

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

Halo Wireless, Inc.,)	
)	
Complainant,)	
)	
v.)	Case No. TC-2012-0331
)	
Craw-Kan Telephone Cooperative, Inc.,)	
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, Moka Dial, Inc.,)	
Peace Valley Telephone Company, Inc., and)	
Southwestern Bell Telephone Company,)	
d/b/a AT&T Missouri,)	
)	
Respondents.)	

Alma, et al. Response to Halo Wireless
June 25 Objections to and Motions to Strike the Direct Testimonies of
Amanda Molina and Tommie Sue Loges

Response to Summary and General Objections

Halo's objections are general, and set forth no specific reasoning or applicability to the portions of the Molina and Loges testimonies objected to. This lack of specificity requires the Commission to speculate as to how the general objection specifically applies to the testimony objected to.

Halo objects to Alma et al. testimony regarding “traffic” between traffic Halo delivered to AT&T and AT&T delivered to Alma et al. Halo claims the testimony was not based upon personal knowledge, relied upon inadmissible hearsay, and was foundationally unreliable. Halo has never denied traffic was passed between these carriers. In fact the entire purpose of Halo’s business model was to see that Transcom’s traffic was terminated to AT&T and the RLECs in a fashion that Halo hoped would not trigger responsibility to pay terminating exchange access compensation.

§386.410 RSMo provides that the Commission in its investigations, inquiries, or hearings shall not be bound by the technical rules of evidence. §536.070 RSMo, subsections (9), (10), and (11), allow copies of original documents to be admitted into evidence without proof that the originals cannot be produced. This statute, reinforced by long-standing custom and practice, allows entries in a switch made to record the passage of traffic, or studies or examinations traffic to be admitted into evidence, so long as made in the regular course of business. The circumstances surrounding the making of the entry or study is to affect the weight, but not the admissibility, of such evidence.

It is routine practice in telecommunications cases before this Commission for parties to testify as to the nature and amount of traffic based upon records produced by telecommunications switches. The PSTN that exists today is the result of the need for such recordings, the engineering of the network to produce

such recordings, and the standardized practices and conventions utilized by communications companies to bill for use of their networks.

Halo's direct and rebuttal testimony is replete with references to the type of traffic Halo delivered to AT&T, and which AT&T delivered to Alma et al. Halo's testimony is replete with conclusions of fact and law that assume traffic handled traffic delivered to Halo by Transcom, and Halo sent via AT&T to AT&T and to the RLECs.

At hearing Halo cross examined witnesses with respect to originating and terminating locations, passing of CPN and CN, and its reliability with respect to being utilized for billing for traffic. The evidence Halo adduced during these cross-examinations was also based upon the assumption this traffic happened.

Several aspects of this case concern the MoERE. The MoERE regulates the traffic that can be placed upon the LEC-to-LEC network. The LEC-to-LEC network was designed decades ago for use for toll traffic in a monopoly intraLATA toll environment. Basically, the MoERE attempts to specify the types of traffic, and billing conventions therefore, that will apply to both competitive intraLATA toll traffic, and to competitive local traffic (wireline and wireless originated) placed on this LEC-LEC-network.

The MoERE recognizes and attempts to accommodate the operating deficiencies of the LEC-to-LEC network, which is provisioned via Feature Group C trunks and signaling protocols. RLECs are not capable of readily knowing the carriers financial responsibility for traffic placed upon the LEC-to-LEC network,

and the compensation due for traffic, without accurate billing records provided by AT&T. RLECs are not capable of disconnecting a carrier that places traffic on the LEC-to-LEC network without AT&T's assistance in performing the blocking at AT&T's tandem.

Halo objects to RLECs placing into evidence information about traffic on the network that was recorded by AT&T, summarized by AT&T, and provided to the RLECs. Halo would make the RLECs responsible for the deficiencies of the LEC-to-LEC that the Commission refused to eliminate years ago. Halo attempts to ignore the very network limitations that are the basis for the MoERE itself. Halo's objections are of no weight and import. AT&T's testimony has placed this traffic summary information into the record. The RLEC testimony is merely corroborative of AT&T's evidence.

Telecommunications traffic between carriers is something no human being (witness) has "first hand" perception or personal knowledge of (unless they were a participant in the conversation). Telecommunications traffic is transmitted through interconnected networks as electronic signals or packets along wires or through the air that no human can see, hear, taste, smell, or touch. Objecting to RLEC witness testimony as to traffic flow based upon lack of personal information denies the science and technology of telecommunications.

Telecommunications carriers know traffic has traversed their networks because their switches have been engineered to record that this traffic has flowed. The telecommunications industry relies upon these switch recordings of traffic.

The readings or measurements obtained from these switch recordings are the first and most basic information as to traffic flow that is capable of being seen and measured using human perception.

The Missouri Enhanced Record Exchange Rule (MoERE) was promulgated to mandate the proper type of traffic to be placed on the LEC-to-LEC network, and to establish parameters for the creation of billing records and intercompany compensation for this traffic. The MoERE is premised upon the assumption that switch recordings are reliable. These rules recognized that, due to the limitations of the LEC-to-LEC signaling and trunking FGC protocols, these parameters were necessary for the public interest in assuring proper billing of intercompany compensation.

Even though relaxed by §526.070 (9) RSMo, the Best Evidence Rule (BER) applies only when the terms or content of a written document are trying to be proven. The BER requires the original written document, or copy or substitute, depending upon the reason the original is unavailable. The BER does not exclude evidence of a fact that is independent of a document's terms. The fact that a document was involved in some transaction or occurrence does not mean that the document alone is the only evidence admissible as to what transpired. Alma et al. can testify they "billed" Halo "exchange access" without having to introduce a copy of the bill. If there was a dispute as to what words appeared on the face of the bill, the BER would apply to that dispute.

The Parol Evidence Rule (PER) is a rule of law that determines when

evidence as to the intent of a contract will be admissible in addition to the terms of a contract. If the contract alone is an integrated expression of the parties' contractual intent, the PER precludes the admission of extrinsic evidence as to what the contract means. If an ambiguity exists with respect to an aspect of the contract, parol evidence is admissible to aid the court in interpreting the ambiguity. Parol evidence is also admissible to prove fraud, accident, mistake, or subsequent change to even an integrated, unambiguous contract.

Response to Specific Objections

IV. Loges 4:6-12, Molina 4:20-5:3

This testimony merely summarized the grounds set forth in the blocking requests. The blocking requests themselves, and notices thereof to Halo, were attached to the direct testimony of these witnesses. There is no harm, and the Commission has discretion to admit, testimony summarizing the blocking requests for narrative continuity. There is no valid best evidence objection as the documents themselves are attached and in evidence, and the originals were sent to AT&T and Halo. There is no valid parol evidence objection as there is no contract between Halo and Alma et al. for which the interpretation is in dispute.

V. Loges 4:13-20, Molina 5:4-13

This testimony stated Alma et al. knew Halo traffic was terminating from AT&T because AT&T provided billing records indicating it had. Due to the limitations inherent in the LEC-to-LEC network, RLECs don't know who

originated traffic placed on the “common” trunks comprising part of the LEC-to-LEC network unless originating tandem provider AT&T informs them by providing such billing records. No conclusion of law is set forth in this testimony.

VI. Loges 4:23-5:6, Molina 5:16-22

This testimony relies on the billing record process mandated by the ERE. The testimony says these witnesses know that Halo traffic is terminating comes from AT&T billing records provided after the traffic was terminated. To Alma et al., receipt of the billing records provided by AT&T *meant* that they were providing terminating services for traffic AT&T indicated was originated by Halo. This is the first, most fundamental information RLECs can obtain, and cannot be stated in more basic terms. AT&T’s testimony set forth more “first hand” information that this traffic did terminate. The electronic billing records provided by AT&T are not “written”. While they may be printed off, they are not documents whose terms are at issue. Admitting this testimony did not violate the best evidence rule.

VII. Loges 5:19-6:9, Molina 6:14-7:4

This testimony described the process that had been followed by Alma et al. and national, bona fide CMRS providers in reaching interconnection agreements, and billing pursuant to those agreements. This process matches the requirement of law set forth in 47 USC 252. No documents were necessarily relied upon for this testimony. This testimony is not directed to the contents of an

interconnection agreement. This testimony does not violate the best evidence rule.

VIII. Loges 6:16-7:3, Molina 7:5-10

This testimony summarized communications between Alma et al.'s counsel and Halo's counsel. Halo has not contended this summary of Alma was not accurate. Halo's testimony likewise summarized those communications. There is no harm in either Halo or Alma et al. summarizing those communications rather than introducing every communications exchanged, whether written or not written, into evidence. Both Halo and the RLECs agreed the communications occurred. There is only disagreement as to the legal significance of the communications.

IX. Molina 7:11-21

This testimony explained the information Choctaw and MoKan possessed giving them cause to believe the Halo traffic was not intraMTA CMRS mobile traffic originated by Halo mobile CMRS customers. This information was pertinent to the legal issue of whether the traffic was appropriate for inclusion in an interconnection agreement, and thus was pertinent to the issue of whether the RLECs were obligated to participate in interconnection agreement negotiations with Halo. To the extent any of this information was hearsay, information giving rise to a state of mind as to why they chose not to request interconnection or negotiation is admissible even though it is based upon or summarizes a series of communications not made in the hearing room. This testimony is not directed to

the contents of any document. There was no contract document. There is no best evidence rule or parol evidence rule violation.

IX. Loges 7:4-6, X. Molina 7:22-8:2

This testimony indicated that, based upon the information received, Alma et al. believed that Halo was attempting to avoid the payment of access charges. Halo's position throughout this case, from blocking request to hearing, has always been it did not believe it was responsible to pay access charges. This testimony was consistent with Halo's position. This testimony was pertinent to the issue of whether Halo had paid the RLEC's proper compensation for traffic terminating to them. To the extent any of this information was hearsay, information giving rise to a state of mind is admissible even though it is an out of court statement, duplicates or summarizes an out of court statement, or is based upon a series of out of court communications. This testimony is not directed to the contents of any document. There is no best evidence rule or parol evidence rule violation.

X. Loges 7:21-8:4, XI. Molina 8:17-22

Like the previous item, this testimony continued to explain why Alma et al. decided to request blocking. This testimony explained what happened after Alma et al decided not to request interconnection agreement negotiations until they decided to request blocking. This testimony does not set forth conclusions of fact or law. To the extent any of this information was hearsay, information giving rise to a state of mind is admissible even though it is or duplicates an out of court

statement. This testimony is not directed to the contents of any document. There is no best evidence or parol evidence violation.

**XI. Loges 8:13-20, XII. Molina 9:8-20; and
XII. Loges 9:4-8, XIII. Molina 10:4-11 ; and
XIII. Loges Attachment C, Molina Attachments E, F**

The testimony Halo objects to in items XI, XII, and XIII sets forth the information in Alma et al.'s possession that supported blocking request grounds that some Halo traffic was landline originated, some was interLATA in jurisdiction, and some was originated using feature group D protocols. Due to the limitations inherent in the LEC-to-LEC network, and incorporated into the MoERE, RLECs are forced to rely upon AT&T and the MoERE processes. Without doing a labor/money intensive matching of SS7 call information to the billing records provided by AT&T, in the ordinary course of business for LEC-to-LEC traffic RLECs have to rely upon AT&T for this information.

AT&T provided this information to Alma et al. at their request. AT&T separately proffered this information into evidence. Traffic studies such as these are normal and regularly conducted by the telecommunications industry in the course of the telecommunications business, given to the Commission in evidence, and the Commission relies upon such studies in making policy and case decisions. The traffic study(ies) were admissible pursuant to §536.070 (10) and (11) RSMo.

WHEREFORE, on the basis of the foregoing, Alma et al requests that Halo's objections be overruled and the direct testimonies received into evidence.

Respectfully submitted,

/s/Craig S. Johnson
Craig S. Johnson
Mo Bar # 28179
Johnson & Sporleder, LLP
304 E. High St., Suite 200
P.O. Box 1670
Jefferson City, MO 65102
(573) 659-8734
(573) 761-3587 FAX
cj@cjaslaw.com

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was electronically mailed, this 6th day of July, 2012 to all counsel of record.

/s/ Craig S. Johnson
Craig S. Johnson