

Exhibit No.:  
Issues: Multiple jurisdictional, contractual,  
and policy related issues  
Witness: Robert Johnson  
Type of Exhibit: Rebuttal Testimony  
Sponsoring Party: Halo Wireless, Inc.  
Case Nos.: TC-2012-0331 and TO-2012-  
0035

**BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI**

|   |   |                       |
|---|---|-----------------------|
| Halo Wireless, Inc.,                          | § |                       |
|   | § |                       |
| Complainant,                                  | § | Case No. TC-2012-0331 |
|   | § |                       |
| v.  | § |                       |
|   | § |                       |
| Craw-Kan Telephone Cooperative, Inc., et al., | § |                       |
|   | § |                       |
| Respondents.                                  | § |                       |
| -----   |   |                       |
| Alma Communications Company d/b/a Alma        | § |                       |
| Telephone Company, et al.                     | § |                       |
|   | § | Case No. IC-2012-0035 |
| Complainants,                                 | § |                       |
|   | § |                       |
| vs.   | § |                       |
| Halo Wireless, Inc. and Southwestern Bell     | § |                       |
| Telephone Company, d/b/a AT&T Missouri,       | § |                       |
| Respondents.                                  | § |                       |

consolidated with

**PRE-FILED REBUTTAL TESTIMONY OF ROBERT JOHNSON**  
**ON BEHALF OF HALO WIRELESS, INC.**

**JUNE 19, 2012**

*Halo* Exhibit No. C  
Date 6-26-12 Reporter PF  
File No. TC-2012-0331

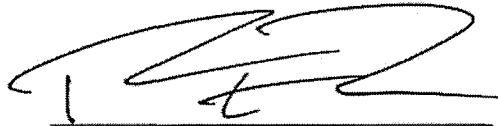
*Halo Exhibit C*

**AFFIDAVIT OF ROBERT JOHNSON**

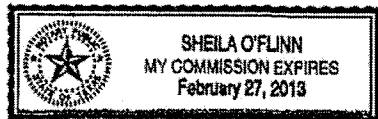
STATE OF TEXAS                   §  
  §  
COUNTY OF TARRANT       §


I, Robert Johnson, of lawful age, being duly sworn, depose and state:

1. My name is Robert Johnson. I am the President of Ameliowave, Inc., which is a consulting and software development practice that is under contract with Transcom Enhanced Services, Inc. to provide support for managing existing products, developing new products, and architecting the platform and systems that support all products.
2. Attached hereto and made a part hereof for all purposes are my Rebuttal Testimony and true and correct copies of the exhibits thereto.
3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
ROBERT JOHNSON

SUBSCRIBED and SWORN TO before me, on this the 19 day of June, 2012.



  
\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

Commission Expires: 2-27-13

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1 **BEFORE THE PUBLIC SERVICE COMMISSION**  
2 **STATE OF MISSOURI**  
3

Halo Wireless, Inc., §  
Complainant, § Case No. TC-2012-0331  
v. §  
Craw-Kan Telephone Cooperative, Inc., et al., §  
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Alma Communications Company d/b/a Alma §  
Telephone Company, et al. §  
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Telephone Company, d/b/a AT&T Missouri, §  
Respondents. §

4  
5 **PRE-FILED REBUTTAL TESTIMONY OF ROBERT JOHNSON**  
6

7 **INTRODUCTION**

8 **Q: Please state your name, title and business address.**

9 A: My name is Robert Johnson. I am the President of Ameliowave, Inc. My business address  
10 is 307 W. 7<sup>th</sup> St., Suite 1600, Ft. Worth, TX 76107. Ameliowave is a consulting and software  
11 development practice that is under contract with Transcom Enhanced Services, Inc.  
12 (“Transcom”) to provide support for managing existing products, developing new products, and  
13 architecting the platform and systems that support all products.

14 **Q: Are you an attorney?**

15 A: No.  
16

1    **Q:     On whose behalf are you appearing?**

2    A:     I am supplying testimony concerning Transcom Enhanced Services, Inc. (“Transcom”),  
3    which is a business end user customer that purchases wireless-based telephone exchange service  
4    from Halo Wireless, Inc. (“Halo”).

5    **Q:     Are you the same Robert Johnson who presented Direct Testimony in this matter?**

6    A:     Yes.

7    **Q:     What is the purpose of this Rebuttal Testimony?**

8    A:     I will respond to the Direct Testimonies of the staff witness and the witnesses for AT&T  
9    (the “AT&T Witnesses”) and the RLECs (the “RLEC Witnesses”) in consolidated cases, No.  
10   TC-2012-0331 (the “Blocking Proceeding”), and No. IC-2012-0035 (the “ICA Rejection  
11   Proceeding” and collectively with the Blocking Proceeding, the “MOPSC Proceedings”). In  
12   particular, I will respond to the Direct Testimonies of William Voight for the Staff, J. Scott  
13   McPhee and Mark Neinast for AT&T (the “AT&T Witnesses”), Tommie Sue Loges for Alma  
14   Telephone Company, Amanda Molina for Choctaw Telephone Company and Mogan Dial Inc.,  
15   and Debbie Choate for Miller Telephone Company (collectively the “Opposing Party  
16   Testimony”). I will also provide additional rebuttal testimony relevant to the facts in the MOPSC  
17   Proceedings to inform the Commission and assist it in ruling on the matters before it in the  
18   MOPSC Proceedings.

19   **Q:     Will you specifically “rebut” everything in the Opposing Party testimony that you**  
20   **take issue with?**

21   A:     No. Many of the things they say were already and sufficiently addressed in my Direct. In  
22   order to conserve time and paper I will not repeat what I’ve already said. My silence in this

1 Rebuttal Testimony on a claim or argument made in the Opposing Party Testimony should not  
2 be interpreted as assent, concurrence, agreement or admission. To the contrary.

3 **Q: To the extent you respond to specific testimony by the Opposing Parties are you**  
4 **agreeing the testimony is relevant and admissible?**

5 A: No. My Rebuttal is presented in case the Commission decides to receive and consider the  
6 Opposing Party Testimony to which I respond.

7 **Q: Have you read the Opposing Party Testimony?**

8 A: Yes, I have read the Opposing Party Testimony and will respond to same below.

9 **RESPONSE TO MCPHEE**

10 **Q. On page 8 of his direct testimony, Mr. McPhee alleges that Transcom operates**  
11 **“switches.” Is this correct?**

12  
13 A. Transcom has a Veraz IP Control Switch located in Dallas, Texas. However, as part of its  
14 overall distributed platform, Transcom operates primarily through media gateways and customer  
15 premises equipment (“CPE”), which I would not consider be “switches.” Notably, AT&T’s own  
16 witnesses have acknowledged this fact in prior proceedings between AT&T and Halo regarding  
17 these same issues. In any event, Transcom does not operate any switches in Missouri.

18 **Q: On page 8 of his Direct Testimony, Mr. McPhee claims that Transcom’s website**  
19 **represents that Transcom’s “core service offering” is “voice termination services.” Is he**  
20 **correct?**

21 A: No. Mr. McPhee is referring to a previous version of Transcom’s website, which did  
22 contain the specific phrases that he includes in his testimony, but they are not part of Transcom’s  
23 current website. Mr. McPhee admits to this fact in a footnote to his testimony, although he  
24 clouds the truth with aspersions that the change to the website were because the purported  
25 “admissions” on the website were “hurting” Transcom in these proceedings.

1   **Q:     Why did the website change?**

2   A:     As I testified in a previous proceeding, which Mr. McPhee acknowledges in footnote 14  
3   in his Direct Testimony, it was thanks to AT&T that I became aware that Transcom's website  
4   was failing to do its job as a marketing vehicle for Transcom's enhanced services. If it was  
5   "hurting" Transcom, it was only hurting in the sense of failing to do its job as a marketing  
6   vehicle.

7   **Q:     Was the website "hurting" Transcom in these proceedings?**

8   A:     Absolutely not. Although Mr. McPhee pretends to not understand the purpose of a public  
9   website, I have no doubt that the Missouri PSC and Transcom's customers do understand that  
10   Transcom's website, like most other websites, exists to provide a web presence for Transcom. It  
11   in no way, establishes a "holding out" by Transcom as a Common Carrier. Nothing on the site,  
12   then, now, or ever, would support that separate conclusion. More importantly, I am sure that the  
13   Missouri PSC would agree that an entity's website cannot be the basis for establishing its  
14   regulatory status.

15   **Q:     Did Mr. McPhee claim that Transcom was "holding out" as a Common Carrier?**

16   A:     No. Instead, he insinuates it because he knows it is not true and that he simply has no  
17   factual basis or evidence for asserting that Transcom was "holding out" or has ever "held out" as  
18   a Common Carrier.

19         Instead, he claims that the "voice termination services" that Transcom offers are "the  
20   intermediate routing of telephone calls between carriers for termination to the carriers serving the  
21   called party." He gives no basis for this definition other than he made it up, even after I've  
22   testified repeatedly in these proceedings that these "voice termination services" are part of an  
23   inseparable bundle that includes Transcom's enhanced functionality. The problem is that even if

1 we incorrectly accept the proposition Transcom is not an ESP that still does not resolve the  
2 second and separate question of whether Transcom is a Common Carrier. Mr. McPhee's  
3 conclusion can only be correct if and to the extent that Transcom is (1) not acting as an ESP and  
4 (2) is a Common Carrier.

5 He goes on to state that Transcom claims that it "provides service to the largest  
6 Cable/MSOs, CLECs, broadband service providers, and wireless customers." While it is true that  
7 Transcom customers are often themselves service providers, that in no way makes Transcom a  
8 Telecommunications Carrier or a Common Carrier.

9 In other words, Mr. McPhee has at best made out a case that Transcom uses  
10 telecommunications that it obtains from other parties to provide its service. But all ESPs by  
11 definition do so; it is part of the statutory definition that information services are provided "via"  
12 telecommunications. He completely fails to show that Transcom *provides* telecommunications.  
13 And he most certainly has not shown that Transcom provides telecommunications service  
14 because before any finding to that effect can be made there must be a determination that the  
15 provider is a "telecommunications carrier" which in turn requires a finding that the provider is a  
16 common carrier.

17 **Q: In his Direct Testimony, Mr. McPhee claims that in their USF and ICC Reform**  
18 **Order, the FCC "rejected" Halo's argument that Transcom's traffic is "originated" to**  
19 **Halo. Do you agree with his reading of the FCC's Order?**

20 A: No. Mr. McPhee quotes ¶1003 – ¶1006 of the FCC's Order in their entirety, then selects  
21 portions of ¶1005 and ¶1006 to support his argument that "[t]he FCC rejected Halo's argument  
22 about where Halo's calls originate..." However, as I previously noted in my Direct Testimony,  
23 Mr. McPhee and AT&T appear to misunderstand or misinterpret ¶1005, which is merely an



1 explanatory paragraph and not part of the FCC's ruling, which is contained, in its entirety, in

2 ¶1006:

3 1006. We clarify that a call is considered to be originated by a  
4 CMRS provider *for purposes of the intraMTA rule* only if the  
5 calling party initiating the call has done so through a CMRS  
6 provider. Where a provider is merely providing a transiting  
7 service, it is well established that a transiting carrier is not  
8 considered the originating carrier for purposes of the reciprocal  
9 compensation rules. Thus, we agree with NECA that the "re-  
10 origination" of a call over a wireless link in the middle of the call  
11 path does not convert a wireline-originated call into a CMRS-  
12 originated call *for purposes of reciprocal compensation* and we  
13 disagree with Halo's contrary position. (Emphasis added, footnotes  
14 omitted).

15  
16 As I also noted in my Direct testimony, AT&T misinterprets the FCC's ruling to mean  
17 that Transcom does not originate further communications to Halo, so the traffic Transcom is  
18 sending to Halo must be originated somewhere else. However, even using my layman's reading  
19 of the FCC's ruling, it says that this particular finding applies only "for purposes of the  
20 intraMTA rule" and "for purposes of reciprocal compensation," which are two ways of saying  
21 the same thing. Transcom's position that, as an ESP, it originates a further communication to  
22 Halo using its wireless CPE and, thus, that traffic was before the ruling and still is "wireless-  
23 originated" for purposes of the contract provision is both consistent with, and supported by the  
24 FCC's ruling.

25 **Q: In his Direct Testimony, Mr. McPhee claims that "neither Transcom nor any**  
26 **customer of Transcom actually initiates any telephone calls" and that because Transcom's**  
27 **customers are themselves service providers that Transcom cannot be providing an**  
28 **Enhanced Service? How do you respond?**

29 A: Under Mr. McPhee's theory, Transcom is not "the" "calling party" and does not directly  
30 serve the "calling party." However, he makes no effort to tie this "fact" to any conclusion, legal

1 or otherwise. Instead, he merely hopes that the Commission will completely skip over  
2 Transcom's participation, and the participation of Transcom's customers', looking instead to the  
3 "calling party" as the important link – but then try to bind Transcom and Halo to what those  
4 people who are not in anyway associated with either Transcom or Halo do.

5 In fact, in the case where the "person who picks up the phone" is a subscriber to an  
6 Information Service like a cable company's voice offering, an "over the top" service like Vonage  
7 or something like Skype or GoogleVoice there is no "origination" in the traditional sense. (See  
8 Johnson Exhibit 5). As the AT&T Witnesses have admitted under oath during cross examination  
9 in previous proceedings, in that case, the first time the "call" enters the PSTN is where  
10 Transcom, as an End User of a Telecommunications Service "originates" the call using the  
11 modern equivalent of a "Leaky PBX." (See Johnson Exhibit 6). However, by that logic,  
12 Transcom is always the "originating party" of the Telecommunications it originates as an End  
13 User of a Telecommunications Service, regardless of what kind of service the "person who picks  
14 up the phone" is using.

15 It is important to note here that McPhee uses the term "initiates" and not "originates" in  
16 his statement. He is implicitly acknowledging that Transcom must "originate" traffic to Halo,  
17 even if another party "initiated" this traffic on some network and it is then handled by Transcom.  
18 In effect, McPhee's choice of words only serves to further support Transcom's statement of fact,  
19 that it is *always* an End User when it subscribes to a Telecommunications Service and it *always*  
20 "originates" traffic when it uses that Telecommunications Service.

1   **RESPONSE TO NEINAST**

2   **Q.     On page 4 of his Direct Testimony, Mr. Neinast claims that if the Missouri PSC**  
3   **follows the FCC's lead, the only possible conclusion is that Halo breached its ICA with**  
4   **AT&T Missouri. How do you respond?**

5   A.     My response is the same as my response to Mr. McPhee's interpretation of the FCC's  
6   Order. The AT&T Witnesses are reading requirements into the FCC's Order that simply do not  
7   exist. Based on the advice of counsel, it is my understanding that although the FCC's order does  
8   purport to address Transcom's argument regarding its origination of traffic in the same MTA as  
9   Halo, the FCC made clear that its finding was "for purposes of reciprocal compensation." The  
10   FCC expressly indicated that its finding was not for *all purposes*. I am not a lawyer, but even  
11   with my layman's reading of the pleadings in this matter, it is seems obvious that the FCC's  
12   order cannot be dispositive of the question of whether Halo has breached the ICA because unlike  
13   the FCC's Order, the ICA covers far more than just reciprocal compensation.

14   **Q:     Both Mr. Neinast and Mr. McPhee claim that the traffic Transcom originates to**  
15   **Halo using its CPE is "wireline-originated" and not "wireless-originated" traffic. How does**  
16   **this fit with the actual facts?**

17   A:     In this case, not well. The logical conclusion of the actual facts is that, since Transcom  
18   does not provide Telecommunications Services, it is not a Telecommunications Carrier, so it  
19   must be an End User that "originates" Telecommunications Services. Further, since Transcom's  
20   CPE constitutes "wireless transmitting and receiving facilities" and the Telecommunications  
21   Services Transcom originates using that CPE are wireless Telecommunications Services,  
22   Transcom's traffic that it originates to Halo must be "wireless-originated" and not "wireline-  
23   originated."

1   **Q:     How do the AT&T Witnesses distort the basic facts here to fit their position?**

2   A:     Mr. Neinast claims in his Direct Testimony that the traffic Transcom originates to Halo  
3   are actually “calls originate[d] with end-user customers of various landline and wireless service  
4   providers using either landline or wireless equipment,” which he further claims is “wireline-  
5   originated” traffic. However, his only basis for this claim is a traffic study that looks at the  
6   Calling Party Numbers (“CPNs”) of the traffic Transcom originated to Halo, which is  
7   inconsistent with the actual facts of this case. The two AT&T witnesses are simply deeming the  
8   traffic to always be “wireline-originated” even though they both admit that at least some is not  
9   originated from a legacy handset connected to the traditional circuit-switched PSTN. To them a  
10  call is “wireline” if it happens to contain a “wireline” number in signaling, even if in fact the call  
11  started out wireless or on a broadband network. They simply “assume” the conclusion they want  
12  to reach by deeming everything to be “wireline” to “prove” everything is “wireline.”

13         First, Mr. Neinast has made no attempt to ascertain if the calling party even subscribes to  
14  a Telecommunications Service. He assumes that, because the calling party has a CPN,<sup>1</sup> it must be  
15  an End User of a Telecommunications Service, which is a false assumption. Further, he assumes  
16  that, if the calling party has a CPN because it is an End User of a Telecommunications Service,  
17  then the calling party must necessarily have sent its communications traffic using that  
18  Telecommunications Service and using the network of the carrier that is the code-owner. Both of  
19  these are unsupportable assumptions. They then try to “correct” for this problem by arbitrarily  
20  reducing the percentage that is said to be “wireline” by discounting a few specific code-owners’

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<sup>1</sup> I must note at this point that Mr. Neinast has to admit that Halo is signaling the phone number of the person he says is the call originator without any change. There is and can be no allegation that Halo is stripping or altering CPN. Thus there can be no serious claim that Halo has in any way failed to deliver “originating caller identification” as defined in rule 240-29.020(28). Halo did supply additional information in the Charge Number parameter, but always also provided the very originating caller identification called for by the rule. Their complaint that Halo violated the rule by providing the information the rule requires and also giving additional information is ludicrous.

1 numbers. This assumes, of course, that it is only those companies' numbers that might not  
2 originate on the legacy PSTN, but they provide no basis for this "limiting" assumption. I  
3 disagree that someone can fix one bad assumption by making a second, equally bad assumption.

4 Further, even assuming that the calling party is an End User of a Telecommunications  
5 Service that originated Telecommunications traffic using its CPE to a Telecommunications  
6 Carrier, if that traffic is terminated to Transcom using its CPE, then, because Transcom is an End  
7 User, the Telecommunications Service is terminated as well. Transcom would then originate a  
8 further communication to deliver the enhanced communications traffic to the called party.

9 If Transcom originated that further communication using an Information Service, there  
10 would be no question in anyone's mind that the Telecommunications Service necessarily  
11 terminated on Transcom's CPE, but in this case, Transcom originates that further communication  
12 to Halo using a Telecommunications Service. Although that appears to have confused Mr.  
13 Neinast into believing that the calling party originated a Telecommunications Service to the  
14 called party, the basic facts do not support that position.

15 **Q: AT&T adheres to an "end-to-end" theory, and rejects the "two-call" theory with the**  
16 **result that Transcom cannot be an end point. Do you agree?**

17 A: AT&T asserts the "end-to-end" theory when it supports their claims, but they hasten to  
18 abandon it when it means they must pay compensation to some other carrier, or when it would  
19 serve to reduce their revenue. While the end-to-end theory is a legitimate and well-accepted tool  
20 to segregate interstate calls from intrastate calls, the D.C. Circuit has made it absolutely clear that  
21 "end-to-end" concepts do not determine the intercarrier compensation that may apply to a call.  
22 *See e.g. Bell Atlantic*, 206 F.3d at 5-6.<sup>2</sup>

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<sup>2</sup> Calls to ISPs are not quite local, because there is some communication taking place between the ISP and out-of-state websites. But they are not quite long-distance, because the subsequent communication is not really a

1   **Q:     Mr. Neinast’s Testimony once again argues that Transcom is not an ESP because it**  
2   **merely “improves the call quality of transmission.” What logical difficulties do you see with**  
3   **that claim?**

4   **A:     Mr. Neinast’s testimony presents a false dichotomy. He assumes that if Transcom is *not***  
5   **an ESP then it *must* be a carrier. That is most definitely not true. Even if Transcom is not an ESP**  
6   **(which of course Transcom denies) that does not mean Transcom *is* a common carrier. My**  
7   **layman’s understanding is that an entity must “hold out” as a common carrier, or there must be**  
8   **some legal compulsion that the entity be a common carrier. Otherwise, the entity is at best a**

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continuation, in the conventional sense, of the initial call to the ISP. The [FCC’s] ruling rests squarely on its decision to employ an end-to-end analysis for purposes of determining whether ISP traffic is local. There is no dispute that the Commission has historically been justified in relying on this method when determining whether a particular communication is jurisdictionally interstate. But it has yet to provide an explanation why this inquiry is relevant to discerning whether a call to an ISP should fit within the local call model of two collaborating LECs or the long-distance model of a long-distance carrier collaborating with two LECs.

In fact, the extension of “end-to-end” analysis from jurisdictional purposes to the present context yields intuitively backwards results. Calls that are jurisdictionally intrastate will be subject to the federal reciprocal compensation requirement, while calls that are interstate are not subject to federal regulation but instead are left to potential state regulation. The inconsistency is not necessarily fatal, since under the 1996 Act the Commission has jurisdiction to implement such provisions as § 251, even if they are within the traditional domain of the states. See *AT&T Corp.*, 119 S.Ct. at 730. But it reveals that arguments supporting use of the end-to end analysis in the jurisdictional analysis are not obviously transferable to this context.

...

In its ruling the Commission avoided this result by analyzing the communication on an end-to-end basis: “[T]he communications at issue here do not terminate at the ISP’s local server TTT, but continue to the ultimate destination or destinations.” FCC Ruling, 14 FCC Rcd at 3697 (¶ 12). But the cases it relied on for using this analysis are not on point. Both involved a single continuous communication, originated by an end-user, switched by a long distance communications carrier, and eventually delivered to its destination.

...

ISPs, in contrast, are “information service providers,” Universal Service Report, 13 FCC Rcd at 11532-3 (¶ 66), which upon receiving a call originate further communications to deliver and retrieve information to and from distant websites. The Commission acknowledged in a footnote that the cases it relied upon were distinguishable, but dismissed the problem out-of-hand: “Although the cited cases involve interexchange carriers rather than ISPs, and the Commission has observed that ‘it is not clear that [information service providers] use the public switched network in a manner analogous to IXCs,’ Access Charge Reform Order, 12 FCC Rcd at 16133, the Commission’s observation does not affect the jurisdictional analysis.” FCC Ruling, 14 FCC Rcd at 3697 n.36 (¶ 12). It is not clear how this helps the Commission. Even if the difference between ISPs and traditional long distance carriers is irrelevant for jurisdictional purposes, it appears relevant for purposes of reciprocal compensation. Although ISPs use telecommunications to provide information service, they are not themselves telecommunications providers (as are long-distance carriers).

1 “private” carrier, if it is a carrier at all. Transcom has not ever held out to “serve indifferently all  
2 potential users.” To the contrary, Transcom has zealously acted to protect its ability to freely  
3 choose those with whom it will deal, and on what terms. Transcom is not a carrier. Transcom  
4 aggressively sought and won three separate decisions by federal courts that it is an ESP, which  
5 necessarily means it is not acting as a common carrier.

6 Under FCC rule 69.2(m) “any customer of an interstate or foreign telecommunications  
7 service that is not a carrier” is an end user. So even if Transcom is not an ESP for so long as it is  
8 not a carrier, then it is still an end user. AT&T keeps wanting to put the carrier label on  
9 Transcom, but I have seen no testimony or other evidence proffered by AT&T that Transcom is  
10 or must be a common carrier. AT&T has not in any way shown that there has been a holding out.  
11 Transcom clearly *uses* transmission, but it does not *provide* any stand-alone transmission on a  
12 common carrier basis.

13 This point is key to Mr. Neinast’s argument that Transcom is merely improving the audio  
14 quality of transmission. What he is really urging is that Transcom is merely improving upon, but  
15 still providing, a “basic” transmission (telecommunications) service and therefore the  
16 “improvements” (enhancements) – which he clearly admits are occurring – are “adjunct to basic”  
17 in regulatory parlance and thus “not enhanced.” The problem, of course, is that Transcom is not a  
18 carrier, so it simply cannot be said to be providing any “telecommunications service.” My  
19 understanding of the “adjunct to basic” principle is that it only applies to entities that are  
20 common carriers. Since Transcom is not a common carrier it does not provide “basic”  
21 transmission service as a common carrier. There is no “basic” service to which the admitted  
22 enhancements can be “adjunct.” The “adjunct to basic rule” applies to AT&T (since it is a

1 common carrier), but it does not apply to Transcom for the simple reason that Transcom is not a  
2 carrier.

3 The *correct* principle to apply to entities that are not common carriers is the  
4 “contamination doctrine.” It is my understanding that the FCC has long recognized that when an  
5 entity that is not a common carrier adds enhanced/information functions on top of  
6 telecommunications it obtains from third party providers, the addition of any enhanced  
7 functionality “contaminates” the telecommunications, with the result that the ESP’s finished  
8 service is “enhanced/information” rather than “telecommunications.” Therefore, Transcom must  
9 be an ESP. As noted, even if Transcom is wrong on that issue, it is still an End User. End Users  
10 originate calls, and calls terminate to End Users. That is why the leaky PBX rules exist.

11 **Q: What does Mr. Neinast make of the Federal Bankruptcy Court rulings that**  
12 **establish Transcom as an ESP (the “ESP Rulings”)?**

13 A: Mr. Neinast appears to entirely disregard the applicability of these rulings. However, to  
14 support his argument as to why Transcom is not an ESP, Mr. Neinast claims that the Tennessee  
15 Regulatory Authority (“TRA”) recently ruled in a case where Transcom was a party that  
16 Transcom was not an ESP. In addition, Mr. Neinast also refers to a ruling by the Pennsylvania  
17 Public Utility Commission (“PPUC”) in a case where Transcom was not a party that Transcom  
18 was not an ESP. Unfortunately for Mr. Neinast, it is my understanding, based on advice of  
19 counsel, that although the ESP rulings are binding on AT&T, neither the TRA ruling nor the  
20 PPUC ruling are binding on this Missouri PSC.

21

22



1    **Q:     As you have noted, the AT&T Witnesses rely on the TRA ruling that Transcom is**  
2    **not an ESP. Why might the TRA ruling be misleading to the Commission?**

3    A:     The TRA ruled in a proceeding that Transcom was a participant that Transcom was not  
4    an ESP for this traffic based on the description AT&T gave of Transcom's enhanced services  
5    and enhanced service platform. I provided true and accurate testimony to the TRA of the nature  
6    of Transcom's enhanced services and enhanced service platform, as well as made myself  
7    available for cross examination during the hearing. No questions were posed to me about this  
8    testimony and none of it appears in the final TRA ruling. I note that the TRA expressly refused  
9    to rule on whether Transcom is a Common Carrier. In short, in addition to being non-binding on  
10   the Missouri PSC, the TRA ruling doesn't actually provide any real analysis of whether  
11   Transcom is an ESP.

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13   **RESPONSE TO RLEC WITNESSES**

14   **Q.     The RLEC Witnesses claim that their blocking requests are supported by the FCC**  
15   **recent order. How do you respond?**

16   A.     My response is the same as it was for AT&T's Witnesses. The FCC Order simply does  
17   not address all of the issues in dispute in the MOPSC Proceedings and thus cannot be dispositive  
18   of the issues of to be decided in these cases.

19   **Q.     Like AT&T's Witnesses, the RLEC Witnesses all claim that the traffic in question is**  
20   **"landline originated." How do you respond?**

21

22   A.     The RLEC Witnesses admit that the sole bases of their claims that the traffic in question  
23   is "landline-originated" traffic are AT&T's traffic studies. However, AT&T has not given Halo  
24   or any of the RLECs any of the data AT&T used to make its studies. Thus, the RLECs' reliance

1 on AT&T's traffic studies is an admission that the RLECs have no actual knowledge of whether  
2 the traffic in question is actually "landline-originated" and that the RLECs have no legitimate  
3 basis of their own for supporting their blocking requests. This is emphasized by the fact that even  
4 AT&T, who created the studies, has previously acknowledged that it cannot determine for  
5 certain whether all of the traffic in question actually "originated" on a landline.

6 **Q. The RLECs claim that they know that some of the traffic was landline originated**  
7 **using feature group D signaling or trunking protocols because "InterLATA landline traffic**  
8 **is carried by interexchange carriers (IXCs). IXC traffic is originated using feature group D**  
9 **signaling and trunking protocols." How do you respond?**

10 A. The RLECs admit that Halo is delivering the traffic to AT&T over interconnection  
11 trunks. These are not Feature Group D arrangements. The RLECs also admit that AT&T sends  
12 them Halo's traffic over the "LEC-to-LEC network" which by definition is "Feature Group C"  
13 and not Feature Group D. They never claim that the connection between Halo and Transcom is  
14 "Feature Group D." I cannot fathom how they can still assert that the traffic "originated" using  
15 Feature Group D given their admissions, unless what they are really arguing is that the calls they  
16 identify as "landline" in the AT&T "call studies" were dialed "1+" and the user's call attempt  
17 was routed over originating Feature Group D trunks to an IXC.

18 **Q: Do they ever actually explain that this is their argument?**

19 A: Not at all.

1   **Q:     Do the ILECs present even a shred of evidence that any call delivered by Halo to**  
2   **AT&T did actually start out with an end user on a legacy ILEC circuit switched network**  
3   **who dialed 1+ and the call was routed to an IXC by the end user's ILEC?**

4   A:     I do not see any such evidence. All we have are assumptions based on an examination of  
5   the "originating caller identification" that Halo faithfully supplied to AT&T. They are *assuming*  
6   that the call started on an ILEC circuit switched network. They are *assuming* that the call was  
7   dialed 1+. They are *assuming* the call was routed to an IXC. Ultimately, their claims are nothing  
8   but an exercise in begging the question, because they do nothing but assume the violation they  
9   claim occurred.

10  **Q:     Does this conclude your testimony?**

11  A:     Yes.<sup>3</sup>

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<sup>3</sup> I reserve the right to make corrections of any errors I may discover by submitting an *erratum*.

