

**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,)	
Iamo Telephone Company,)	
Le-Ru Telephone Company,)	
McDonald County Telephone Company,)	File No: TC-2012-0331
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)	
)	
Respondents.)	

**Alma Telephone Company, et al.
Statement of Position**

Comes now Alma Telephone Company, Choctaw Telephone Company, and MoKan Dial Inc, (“Alma et al.”) and for their statement of position as to the issues present the following:

Introduction:

There are approximately 35 Rural Local Exchange Telecommunications Companies (RLECs) operating in Missouri. In the spring and summer of 2011 approximately 20 of the larger RLECs had AT&T block Halo traffic pursuant to the Missouri Enhanced Record Exchange Rule (MoERE). Halo did not file a Complaint to stop those blocking requests pursuant to the MoERE. Alma et al. infers the reason that Halo now challenges the remaining 15 smaller RLECs' blocking requests is due to AT&T's Counterclaim herein.

The 1996 Telecommunications Act called for implementation of intraLATA toll competition using "equal access" or "dialing parity". InterLATA toll competition, including equal access/dialing parity, had been in place since divestiture in the 1980's. During the process of implementing intraLATA toll competition/equal access/dialing parity, Mo RLECs sought permission to replace the previously utilized intraLATA business relationship with interconnecting carriers to the business relationship utilized for the interLATA market.¹

¹ As a simple description, the interLATA business relationship allowed the RLEC to make the carrier directly interconnecting with it financially responsible for all traffic delivered over that interconnection, even if some of the traffic delivered by that carrier was originated by other carriers. The traffic was measured by the RLEC at the interconnection point, and billed using the RLEC's own resources. If the traffic was not properly paid for, the RLEC could disconnect the offending carrier on its own.

The intraLATA business relationship permitted AT&T to directly interconnect with the RLEC, and permitted AT&T to separately directly connect with other carriers, and to deliver traffic of these other carriers to the RLEC. AT&T was only responsible for traffic it originated. The rest of the traffic originated by carriers that were indirectly interconnected with the RLEC was not the responsibility of AT&T. AT&T reported the traffic volumes and identified the carrier delivering the traffic to AT&T. The RLEC was not able to measure the traffic, and had to rely on AT&T to quantify it. The RLEC was required to attempt to bill and collect from each of the various originating carriers as

The Commission refused to sanction the requested change in business relationships. However, the MoERE was subsequently adopted to protect RLECs from potentially abusive practices of indirectly interconnected carriers utilizing the intraLATA business relationship. Halo and its affiliate Transcom are engaged in an access avoidance scheme. The scheme violates the MoERE. The scheme has been seen for what it is, and rejected by the FCC², by the state of Tennessee³, and by the state of Pennsylvania⁴ (so far). This Commission should also reject the Halo scheme, and grant the relief requested by AT&T and the MoRLECs here.

Issues and Positions:

A. Blocking Under the Missouri ERE Rule

(1) Does 4 CSR 240-29.010 *et seq.*, (the “Missouri ERE Rule”), apply to Halo’s traffic?

Yes. Even were Halo operating as a legitimate CMRS provider, the Commission has jurisdiction over Halo’s complaint against the RLECs, and ATT’s Counterclaim

identified by AT&T. If the traffic was not properly paid for, the RLEC could not disconnect the offending carrier, but had to rely on AT&T to do so.

² November 18, 2011 USF/ICC transformation Order, WC Docket No. 10-90, at paragraphs 1003-1007, which held that Halo’s attempt to claim that it was “re-originating” Transcom’s traffic via “CMRS” “base stations” in each Major Trading Area did not change the true originating point of the call, and did not convert such calls to reciprocal compensation traffic.

³ Tennessee Regulatory decision of January 26, 2012 in Docket No. 11-00119, in re Bellsouth d/b/a ATT Tennessee v Halo Wireless; and decision of April 18, 2012 in Docket No. 11-00108, in re Concord Tel. et al v Halo and Transcom; which decisions permitted AT&T to terminate service to Halo, thus ending the access avoidance scheme in Tennessee.

⁴ Palmerton Tel Co v Global NAPS South Inc, et al, PA PUC Docket No. C-2009-2093336, March 16, 2010; which found Transcom was not an ESP.

against Halo. In its February 14, 2002 Order Regarding Subject Matter Jurisdiction in TC-2002-57, the Commission ruled it has jurisdiction over complaints between MoRLECs and CMRS providers that were actually engaged as CMRS providers.

This Commission's Order adopting the MoERE specifically determined it would apply to CMRS traffic an originating carrier placed on the LEC-to-LEC network (as cited and quoted in the Position Statement of Craw-Kan et al.)

47 USC 253(b) recognizes the state of Missouri's authority to adopt regulations such as the MoERE. The MoERE was adopted in order to protect RLECs from abusive indirectly interconnected carriers, such as Halo. If Halo truly believed the federal telecommunications act preempted the MoERE, the appropriate remedy would have been for Halo to request that the FCC preempt the ERE pursuant to 47 USC 253(d). Halo has not done so.

The Halo traffic is not the traffic of a legitimate CMRS provider. It is not originated by Halo customers using mobile phones. The Halo traffic instead consists of traffic its affiliate Transcom aggregates as a "least cost router" and hands off to Halo for termination. The traffic Transcom sends to Halo for termination is either wireline-originated interexchange traffic, or wireless traffic originated by legitimate CMRS providers (not by Halo). Halo places this traffic on the LEC-to-LEC network at its interconnection points with AT&T, thus triggering the applicability of the MoERE.

(2) Has Halo placed interLATA wireline telecommunications traffic on the LEC-to-LEC network?

Yes. The traffic studies performed by AT&T demonstrate that Halo has placed interLATA wireline traffic on the LEC-to-LEC network at its interconnection points with

AT&T, for completion over other portions of the LEC-to-LEC network provided by RLECs. (See Direct Testimonies of AT&T Witness McPhee, and Alma et al witnesses Molina and Loges).

(3) Has Halo appropriately compensated the Respondents for traffic it is delivering to them for termination pursuant to Halo's Interconnection Agreement with AT&T?

No.

In order to adopt the AT&T/T-Mobile interconnection agreement (ICA), Halo misrepresented itself to AT&T and this Commission as being a CMRS provider intending to exchange wireless-to-wireline traffic originated by Halo mobile customers with wireline- to-wireless traffic originated by ILEC customers. After adoption of the ICA, Halo has instead delivered vast quantities wireline-to-wireline interexchange traffic, and wireless-to-wireline traffic originated by CMRS providers other than Halo. This was Transcom's least cost router aggregated traffic. The traffic Halo sent does not qualify for reciprocal compensation. This traffic was subject to exchange access tariffs. Alma et al. billed Halo for this traffic, and Halo has paid nothing to Alma et al.

Even assuming Halo has been properly registered to use unlicensed radio spectrum as permitted by the FCC, such registration does not command the conclusion that the traffic Halo actually sent to AT&T and the RLECs was intraMTA CMRS traffic originated by Halo mobile customers. It clearly was not. Most if not all of the complex legal and technical arguments Halo attempts to advance⁵ are premised on the false

⁵ Halo continues to repeat its positions, or re-wrap them into new arguments, even though the FCC rejected Halo's claim that insertion of a small fixed station wireless link between the caller and the called party constituted a new origination point for the traffic.

assumption that all of the Halo traffic qualifies for reciprocal compensation in an approved IAC.⁶ The FCC and Tennessee have both recognized and rejected this false assumption, and terminated Halo/Transcom's access avoidance scheme. Pennsylvania has rejected Trascom's claim that it is an ESP, one of the constructs of Halo's positions. This Commission should do the same.

(4) Has Halo delivered the appropriate originating caller identification to Respondents along with the traffic it is delivering to them for termination?

No. Alma et al. concur in the position statements of Craw-Kan et al, and of AT&T, with respect to this issue.

(5) Is the blocking of Halo's traffic in accordance with the ERE rules appropriate?

Yes. Alma et al. concur in the position statements of Craw-Kan et al. and of AT&T with respect to this issue.

B. AT&T's ICA Complaint

(1) Has Halo delivered traffic to AT&T Missouri that was not "originated through wireless transmitting and receiving facilities" as provided by the parties' ICA?

(2) Has Halo paid the appropriate compensation to AT&T Missouri as prescribed by the parties' ICA? If not, what compensation, if any, would apply?

(3) Has Halo committed a material breach of its ICA with AT&T Missouri? If so, is AT&T Missouri entitled to discontinue performance under the ICA?

Alma et al. supports AT&T's positions on these issues.

⁶ This false assumption underlies Halo's argument that the indirectly interconnected RLECs were forced to accept zero compensation, or "bill and keep" until they successfully hauled Halo before the MoPSC for an IAC arbitration.

TC-2012-0035 Issues

Halo has just filed a position statement in which 5 issues have been articulated with respect to the RLEC petitions for rejection of the transit portions of the Halo/AT&T IAC pending in TC-2012-0035. Alma et al. understood the Commission's May 17, 2012 Order of Consolidation as consolidating TC-2012-0331 with TC-2012-0035 simply for purposes of creating a single evidentiary record from which both cases could, if need be, resolved. Alma et al. believed it would not be necessary to present issues or position statements with respect to TC-2012-0035, until and if necessary after Commission decision in TC-2012-0331. Therefore Alma et al. is not attempting to frame its own issues or state positions with respect TC-2012-0035 issues here. Alma et al. would like to reserve the right to supplement this position statement with their statement of issues and positions in TC-2012-0035 in the event the Commission later directs this to be done, either in this case or in TC-2012-0035.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 22nd day of June, 2012.

/s/Craig S. Johnson