

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Halo Wireless, Inc.,)	
)	
Complainant)	
)	
v.)	
)	
Craw-Kan Telephone Cooperative, Inc.,)	
Ellington Telephone Company,)	
Goodman Telephone Company,)	
Granby Telephone Company,)	Case No. TC-2012-0331
Iamo Telephone Company ,)	
McDonald County Telephone Company,)	
Miller Telephone Company,)	
Ozark Telephone Company,)	
Rock Port Telephone Company,)	
Seneca Telephone Company,)	
Alma Communications Co. d/b/a Alma Tel.. Co.)	
Choctaw Telephone Company)	
MoKan Dial, Inc.)	
Peace Valley Telephone Company, Inc.)	
)	
Respondents)	

RESPONSE OF CRAW-KAN TELEPHONE COOPERATIVE ET AL.

COME NOW Respondents Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Goodman Telephone Company, Granby Telephone Company, Iamo Telephone Company , McDonald County Telephone Company, Miller Telephone Company, Ozark Telephone Company, Rock Port Telephone Company, Seneca Telephone Company, and Peace Valley Telephone Company, Inc. (hereinafter “Craw-Kan Telephone et al.” or “Respondents”), and for their Response to the April 3, 2012 Order Modifying Deadline, state to the Missouri Public Service Commission (Commission or PSC) as follows:

INTRODUCTION, BACKGROUND, AND SUMMARY

1. Respondents are small rural telephone companies that provide local and exchange access services in remote, high cost and low density areas of Missouri pursuant to certificates of service authority from the PSC.

2. Halo Wireless, Inc. (Halo) is engaged in a nationwide access rate avoidance scheme that spans much of the AT&T landline network in this country and has produced extensive litigation before at least ten state public service commissions, the Federal Communications Commission, numerous federal district courts, a federal Bankruptcy Court in Texas, and most recently the United States Courts of Appeals for the Fifth Circuit and Tenth Circuit. The FCC and the Tennessee Regulatory Authority have both rejected the arguments that Halo now raises before the Commission.

3. In late 2010 and early 2011, Respondents became aware that Halo was delivering what appeared to be landline-originated calls to Respondents' rural exchanges over AT&T's landline network without an approved agreement with the Respondents and without paying the Commission-approved tariff rates for such calls.

4. For example, Respondents' initial investigation of the problem revealed that calls from the undersigned counsel's landline telephone in Jefferson City, Missouri to a small rural telephone company's office in Higginsville, Missouri had been routed to Halo's network by one of Halo's affiliates, a "least cost router", and then delivered by Halo over AT&T's network. These calls were clearly in-state, inter-LATA landline calls, yet Halo claimed they were intra-LATA "wireless" calls and refused to pay the appropriate tariff rates.

5. Although Respondents received reports from AT&T identifying the amount of call traffic Halo delivered (*i.e.* minutes of use), Halo refused to pay Respondents the tariffed rates for the use of their in-state networks. Halo's access rate avoidance scheme attempts to take what are clearly landline, in-state telephone calls (subject to PSC-approved intrastate access rates) and claims to convert them into some combination of interstate, Internet, and/or wireless calls in an effort to avoid any payment for the use of Complainants' rural networks.

6. The FCC's November 18, 2011 *USF/ICC Transformation Order*¹ rejected Halo's arguments and found that Halo's scheme did not convert landline calls into something else. Specifically, the FCC held, "**[T]he 're-origination' of a call over a wireless link in the middle of a 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.**"² Rather, the FCC confirmed that the originating caller remains the appropriate reference point for purposes of intercarrier compensation. Halo has appealed the FCC's *Order* as part of a consolidated proceeding in the United States Court of Appeals for the Tenth Circuit. To Complainants' knowledge, the FCC's *Order* as it relates to Halo has not been stayed.

7. Other state utility commissions have put a stop to Halo's scheme. For example, on January 26, 2012, the Tennessee Regulatory Authority rejected the same arguments that Halo has made before this Commission and terminated Halo's

¹ WC Docket No. 10-90 et al. released Nov. 18, 2011.

² *Id.* at ¶1006 (emphasis added).

interconnection agreement with AT&T Tennessee.³ The TRA's order found: (a) that Halo impermissibly sent traffic originating from wireline telephones to AT&T under an agreement that only permits calls originating from wireless networks; (b) that Halo had improperly altered call detail information that allowed AT&T to properly classify calls for the purpose of intercarrier compensation; and (c) that Halo had not properly compensated AT&T for the traffic Halo had delivered.⁴ The TRA's order authorized immediate disconnection of Halo from the Tennessee in-state network.⁵

8. Halo has repeatedly filed suit against Respondents and then pointed to the Texas bankruptcy proceedings as a reason to suspend proceedings, delay justice, and prolong Halo's unlawful free ride on Missouri's rural telecommunications networks. Halo employed this transparent litigation strategy in the United States District Court for the Western District of Missouri (twice)⁶ as well as the United States Bankruptcy Court for the Eastern District of Texas.⁷ Halo was rebuffed each time, by three different federal judges. Halo is now trying the same tired two-step before this Commission, but the bankruptcy proceedings have no bearing on Halo's continued, post-bankruptcy use of Respondents' rural networks and violations of the Enhanced Record Exchange (ERE) Rule. Accordingly, the PSC should deny Halo's request to stay this action and issue a ruling that the ERE Rule blocking process in Missouri is not stayed or otherwise impacted by the Texas bankruptcy proceedings.

³ *In re BellSouth Telecommunications LLC d/b/a AT&T Tennessee v. Halo Wireless, Inc.*, Docket No. 11-00119, Order, dated Jan 26, 2012.

⁴ *Id.*, pp. 17-19.

⁵ *Id.*, p. 22.

⁶ *Halo Wireless v. Citizens Telephone Co. of Higginsville, Mo. et al.*, Case No. 11-cv-00682; *BPS Telephone et al. v. Halo Wireless*, Case No. 11-cv-04220.

⁷ *In Re: Halo Wireless*, Case No. 11-42464, U.S. Bankruptcy Court for the Eastern District of Texas.

ARGUMENT

9. The Commission should deny Halo's request that this action be stayed until the Bankruptcy Court rules on the propriety of the blocking notices.

10. **The Bankruptcy Court Held that State Commission Proceedings May Continue.** On October 26, 2011, the Texas Bankruptcy Court ruled that regulatory proceedings in Missouri were not subject to the bankruptcy stay so long as the Missouri PSC does not: (a) liquidate the amount of any bankruptcy claim against Halo, or (b) permit any action that affects the debtor-creditor relationship between Halo and any debtor. See Complaint, Ex. E. Respondents' blocking notices were issued in March of 2012 for post-bankruptcy non-payment and violations of the ERE Rule. Respondents' blocking of Halo's post-bankruptcy traffic does not liquidate any bankruptcy claim against Halo or affect the debtor-creditor relationship. Therefore, Respondents' ERE Rule blocking is not subject to the bankruptcy stay.

11. **Halo May Be Blocked for Post-Bankruptcy Non-Payment and ERE Rule Violations.** Respondents' March, 2012 blocking requests were issued for: (a) failure to pay invoices for post-bankruptcy traffic delivered by Halo; (b) continued post-bankruptcy transmission of interLATA wireline telecommunications traffic in violation of the ERE Rule; and/or (c) failure to provide, or altering, originating caller identification information for post-bankruptcy traffic. Therefore, Halo's arguments regarding the bankruptcy proceedings are inapposite here. Although Halo's bankruptcy may prevent Respondents from ever being compensated for Halo's pre-bankruptcy traffic, bankruptcy law does not allow Halo to continue: (a) receiving service and using Respondents' rural Missouri networks without payment, or (b) violating the

Commission's ERE Rule. On the contrary, Halo's post-bankruptcy traffic may be blocked for non-payment and/or violations of the ERE Rule.

12. Generally, a bankruptcy stay prevents actions to commence or continue a proceeding to collect pre-petition debt. But here, Respondents' blocking notices are clearly limited to post-bankruptcy non-payment and ERE Rule violations. Specifically, the notices state that Halo has failed to compensate Respondents "for the traffic Halo is terminating to [them] after Halo's filing for bankruptcy protection (post-bankruptcy traffic)." The notices also state that Halo is violating the ERE Rule by transmitting InterLATA wireline traffic over the LEC-to-LEC network and by failing to deliver correct originating caller identification. Bankruptcy does not allow Halo to continue to use Respondents' networks post-petition without payment and in violation of the ERE Rule. Rather, a utility may terminate service for non-payment of post-petition service without violating the bankruptcy stay. *See e.g. Jones v. Boston Gas Co.*, 369 B.R. 745, 756 (1st Cir. Bankruptcy Appellate Panel 2007)(holding that a utility may terminate service, without obtaining relief from stay, based upon a bankruptcy debtor's "failure to pay for post-petition service").

13. **The Bankruptcy Stay Is Not Applicable to Cases Initiated By Halo.**

Since the instant complaint was filed by Halo, the bankruptcy stay does not apply. Last year, the District Court for the Western District of Missouri ruled on this issue in a case involving both Halo and Respondents. On July 11, 2011, Halo filed a federal lawsuit against Respondents (and other small rural Missouri telephone companies) seeking a declaratory judgment and injunctive relief in Case No. 11-cv-00682. Halo's lawsuit was quickly followed by Halo's Suggestions of Bankruptcy and Notice of Stay filed on August

11, 2011. On August 22, 2011, the court issued an *Order* ruling that the case was not stayed by Halo's Bankruptcy:

The Eighth Circuit has held that, "**as the plain language of the statute suggests,... the Code's automatic stay does not apply to judicial proceedings, such as this suit, that were initiated by the debtor.**" *Brown v. Armstrong*, 949 F.2d 1007, 1009-10 (8th Cir. 1991). The Court notes that the present lawsuit was initiated by the debtor, and therefore the automatic stay provisions of the Bankruptcy Code do not appear to apply.⁸

In short, Halo initiated this complaint case, so Halo cannot argue that the stay applies.

14. **The Texas Bankruptcy Court Has Already Denied Halo's Arguments.**

The Texas Bankruptcy Court has already ruled against Halo when Halo made a similar request seeking emergency relief to enjoin AT&T Tennessee from disconnecting Halo following an order by the Tennessee Regulatory Authority. Specifically, the Texas Bankruptcy Court stated:

The TRA's ruling and Order regarding AT&T Tennessee's right to stop accepting traffic is within the TRA's police and regulatory powers and falls with the exception to the automatic stay as found in this Court's 362(b)(4) Order.

See Alma et al. Reply, filed April 5, 2012, Exhibit 5 (*Order*, ¶3, signed Feb. 2, 2012) (emphasis added). There is no reason to believe that the Bankruptcy Court would treat Respondents' blocking of Halo's post-bankruptcy traffic in Missouri any differently.

⁸ *Order*, p. 1 (emphasis added).

CONCLUSION

Respondents respectfully request that the Commission issue an order denying Halo's request that this action be stayed and granting such other relief as is reasonable and necessary in the circumstances.

Respectfully submitted,

By: /s/ Brian T. McCartney

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand-delivered on this 9th day of April, 2012, to the following parties:

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