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Please notify me and Mr. John Van Eschen of the Missouri Public Service Commission Staff no later than April 10, 2012 if Halo wishes to take any of these steps to avoid the effectuation of traffic blocking.

Very truly yours,

Leo J. Bub

cc: Via Certified Mail and Via E-Mail
Russ Wiseman,Secretary/Treasurer - Cert. U.S. Mail No. 7011 1150 0000 5809 8697
Todd Wallace, CTO - Cert. U.S. Mail No. 7011 1150 0000 5809 8703

Via E-Mail
John Van Eschen, MoPSC Telecom. Dept. Mgr.
John Marks, General Counsel
W. Scott McCollough
Steven H. Thomas
Louis A. Huber, III
Jason Menard, Consultant

USA Proud Sponsor of the U.S. Olympic Team

EOD
10/26/2011

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

IN RE:	§	CASE NO. 11-42464-btr-11
	§	
HALO WIRELESS, INC.,	§	
	§	
DEBTOR.	§	

ORDER GRANTING MOTION OF THE TEXAS AND MISSOURI TELEPHONE COMPANIES TO DETERMINE AUTOMATIC STAY INAPPLICABLE AND FOR RELIEF FROM THE AUTOMATIC STAY [DKT. NO. 31]

Upon consideration of *The Texas and Missouri Telephone Companies' Motions to Determine Automatic Stay Inapplicable and in the Alternative, For Relief from Same* [Dkt. No. 31] (the "TMTC Motion")[1], and it appearing that proper notice of the TMTC Motion has been given to all necessary parties; and the Court, having considered the evidence and argument of counsel at the hearing on the TMTC Motion (the "Hearing"), and having made findings of fact and conclusions of law on the record of the Hearing which are incorporated herein for all purposes; it is therefore;

ORDERED that the TMTC Motion is GRANTED, but only as set forth hereinafter; and it is further

ORDERED that, pursuant to 11 U.S.C. §362(b)(4), the automatic stay imposed by 11 U.S.C. § 362 (the "Automatic Stay") is not applicable to currently pending State Commission Proceedings[2], except as otherwise set forth herein; and it is further

---

[1] The Court contemporaneously is entering separate orders granting the *Motion of the AT&T Companies to Determine Automatic Stay Inapplicable and For Relief from Automatic Stay* [Dkt. No. 13] and the *Motion to Determine the Automatic Stay is Not Applicable, or Alternatively, to Lift the Automatic Stay Without Waiver of 30-Day Hearing Requirement* [Dkt. No. 44] filed by TDS Telecommunications Corporation.

[2] The term "State Commission Proceeding" as used herein refers to those proceedings identified in the TMTC Motion at ¶ 5, fn. 11.

Exhibit E

ORDERED that, any regulatory proceedings in respect of the matters described in the TMTC Motion, including the State Commission Proceedings, may be advanced to a conclusion and a decision in respect of such regulatory 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 (collectively, the "Reserved Matters"); and it is further

ORDERED that nothing in this Order precludes the TMTC Companies[3] from seeking relief from the Automatic Stay in this Court to pursue the Reserved Matters once a state commission has (i) first determined that it has jurisdiction over the issues raised in the State Commission Proceedings; and (ii) then determined that the Debtor has violated applicable law over which the particular state commission has jurisdiction; and it is further

[3] The TMTC Companies include Alenco Communications, Inc.; Alma Communications Company d/b/a Alma Telephone Company; Big Bend Telephone Company, Inc.; BPS Telephone Company; Brazoria Telephone Company; Chariton Valley Telecom Corporation; Chariton Valley Telephone Company; Choctaw Telephone Company; Citizens Telephone Company of Higginsville, Missouri; Craw-Kan Telephone Cooperative, Inc.; Eastex Telephone Cooperative, Inc.; Electra Telephone Company, Inc.; Ellington Telephone Company; Farber Telephone Company; Fidelity Communication Services I, Inc.; Fidelity Communication Services II, Inc.; Fidelity Telephone Company; Five Area Telephone Cooperative, Inc.; Ganado Telephone Company; Goodman Telephone Company; Granby Telephone Company; Grand River Mutual Telephone Corporation; Green Hills Area Cellular d/b/a Green Hills Telecommunications Services; Green Hills Telephone Corporation; Guadalupe Valley Telephone Cooperative, Inc.; Hill Country Telephone Cooperative, Inc.; Holway Telephone Company; Iamo Telephone Company; Industry Telephone Company; Kingdom Telephone Company; K.L.M. Telephone Company; Lake Livingston Telephone Company, Inc.; Lathrop Telephone Company; Le-Ru Telephone Company; Livingston Telephone Company; Mark Twain Communication Company; Mark Twain Rural Telephone Company; McDonald County Telephone Company; Mid-Missouri Telephone Company, a Corporate Division of Otelco, Inc.; Mid-Plains Rural Telephone Cooperative, Inc.; Miller Telephone Company; MoKan Dial, Inc.; New Florence Telephone Company; New London Telephone Company; Nortex Communications Company; Northeast Missouri Rural Telephone Company; North Texas Telephone Company; Orchard Farm Telephone Company; Ozark Telephone Company; Peace Valley Telephone Company, Inc.; Peoples Telephone Cooperative, Inc.; Riviera Telephone Company, Inc.; Rock Port Telephone Company; Seneca Telephone Company; Santa Rosa Telephone Cooperative, Inc.; Southwest Texas Telephone Company; Steelville Telephone Exchange, Inc.; Stoutland Telephone Company; Tatum Telephone Company; Totelcom Communications, LLC; Valley Telephone Cooperative, Inc. and West Plains Telecommunications, Inc.

ORDERED that the TMTC Companies, as well as the Debtor, may appear and be heard, as may be required by a state commission in order to address the issues presented in the State Commission Proceedings; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from the implementation and/or interpretation of this Order.

Signed on 10/26/2011

Brenda T. Rhoades SR

HONORABLE BRENDA T. RHOADES,
CHIEF UNITED STATES BANKRUPTCY JUDGE

EOD
10/26/2011

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

In re:	§	Chapter 11
	§	
Halo Wireless, Inc.,	§	Case No. 11-42464-btr-11
	§	
Debtor.	§	

ORDER GRANTING MOTION OF THE AT&T COMPANIES TO DETERMINE AUTOMATIC STAY INAPPLICABLE AND FOR RELIEF FROM THE AUTOMATIC STAY [DKT. NO. 13]

Upon consideration of the *Motion of the AT&T Companies to Determine Automatic Stay Inapplicable and For Relief from the Automatic Stay* [Dkt. No. 13] (the "AT&T Motion")[1], and it appearing that proper notice of the AT&T Motion has been given to all necessary parties; and the Court, having considered the evidence and argument of counsel at the hearing on the AT&T Motion (the "Hearing"), and having made findings of fact and conclusions of law on the record of the Hearing which are incorporated herein for all purposes; it is therefore:

ORDERED that the AT&T Motion is GRANTED, but only as set forth hereinafter; and it is further

ORDERED that, pursuant to 11 U.S.C. §362(b)(4), the automatic stay imposed by 11 U.S.C. § 362 (the "Automatic Stay") is not applicable to currently pending State Commission Proceedings[2], except as otherwise set forth herein; and it is further

ORDERED that, any regulatory proceedings in respect of the matters described in the AT&T Motion, including the State Commission Proceedings, may be advanced to a conclusion

[1] The Court contemporaneously is entering separate orders granting *The Texas and Missouri Companies' Motion to Determine Automatic Stay Inapplicable and in the Alternative, for Relief From Same* [Dkt. No. 31] and the *Motion to Determine the Automatic Stay is Not Applicable, or Alternatively, to Lift the Automatic Stay Without Waiver of 30-Day Hearing Requirement* [Dkt. No. 44] filed by TDS Telecommunications Corporation.

[2] All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

Exhibit F

and a decision in respect of such regulatory 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 (collectively, the "Reserved Matters"); and it is further

ORDERED that nothing in this Order precludes the AT&T Companies[3] from seeking relief from the Automatic Stay in this Court to pursue the Reserved Matters once a state commission has (i) first determined that it has jurisdiction over the issues raised in the State Commission Proceeding; and (ii) then determined that the Debtor has violated applicable law over which the particular state commission has jurisdiction; and it is further

ORDERED that the AT&T Companies, as well as the Debtor, may appear and be heard, as may be required by a state commission in order to address the issues presented in the State Commission Proceedings; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from the implementation and/or interpretation of this Order.

Signed on 10/26/2011

Brenda T. Rhoades SR

HONORABLE BRENDA T. RHOADES,
CHIEF UNITED STATES BANKRUPTCY JUDGE

[3] The AT&T Companies include Southwestern Bell Telephone Company d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma, and AT&T Texas; BellSouth Telecommunications, LLC 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; Illinois Bell Telephone Company d/b/a AT&T Illinois; Indiana Bell Telephone Company Inc. d/b/a AT&T Indiana; Michigan Bell Telephone Company d/b/a AT&T Michigan; The Ohio Bell Telephone Company d/b/a AT&T Ohio; Wisconsin Bell Telephone, Inc. d/b/a AT&T Wisconsin; Pacific Bell Telephone Company d/b/a AT&T California; and Nevada Bell Telephone Company d/b/a AT&T Nevada.

MCGUIRE, CRADDOCK & STROTHER, P.C.
2501 N. HARWOOD
SUITE 1800
DALLAS, TEXAS 75201
www.mcslaw.com

STEVEN H. THOMAS
DIRECT: 214.954.6845
sthomas@mcslaw.com
Licensed in New York and Texas

TELEPHONE: 214.954.6800
TELECOPIER: 214.954.6868

March 15, 2012

Leo J. Bub
General Attorney
AT&T MISSOURI
One AT&T Center, Room 3518
St. Louis, Missouri 63101

CM-RRR No: 71969008911147526349
Via Email: leo.bub@att.com
Via FAX: 314.247.0014

Craig S. Johnson
JOHNSON & SPROLEDER, LLP
304 E. High St., Suite 200
P.O. Box 1670
Jefferson City, Missouri 65102

CM-RRR No. 71969008911147526356
Via Email: cj@cjslaw.com
Via FAX: 573.761.3587

W. R. England, III
BRYDON, SWEARENGEN & ENGLAND, P.C.
312 East Capitol Avenue
P. O. Box 456
Jefferson City, Missouri 65102-0456

CM-RRR No. 71969008911147526400
Via Email: trip@brydonlaw.com
Via FAX: 573.634.7431

RE: File No. TO-2012-0035 - Alma Communications Company d/b/a Alma Telephone Company, Chariton Valley Telephone Corporation, Chariton Valley Telecom Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, a corporate division of Otelco, Inc., and MoKAN DIAL, Inc. v. Halo Wireless, Inc. and Southwestern Bell Telephone Company d/b/a AT&T Missouri;

Improper Blocking Requests from Alma Communications Company d/b/a Alma Telephone Company, Choctaw Telephone Company, and MoKan Dial, Inc. (the "Johnson Clients"); and

Improper Blocking Requests from 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, Miller Telephone Company, Ozark Telephone Company, Rock Port Telephone Company, and Seneca Telephone Company (the "England Clients").

1116574

Exhibit G

Dear Mssrs. Bub, Johnson and England:

By order dated February 22, 2012 (the "Abeyance Order"), the Missouri Public Service Commission ("MOPSC") granted the complainants' motion to hold the above-referenced proceeding in abeyance pending the completion of any proceedings under Missouri's enhanced record exchange rules (the "ERE Rules"). Immediately after issuance of the Abeyance Order, Halo received copies of the three letters dated February 22, 2012, sent by the Johnson Clients to AT&T Missouri requesting blocking of Halo's traffic under the ERE Rules (the "Johnson Blocking Requests"), and AT&T Missouri's letter dated February 23, 2012, acknowledging receipt of the Johnson Blocking Requests and scheduling blocking to begin April 3, 2012. Later, Halo received copies of nine letters dated March 9, 2012, from the England Clients to AT&T Missouri also requesting blocking of Halo's traffic under the ERE Rules (the "England Blocking Requests") and AT&T Missouri's letter dated March 13, 2012, acknowledging receipt of the England Blocking Requests and scheduling blocking to begin April 12, 2012. The Johnson Blocking Requests and the England Blocking Requests are collectively referred to herein as the "Blocking Requests." The Johnson Clients and the England Clients are collectively referred to herein as the "Missouri LECs."

The Abeyance Order did not authorize any blocking of traffic. We respectfully disagree with the MOPSC's assertion that it is "procedurally premature" for Halo to point out that it is a CMRS provider and therefore not a "telecommunications company" and not an "originating carrier" under the ERE Rules. Under the MOPSC's logic, the ERE Rules would apply to any and all traffic of any kind and to all carriers in the country until proven otherwise, and would permit AT&T to block interstate traffic in direct violation of law unless the victim of the threatened blocking undertakes the burden and expense of initiating a case at the MOPSC under 4 CSE 240-29.120(5). You are on notice that significant portions of Halo's traffic are jurisdictionally interstate, IP-originated, or both, and therefore any wholesale blocking would be unlawful even if the ERE Rules applied (which they do not). The Johnson Clients and England Clients are the entities seeking relief, and the ERE Rules cannot lawfully or reasonably shift the burden of proving the rules do not apply and/or blocking should not occur to Halo.

The Blocking Requests rely on 4 CSR 240-29.130(2), which provides:

> (2) A terminating carrier may request the originating tandem carrier to block, and upon such request the originating tandem carrier shall block, the originating carrier's Local Exchange Carrier-to-Local Exchange (LEC-to-LEC) traffic, if the originating carrier has failed to fully compensate the terminating carrier for terminating compensable traffic, or if the originating carrier has failed to deliver originating caller identification.

While the Missouri LECs may be a "terminating carrier" under the rules, Halo is not an "originating carrier" as the rules define that phrase. 4 CSR 240-29.020(29) defines an "originating carrier" as:

> (29) Originating carrier means **the telecommunications company** that is responsible for originating telecommunications traffic that traverses the LEC-to-LEC network. A telecommunications company whose retail telecommunications services are resold by another telecommunications company shall be considered the originating carrier with respect to such telecommunications for the purposes of this rule. **A telecommunications company performing a transiting traffic function is not an originating carrier**. (Emphasis added)

The Blocking Requests sent by the Johnson Clients rely heavily on the FCC's November 18, 2011, order (the "FCC Order") for the proposition that the traffic sent by Halo does not "originate" in the MTA. Paragraph 1006 of the FCC Order—one of the two paragraphs specifically relied upon by the Johnson Clients—held that Halo is providing "transit." If the FCC Order applies and is correct, Halo clearly is not an "Originating Carrier" and the Missouri ERE rules do not apply. We also note that the FCC defined "transit" traffic as "non-access" traffic, which means that under the FCC Order the traffic is not "intraMTA" but it is also "non-access." The Missouri LECs cannot claim an entitlement to payment of any amount by Halo for the traffic in issue.[1]

Setting aside the FCC Order, Halo is not a "telecommunications company" under the state statute and thus it cannot be an "originating carrier" under the ERE Rules. 4 CSR 240-29.020(34) has a specific definition of "telecommunications company": "those companies as set forth by section 386.020(51),[2] RSMo Supp. 2004." Under the cited Missouri statutory provision:

> (52) "Telecommunications company" includes telephone corporations as that term is used in the statutes of this state and every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling or managing any facilities used to provide telecommunications service for hire, sale or resale within this state; (emphasis added)

This definition clearly provides that an entity is a "Telecommunications company" only if it provides a "telecommunications service." The statute defines that term in subpart (54):

> (54) "Telecommunications service", the transmission of information by wire, radio, optical cable, electronic impulses, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. Telecommunications service does not include:

[1] Halo asserts that the FCC Order is incorrect. Halo's appeal of the FCC Order is pending before the Tenth Circuit. Nonetheless, the FCC's Order and the associated prospective rule changes are presently in effect.
[2] The rule cites to subsection (51) but the correct reference is obviously subsection (52).

...

(c) The offering of radio communication services and facilities when such services and facilities are provided under a license granted by the Federal Communications Commission under the commercial mobile radio services rules and regulations.

Halo is providing its services pursuant to an FCC CMRS license (Radio Station Authorization). Therefore, under the plain terms of the ERE rules Halo is not a Telecommunications company and therefore is not an "Originating carrier." The ERE Rules simply do not apply to this traffic.

The Blocking Requests have failed to identify any factual or legal basis under which the ERE Rules could apply to Halo or its traffic. Any action taken by AT&T Missouri or the Missouri LECs to block Halo's traffic would therefore be a direct violation of law without justification or excuse.

We will remind you that much of the traffic in issue is jurisdictionally interstate. Even if the ERE Rules did apply (which they do not) they could only apply to jurisdictionally intrastate traffic. The Missouri PSC completely lacks any jurisdiction or power to authorize, order or approve blocking of interstate traffic. The FCC Order mentioned the ERE Rules in ¶ 734 and note 1277 with disfavor, even though the FCC was under the impression that the ERE Rules only "allow for blocking of intrastate traffic in certain circumstances." Any blocking of interstate traffic will violate § 201 of the Communications Act.

The England Clients assert that Halo is not delivering "correct originating caller identification." This is flatly untrue and AT&T fully knows this is the case. If and to the extent that the England Clients are receiving incorrect originating caller identification it is because AT&T is changing the information it receives from Halo. Each and every one of the Missouri LECs is on notice that if and to the extent any blocking occurs based on that false allegation, Halo reserves all rights to seek appropriate relief for this flagrant and knowing misrepresentation of facts.

Halo hereby demands that the Missouri LECs either articulate a basis for application of the ERE Rules or withdraw their Blocking Requests by March 30, 2012. Halo further demands that AT&T Missouri withdraw its threat of blocking under the ERE Rules by March 30, 2012. In the event any blocking occurs, Halo reserves all rights and remedies available under applicable law, including, but not limited to, remedies for violations of § 201 of the Communications Act. We look forward to your prompt response.

Sincerely yours,

MCGUIRE, CRADDOCK & STROTHER, P.C.

By: _____
Steven H. Thomas

SHT/vwk

cc: John Van Eschen, Manager—Telecommunications Department
Steven C. Reed, Secretary
The Honorable Harold Stearley, Deputy Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street, PO Box 360
Jefferson City, MO 65102-0360
Email: john.vaneschen@psc.mo.gov
Email: steven.reed@psc.mo.gov
Email: harold.stearley@psc.mo.gov

Certified Article Number

7196 9008 9111 4752 6349

SENDERS RECORD

7196 9008 9111 4752 6349

TO: Leo J. Bub
General Attorney
AT&T Missouri
One AT&T Center, Room 3518
St. Louis, MI 63101

SENDER: Vickie

REFERENCE: SHT - Halo Missouri

PS Form 3800, January 2005

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3. Service Type CERTIFIED MAIL™

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

1. Article Addressed to:

Leo J. Bub
General Attorney
AT&T Missouri
One AT&T Center, Room 3518
St. Louis, MI 63101

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

C. Signature

X ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Reference Information

SHT - Halo Missouri

Vickie

PS Form 3811, January 2005 Domestic Return Receipt

Certified Article Number

7196 9008 9111 4752 6356

SENDERS RECORD

7196 9008 9111 4752 6356

TO: Craig S. Johnson
Johnson & Sproleder, LLP
304 E. High St., Suite 200
P.O. Box 1670
Jefferson City, MI 65102

SENDER: Vickie

REFERENCE: SHT - Halo/Missouri

PS Form 3800, January 2005

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2. Article Number

7196 9008 9111 4752 6356

3. Service Type CERTIFIED MAIL™

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

1. Article Addressed to:

Craig S. Johnson
Johnson & Sproleder, LLP
304 E. High St., Suite 200
P.O. Box 1670
Jefferson City, MI 65102

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) — B. Date of Delivery

Laura Stratman — MAR 1 9 2012

C. Signature

X [signature] ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Reference Information

SHT - Halo/Missouri

Vickie

PS Form 3811, January 2005 Domestic Return Receipt

Certified Article Number

7196 9008 9111 4752 6400

SENDERS RECORD

7196 9008 9111 4752 6400

TO: W. R. Enlgand, III
Brydon, Swearengen & England, P.C.
312 East Capitol Avenue
P. O. Box 456
Jefferson City, MI 65102-0456

SENDER: Vickie

REFERENCE: SHT - Halo/Missouri

PS Form 3800, January 2005

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POSTMARK OR DATE

2. Article Number

7196 9008 9111 4752 6400

3. Service Type CERTIFIED MAIL™

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

1. Article Addressed to:

W. R. Enlgand, III
Brydon, Swearengen & England, P.C.
312 East Capitol Avenue
P. O. Box 456
Jefferson City, MI 65102-0456

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) Marilyn Belcher

B. Date of Delivery 3/19/12

C. Signature

X Marilyn Belcher ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Reference Information

SHT - Halo/Missouri

Vickie

PS Form 3811, January 2005 Domestic Return Receipt