

the “Truth in Caller ID Act” given that – once again – Halo’s practices fully meet even the Commission’s *proposed rules*.⁴⁹

The CPN and Charge Number content populated by Halo depends on the service package being used by the Halo customer, and the customers’ own self-determined actions. The low volume “voice” package employed by Halo at present involves use of a voice “client” operating on a netbook, portable computer, tablet or personal computer that is communicating with the Halo base station using a USB wireless “dongle.” Virtually every voice client allows a user to self-determine what “CPN” is ultimately populated by the carrier. Typically, however, low volume customer-related CPN signaling content will be a Halo number and usually it will be a number associated with a rate center that is common to the MTA where the call is going to terminate, if the user typically enjoys service using a base station in that MTA.⁵⁰ In addition, there probably would not also be information in the Charge Number parameter since the responsible customer number for billing purposes is the same as the CPN.

The high volume package affords more options and capabilities, and quite often the CPN will not be the same as Charge Number. Halo will receive information from its customer that the customer’s CPE has sent to Halo using IP-based technology (usually, SIP, using RFC 3261⁵¹ and RFC 3398⁵²). Halo takes the information delivered by the customer, and populates that information in the CPN parameter as part of the Initial Address Message (“IAM”). Halo will then also populate the Charge Number parameter with a telephone number from a CO code assigned to Halo that Halo has then assigned to the customer, which the customer opts to use as their “billing telephone number.” Thus, for high volume service, there is typically information in both the CPN parameter and in the Charge Number parameter, and it is often different.

(2) Telecommunications providers and entities providing interconnected voice over Internet protocol services who are intermediate providers in an interstate or intrastate call path must pass, unaltered, to subsequent carriers in the call path, all signaling information identifying the telephone number of the calling party, and, if different, of the financially responsible party that is received with a call, unless published industry standards permit or require altering signaling information. This requirement applies to all SS7 information including, but not limited to CPN and CN, and also applies to MF signaling information or other signaling information intermediate providers receive with a call. This requirement also applies to Internet protocol signaling messages, such as calling party identifiers contained in Session Initiation Protocol (SIP) header fields, and to equivalent identifying information as used in successor technologies.

⁴⁹ See Notice of Proposed Rulemaking, *In the Matter of Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, WC Docket No. 11-39, FCC 11-41, __ FCC Rcd __ (2011), not yet published in Federal Register; available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-41A1.pdf. The proposed rules insert new definitions in 47 C.F.R. § 64.1600 for “Caller Identification Information,” “Caller Identification Service” and “Information Regarding the Origination” and then adds a new 47 C.F.R. § 64.1604 that essentially restates the requirements of the legislation. Halo is complying with all industry conventions for both legacy and IP-based networks regarding the information it populates in all relevant ISUP IAM parameters (including CPN and Charge Number).

⁵⁰ As noted elsewhere, calls will traverse the AT&T interconnection in an MTA only when the Halo user is connected to the base station serving that MTA.

⁵¹ Network Working Group, RFC 3261, SIP: SESSION INITIATION PROTOCOL, © The Internet Society (2002), available at <http://www.ietf.org/rfc/rfc3261.txt>.

⁵² Network Working Group, RFC 3398, INTEGRATED SERVICES DIGITAL NETWORK (ISDN) USER PART (ISUP) TO SESSION INITIATION PROTOCOL (SIP) MAPPING, © The Internet Society (2002), available at <http://www.ietf.org/rfc/rfc3398.txt>

Halo has verified with its third-party SS7 network provider that the IAMs sent from Halo's MSC contain the correct CPN and Charge Number and that the third-party SS7 network provider is forwarding those IAMs on to AT&T unchanged. Halo can only speculate as to what the RLECs are (or are not) seeing in the signaling messages they received from AT&T, since none of the purportedly offending IAMs have been produced by any of the RLECs. If any call signaling information different than as described above is being received by the RLECs, AT&T or the RLECs – rather than Halo – are the ones manipulating or changing the signaling information. Halo believes that the RLECs may be looking at Charge Number rather than CPN and confusing the two. It may be that the RLECs are not looking at actual signaling information, but instead are reviewing end office CDR or AT&T-supplied tandem billing records, which under industry standards sometimes replace original CPN content with the Charge Number content if both exist in signaling and are different.⁵³ Halo, however, is populating the correct information in the proper SS7 ISUP IAM parameter in full accord with industry practices and even the FCC's proposed rules.

Halo's MSC/SSP faithfully passes on any CPN it receives by populating the CPN parameter in the IAMs to AT&T with the information received from the customer. Halo also populates its customer's billing number in the Charge Number field if the billing number is different than the CPN, since Halo's customer is the "financially responsible party" under industry conventions. Halo does not violate either the legislation or the proposed rule.

If the defendants persist in their accusations regarding Halo's signaling practices Halo reserves the right to seek fee-shifting damages for all the costs it incurs in defending against these claims. The allegation of fraud is particularly vexing, and is something that should not be cavalierly tossed around. Halo strongly suggests that the defendants fully assess their own practices regarding signaling content before they speak again on this particular topic, because the evidence will show that if any alteration is occurring it must be either AT&T or the RLECs that are violating industry practices and the rules, or simply looking in the wrong parameter.

Regardless, given the charge, Halo requests and demands that all defendants immediately put a litigation hold on all of the signaling content related to Halo traffic they presently have and maintain that information along with all information they receive during the processing of this matter. They should be ready to produce that information as part of the Rule 1.729(i)(1) automatic disclosure process in this case. Halo has now done the same and if this remains in issue Halo will produce its records regarding the signaling content associated with call sessions delivered to the defendants for termination with its Rule 1.729(i)(1) automatic production.

B. The traffic in issue is CMRS and intraMTA; to the extent it is not traditional retail voice traffic it is associated with a Commission-authorized "numbering partner" service to a high-volume non-IXC ESP that has purchased Halo's high volume wireless service and has wirelessly connected the customer's mobile station to a Halo base station in the MTA.

⁵³ See 2011 USF/ICC NPRM ¶ 622, note 950 ["Tandem switches transmitting traffic in TDM format create billing records by combining CPN or Charge Number (CN) information from the SS7 signaling stream with information identifying the originating service provider to provide terminating service providers with information necessary for billing."]

The RLECs have also expressed concern with the type of traffic Halo has sent them, and some have alleged that Halo's traffic is "IP-in-the-Middle" and is not "CMRS." Again, their concerns and arguments lack any foundation in the law and Commission decisions.

Halo is a federally-licensed CMRS provider with interconnection rights under §332(c)(1)(B) and is providing a service that allows customers to obtain broadband and PSTN connectivity using 4G wireless capabilities employing 3.65 GHz spectrum. The traffic in issue all comes from a high volume customer's mobile station that is communicating with a Halo base station in the same MTA as the rate center association of the called party, and the Halo/AT&T point of interconnection is in the same LATA. Thus, it is intraMTA traffic, which also happens to be intraLATA if the POI is used rather than the base station. *See* 47 C.F.R. § 51.701(b)(2). *See also Local Competition Order* ¶¶1043-1044 [providing that intraMTA traffic is subject to § 251(b)(5) and relying on "the location of the initial cell site when a call begins" as "the determinant of the geographic location of the mobile customer" or "as an alternative" "the point of interconnection between the two carriers at the beginning of the call to determine the location of the mobile caller or called party."]

Halo has "low volume" offerings for wireless-based "voice" and broadband data⁵⁴ for small business and consumers and "high volume" offerings for customers that have more intensive communications needs. Both provide for (1) a common carrier wireless transmission service that can be used for any legal purpose; (2) a separate information service offering that includes Internet access; and (3) the ability to communicate with other points on the public switched network for purposes of "voice" or data applications like FAX machines or data terminals accessible via E.164 addresses rather than IP addresses. Users will connect to the base station over a wireless broadband connection, and to the extent the user desires to intercommunicate with a PSTN end-point in the same MTA the call session will be routed to the interconnection arrangement with AT&T in the relevant LATA, and AT&T will transport and terminate the call, or transit the call to the called party's network service provider. Every call that traverses the Missouri interconnection for transport and termination by the RLEC defendants originated from a customer's mobile station that is communicating with a Halo base station serving the MTA that covers the rate center associated with the called party's telephone number.

⁵⁴ Halo's broadband data service has a "transport" component that is offered on a stand-alone common carrier basis. Customers can choose to "bring their own" Internet or private network service and use the wireless transport portion only. Or, the customer can choose to use Halo-supplied Internet capabilities. The offering is conceptually similar to the tariffed DSL transport service the RLEC defendants provide in Missouri that can then be used in association with the RLECs' Internet service, or the service of another ISP. (According to the NECA 5 tariff, Citizens, Green Hills, Mid-Missouri and Northeast Missouri concur in the NECA 5 DSL Transport tariff, *see*, <https://www.neca.org/cms400min/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=2574&libID=2594>.) The Commission should support this business model because it goes far beyond mere "Net Neutrality" and essentially adopts the "common carrier" model the FCC chose to not go so far as to embrace in the recent *Open Internet Order*. Report and Order, *In the Matter of Preserving the Open Internet; Broadband Industry Practices*, GN Docket No. 09-191; WC Docket No. 07-52, FCC 10-201, 25 FCC Rcd 17905 (2010) ("*Open Internet Order*"). Halo's broadband service has already implemented – and voluntarily adopted even more transparency and "no blocking" practices – the proposed "mobile broadband rules in the Open Internet Order. *See id.*, ¶¶ 97-102, 25 FCC Rcd 17958-17961. This is particularly so with regard to a Halo customer's use of competing "voice" services. Halo does not block or impede any alternative voice clients; indeed, a user can use an alternative voice client/service and Halo will not block that client/service's attempt to secure termination of a call in the same MTA using Halo's interconnection arrangement. The defendants' blocking puts Halo in potential violation of the Commission's rules. This must stop.

The RLECs' problem is not with Halo. They instead do not like the use Halo's customers are making with the CMRS service. Even if what they claim is correct, all that means is that Halo is serving as a "numbering partner" to a "communications-intensive" business customer that happens to be an enhanced service provider.⁵⁵ The Commission has expressly recognized that CMRS providers can be "numbering partners" for VoIP providers; indeed the FCC specifically shaped its rules to allow CMRS providers to assume this role and took into account CMRS-specific rules that relate to number portability.⁵⁶ The RLECs should direct their criticism away from Halo and toward the FCC, for all of this is expressly authorized and explicitly contemplated by the statute, rules and several Commission decisions.

The traffic giving such grief to the RLECs is CMRS and intraMTA, and thus fully subject to § 251(b)(5), just as it would be when a PSTN user communicates with a traditional dial-up ISP (in either direction). Further, this traffic is also squarely subject to § 201, and part of the Commission's exclusive jurisdiction. A state commission such as the Missouri PSC cannot order or authorize blocking, and it cannot lawfully make up its own interconnection or intercarrier compensation rules. Federal law exclusively applies, and it prevails over any conflicting state law or requirement. Access rates – and particularly intrastate access rates – cannot be applied to this traffic, since it is not carved out of § 251(b)(5) by § 251(g).⁵⁷

The issue of the appropriate intercarrier compensation for this traffic will be resolved at the appropriate time, by this Commission as part of a § 332(C)(1)(B)/201 "interconnection" proceeding, or perhaps even at some point by the state commission using "the arbitration procedures in section 252 of the Act" and applying the standards in the Act and the Commission's current intercarrier compensation rules. We will get to setting a lawful compensation price when the applicable procedure and context is finally known, and one of the major results of this matter will be sorting out that very question. The RLECs' unilateral and preemptive action of blocking rather than working with Halo on a cooperative basis to figure this

⁵⁵ The D.C. Circuit and the Commission have recognized that ESPs are end users – not carriers – that are classified for regulatory purposes as "communications-intensive business customers." See, e.g., *Bell Atl. Tel. Cos. v. FCC*, 206 F.3d 1, 7 (D.C. Cir. 2000). Halo does not have any IXC customers that use its low volume or high volume wireless service. Thus, this is not "IP-in-the-Middle" traffic, even if and to the extent it could somehow be deemed to have originated with a wireline customer on the PSTN. In any event, 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*, 19 FCC Rcd 7457, note 92 (2004).

⁵⁶ See Report and Order, *Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, In the Matter of Telephone Number Requirements for IP-Enabled Services Providers; Local Number Portability Porting Interval and Validation Requirements; IP-Enabled Services; Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues; Final Regulatory Flexibility Analysis; Numbering Resource Optimization*, WC Docket No. 07-243; CC Docket Nos. 95-116, 99-200; WC Docket Nos. 04-36, 07-244, FCC 07-188, ¶¶ 34-35, 22 FCC Rcd 19531, 19549-19550 (2007); Small Entity Compliance Guide, Local Number Portability (LNP), CC Docket Nos. 95-116, 99-200, WC Docket Nos. 07-243, 07-244, 04-36, DA 08-1317, ¶¶ 3-4 (2008), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-08-1317A1.pdf. See also 47 C.F.R. §§ 52.23(h)(1), (2), 52.31, 52.34. The RLECs are blocking VoIP traffic, and thereby violating § 201(b). See below.

⁵⁷ See Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, *High Cost Universal Service Reform, Federal-State Joint Board on Universal Service, Lifeline and Link Up, Universal Service Contribution Methodology, Numbering, Resource Optimization, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Developing a Unified Intercarrier Compensation Regime, Intercarrier Compensation for ISP-Bound Traffic, IP-Enabled Services*, 24 FCC Rcd 6475 (2008) ("Core Mandamus Order") (subsequent history omitted).

out without the Commission's intervention violates the Act and the Commission rules in several ways. They now get to discover that their tactics have lengthened rather than shortened the time it will take for them to get paid, and it will ultimately cost them more because now they are subject to damages for their violations.

6. Specific violations of the Act and Commission rules.

A. Blocking is an unjust and unreasonable practice under § 201(b). The defendants have violated § 201(b) by engaging in the unjust and unreasonable practice of blocking interstate traffic without advance permission by the Commission. The FCC has made it absolutely clear that carriers cannot block interstate traffic absent specific FCC authorization and doing so is an unjust and unreasonable practice that violates § 201(b). *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)⁵⁸; 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).⁵⁹ All of the defendants, including AT&T, have engaged in an unjust and unreasonable practice in violation of § 201(b).

The RLEC defendants' blocking also violates § 201(b) for a separate and different reason. As explained above, the defendants assert that some of the traffic is "wireline originated" "interLATA" traffic, and is being improperly routed over Halo's interconnection arrangement. They claim the right to block passage of this traffic based on Missouri rules. *See e.g., Exhibits 16, 26, 27 and 31.* These state rules do not apply, but even if they do they are pre-empted given that the traffic is interstate, and is related to VoIP traffic coming from one of Halo's customers for whom Halo serves as a "numbering partner." Defendants are blocking VoIP traffic, and that is a violation of § 201(b).⁶⁰

B. Blocking in this situation without advance Commission permission is a violation of 47 C.F.R. §§ 63.60(b)(5), 63.62(b) and (e) and 63.501. Part 63 rules address carriers' desire to cease the interchange of traffic with another carrier, and that is precisely what has

⁵⁸ ... call blocking is an unjust and unreasonable practice under section 201(b) of the Act" ...
"Specifically, Commission precedent provides that no carriers, including interexchange carriers, may block, choke, reduce or restrict traffic in any way.

⁵⁹ 12. ... After consideration of the arguments and evidence advanced by the parties to this proceeding, we are persuaded that the practice of call blocking, coupled with a failure to provide adequate consumer information, is unjust and unreasonable in violation of Section 201(b) of the Act. ...

15. ... We find that call blocking of telephones presubscribed to the defendant AOS providers or other carriers is an unlawful practice. Accordingly, we order the defendants to discontinue this practice immediately. The defendants must amend their contracts with call aggregators to prohibit call blocking by the call aggregator within thirty days of the effective date of this Order.

⁶⁰ *See Order, In the Matter of Madison River Communications, LLC and affiliated companies*, File No. EB-05-IH-0110; Acct. No. 200532080126; FRN: 0004334082, DA 05-543, 20 FCC Rcd 4295, 4296 (2005) (Enforcement Bureau) [Investigation and consent order regarding violation of § 201(b) with respect to the "blocking of Voice over Internet Protocol ("VoIP") applications, thereby affecting customers' ability to use VoIP through one or more VoIP service providers."]

occurred here. Under Commission rules, a carrier that wants to cease interchanging traffic must seek advance permission from the FCC to do so. There are 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 (§ 63.501(p)). Halo advised these carriers in writing that it did not so consent. Their decision to proceed is a clear violation of these rules. In this regard, AT&T has also violated this rule.⁶¹

The RLECs may respond that a carrier can disconnect another carrier for nonpayment. Halo agrees that this is true, but responds that a carrier cannot disconnect another carrier for nonpayment of patently illegal charges. The unpaid billings here involve tariffed access charges for intraMTA traffic, and 20.11(d) clearly does not allow them. Disconnection for nonpayment of illegal bills cannot be a justification for failing to follow Part 63 procedures, and the defendants have therefore violated Part 63.

C. The RLECs' attempts and actions violate 47 C.F.R. § 20.11(d) and (e).

The RLECs sent access charge billings to Halo, and have now blocked traffic on account of non payment. The billings violate § 20.11(d). Further, the RLECs have not followed the required process set out in § 20.11(e) that would result in an interconnection agreement, including state-level arbitration in the event there are unresolved open issues.

D. If and to the extent the parties are deemed to already be engaged in the § 252 process, the RLECs have violated 47 C.F.R. § 51.301(a), (c)(5) and (c)(8). Section 51.301 requires ILECs to negotiate "in good faith the terms and conditions of agreements to fulfill the duties established by sections 251 (b) and (c) of the Act." They have not done so. The RLECs have offered to "let" Halo adopt an agreement under § 252(i), but they cannot claim that to date any of their actions come close to the kind of negotiations for terms contemplated by the rules. Providing prior agreements, indicating "sign here," and then blocking traffic when that does not happen is a violation of the duty to negotiate in good faith.

The RLECs' blocking is a brazen and obvious attempt to coerce Halo "into reaching an agreement that it would not otherwise have made." This is a clear violation of 51.301(c)(5).

Halo and Mid-Missouri had one telephonic conference during which Halo orally expressed its desire for cost-based terms and IP-based interconnection. Halo thereafter answered a follow-up question posed by counsel for Mid-Missouri. *See* Exhibit 27. These two RLECs (along with Northeast and Chariton Valley) then decided to institute blocking. Halo has reasonably decided to forgo "negotiations" in the face of such coercion.

There was more communication with Citizens and Green Hills, through their counsel. On January 24 Halo indicated that if and to the extent the parties were indeed involved in § 252 negotiations, then Halo requested "cost studies using TELRIC principles that support all of their proposed pricing for interconnection, traffic exchange, and collocation"; studies reflecting your clients' claimed avoided cost for resale purposes"; and "the studies that will support your clients' proposed prices and terms for access to poles, conduits and rights of way." Halo observed that if the parties are in the context of a § 252 negotiation then 47 C.F.R. § 51.031 applies and the

⁶¹ AT&T is not as culpable as the other defendants. It is in very large part acting under perceived compulsion of a state commission rule.

RLECs must provide this information under 51.301(c)(8)(i) and (ii). *See* Exhibit 5. Citizens and Green Hills never acknowledged this request and have not produced any information. They have therefore violated § 51.301(c)(8).

The RLECs' only possible justification for their actions is that they are exempt from the § 251(c)(1) duty to negotiate in good faith that is the basis for § 51.301. If they are correct then that merely proves Halo's point that any continued claim for exemption simply guts the entirety of § 252 and there is nothing to arbitrate so the "negotiation and arbitration procedures in section 252 of the Act" cannot be used.⁶²

II. This case fits well with the Commission's consideration factors for acceptance on the Accelerated Docket.

Rule 1.730(e) sets out several consideration factors the Staff is to use when deciding whether to exercise its discretion to admit a proceeding to the Accelerated Docket. Halo will address them in the order set out in the rule.

1. Whether it appears that the parties to the dispute have exhausted the reasonable opportunities for settlement during the staff-supervised settlement discussions.

The parties are not likely to resolve this matter without participation by the Commission Staff. Halo attempted to negotiate with each RLEC, offered a series of negotiation alternatives, and painstakingly explained Halo's position regarding whether the RLECs had properly invoked § 20.11(e). Notwithstanding its position on that issue, Halo proceeded to discuss substance with counsel for these RLECs and gave an outline of its position on the terms Halo desired to negotiate, and what it would arbitrate should that become necessary. Halo sought the information from the RLECs that the Commission's rules require an ILEC to provide upon request. The RLECs have not provided this information, or any information or feedback other than an offer to allow Halo to adopt an agreement under § 252(i). Ultimately, the RLECs chose the course of brinkmanship and coercion and are now blocking Halo's traffic.

FCC intervention by way of mediation or adjudication will be necessary. Halo does believe, however, that the staff-supervised pre-filing settlement discussions made available in Rule 1.730(b) could significantly improve the potential for a negotiated resolution of the matter.⁶³ If such discussions do not lead to a settlement, then the matter is, as explained below, appropriate for the accelerated processes set out in Rule 1.730(g).

2. Whether the expedited resolution of a particular dispute or category of disputes appears likely to advance competition in the telecommunications market.

Small companies like Halo cannot afford to spend all their resources continually engaging in long and expensive full-blown litigation. Requiring continual "negotiation" and then "arbitration" on every matter erects a formidable barrier to entry. Halo cannot provide the

⁶² Halo has offered to negotiate with each of the RLEC defendants in the § 251(a) context or in the § 332(c)(1)(B)/§ 201/§ 20.11(a) context. They have refused each of these entreaties and instead chose to use coercive "negotiation" tactics by blocking.

⁶³ Staff has discretion whether to conduct a pre-filing settlement conference prior to the decision on inclusion on the Accelerated Docket. Order on Reconsideration, *In the Matter of Implementation of the Telecommunications Act of 1996; Amendment of Rules Governing Procedures to be Followed When Formal Complaints are Filed Against Common Carriers*, CC Docket No. 96-238, FCC 01-78, 16 FCC Rcd 5681, 5689, ¶ 17 (rel. Feb. 2001); Rule 1.730(b). Halo requests that Staff exercise its discretion by conducting the conference.

services it has been recently authorized to provide if RLECs are allowed to unilaterally demand payment of access charges and block traffic if Halo does not pay. The delay associated with full-blown adjudication necessarily leads to significant harm. Second Report and Order, *In the Matter of Implementation of the Telecommunications Act of 1996 Amendment of Rules Governing Procedures to Be Followed When Formal Complaints are Filed Against Common Carriers*, CC Docket No. 96-238, FCC 98-154, 13 FCC Rcd 17018, 17027 ¶ 16 (rel. July 1998).

3. Whether the issues in the proceeding appear suited for decision under the constraints of the Accelerated Docket. This factor may entail, inter alia, examination of the number of distinct issues raised in a proceeding, the likely complexity of the necessary discovery, and whether the complainant bifurcates any damages claims for decision in a separate proceeding.

The defendants may try to make it appear that the issues are many and complex and a lot of discovery will be required. This too is not correct. There are truly only two or at most three major issues that will then be plugged into the provisions in the Act and rules cited by Halo above. Halo expects that the only potential factual dispute will relate to signaling content. Halo has every expectation that the defendants will – “upon further internal examination” – quietly drop this issue. If they do not and when the defendants and Halo produce their signaling records as part of the automatic disclosure process in Rule 1.729(i)(1) then the facts will be resolved based on those records and, if necessary, explanatory declarations by the parties.

Halo believes that little or no discovery will be required. Most of the facts can be stipulated; discovery should be handled via the parties’ Rule 1.729(i)(1) automatic production of documents.

Halo intends to request bifurcation of the damages claims for decision in a separate proceeding as is allowed under § 1.722(b) of the Commission’s rules.

4. Whether the complainant states a claim for violation of the Act, or Commission rule or order that falls within the Commission’s jurisdiction.

This is a matter that falls directly within the Commission’s jurisdiction under §§ 201 and 332(c)(1)(B). It also involves interpretation and application of some of the rules the Commission promulgated to implement §§ 251 and 252. Halo has also pled for violations of other specific FCC rules. As noted, the preponderance of traffic being blocked is jurisdictionally interstate and the blocking is frustrating Halo’s federally granted interconnection rights that flow from its FCC RSA. While the Missouri PSC could ultimately exercise jurisdiction over a § 252 arbitration, we are not to that point and the parties’ dispute relates to how 47 C.F.R. § 20.11 applies and if – as a result of actions taken purportedly in reliance on that rule – the parties are presently involved in “the negotiation and arbitration procedures in section 252 of the Act.”⁶⁴ The FCC has primary and even exclusive jurisdiction over virtually the entirety of the legal issues. The primary complaint is an allegation the defendants are violating § 201 and Commission rules by blocking jurisdictionally interstate traffic. The defendants potential defenses relate to whether the traffic in issue is “CMRS” – a matter that this commission must decide, since that question is answered

⁶⁴ Since the defendants have not requested that Halo submit to state commission arbitration, Halo has not so submitted. Thus the Missouri PSC lacks both subject matter and *in personam* jurisdiction. Not only is there nothing to “arbitrate” there is no ability to have any kind of proceeding at the state level. If the defendants ever get around to making the request that Halo submit, then Halo will since that is what § 20.11(e) requires.

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solely by § 332(c) and the Commission's rules. Given some of the defendant's allegations, other federal statutes and Commission rules now in Part 64 or proposed to be included in Part 64 may arise. Finally, again, given some of the defendants' allegations, the case may involve issues surrounding jurisdictionally interstate enhanced/information service traffic, which is exclusively subject to the Commission's § 201 authority.

This matter does not concern an issue governed by the terms of any interconnection agreement since there is no agreement with any of the defendants except AT&T.⁶⁵ AT&T's actions were precipitated by perceived duties and obligations external to that agreement. There is no Missouri PSC proceeding. Therefore, nothing precludes the FCC from addressing the matter. *Accelerated Docket R&O* ¶ 24, 13 FCC Rcd at 17031. This matter is wholly within the Commission's jurisdiction. Although the state commission could in theory also share jurisdiction over some of the issues under certain procedural contexts and at some point, only this Commission can address all of them and at this time.

5. Whether it appears that inclusion of a proceeding on the Accelerated Docket would be unfair to one party because of an overwhelming disparity in the parties' resources.

There is of course, an overwhelming disparity in resources. The ILECs – even though all but AT&T claim to be RLECs – have a decided and material advantage, and an established terminating monopoly they are intent on protecting. Inclusion on the Accelerated Docket, however, would mitigate that advantage. A full-blown adjudication would favor the defendants given that they can rely on captive customer revenues to fund the litigation, whereas Halo does not have any captive base and the present blocking is inhibiting Halo's ability to attract and retain customers.

Halo is the out-resourced party, yet requests inclusion on the Accelerated Docket in very large part because each day of delay harms Halo. Time is of the essence. This is not a factor that can lead to rejection.

6. Such other factors as the Commission staff, within its substantial discretion, may deem appropriate and conducive to the prompt and fair adjudication of complaint proceedings.

Once the matter is boiled down to its essence, the primary issue – the current call blocking – is simple and straightforward and it requires a rapid, simple and clear resolution by the agency that is in charge of the controlling statute and promulgated the rules involved.

Halo welcomes Staff's guidance with regard to this process, and looks forward to the next step: Staff participation in pre-filing settlement discussions. Halo respectfully requests that Staff exercise its discretion and convene pre-filing settlement discussions before it makes the final determination of whether to accept this matter for accelerated processing. If the matter is not resolved through settlement, Halo respectfully requests that Staff exercise its discretion and designate the matter for inclusion on the Accelerated Docket. Should this not occur, however, then Halo still intends to file a formal complaint under § 208 and Part 1, Subpart E.

Sincerely,

⁶⁵ The RLEC defendants are not parties to that agreement, so they cannot claim any rights under it.

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DATED: March 25, 2011

I certify and represent that a true and correct copy of the foregoing Request for Inclusion of Complaint, Once Filed, on FCC Accelerated Docket was delivered by Certified Mail, Return Receipt Requested, to the registered agents listed on file with the Commission for each of the defendants as follows:

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1000 Vermont Ave. NW, 10th Floor
Washington, DC 20005
Anisa Latif
Southwestern Bell Telephone Company LP d/b/a AT&T Missouri
Telephone: 202-408-4807
E-Mail: al7161@att.com
1120 20th Street, NW, STE 1000
Washington, DC 20036

Halo v. Missouri ILECs; Request for Inclusion of Complaint, Once Filed, on Accelerated Docket

Mark Twain Rural Tel. Co.
Caressa D. Bennett Bennet & Bennet
Telephone: 202-530-9800
Email: cbennet@bennetlaw.com
1000 Vermont Ave. NW, 10th Floor
Washington, DC 20005

I also certify that a courtesy copy was served on each of the below-listed counsel by Certified Mail, Return Receipt Requested at the addresses listed below on the date above indicated.

W.R. England II
Brydon, Swearengen & England
312 East Capitol Ave
P.O. Box 456
Jefferson City, Missouri 65102-0456

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

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

/s/ Matthew A. Henry
Matthew A. Henry

EXHIBIT 1
HALO WIRELESS RADIO STATION AUTHORIZATION

REFERENCE COPY

This is not an official FCC license. It is a record of public information contained in the FCC's licensing database on the date that this reference copy was generated. In cases where FCC rules require the presentation, posting, or display of an FCC license, this document may not be used in place of an official FCC license.



Federal Communications Commission

Wireless Telecommunications Bureau

RADIO STATION AUTHORIZATION

LICENSEE: Halo Wireless

ATTN: CAROLYN MALONE
HALO WIRELESS
3437 W 7TH ST, SUITE 127
FORT WORTH, TX 76107

Call Sign WQJW781	File Number
Radio Service NN - 3650-3700 MHz	
Regulatory Status Common Carrier	

FCC Registration Number (FRN): 0018359711

Grant Date 01-27-2009	Effective Date 06-10-2010	Expiration Date 11-30-2018	Print Date
---------------------------------	-------------------------------------	--------------------------------------	-------------------

Market Name: Nationwide

Channel Block: 003650.00000000 - 003700.00000000 MHz

Waivers/Conditions:

This nationwide, non-exclusive license qualifies the licensee to register individual fixed and base stations for wireless operations in the 3650-3700 MHz band. This license does not authorize any operation of a fixed or base station that is not posted by the FCC as a registered fixed or base station on ULS and mobile and portable stations are authorized to operate only if they can positively receive and decode an enabling signal transmitted by a registered base station. To register individual fixed and base stations the licensee must file FCC Form 601 and Schedule M with the FCC. See Public Notice DA 07-4605 (rel November 15, 2007)

Conditions:

Pursuant to §309(h) of the Communications Act of 1934, as amended, 47 U.S.C. §309(h), this license is subject to the following conditions: This license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized herein. Neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of the Communications Act of 1934, as amended. See 47 U.S.C. § 310(d). This license is subject in terms to the right of use or control conferred by §706 of the Communications Act of 1934, as amended. See 47 U.S.C. §606.

EXHIBIT 2
12/30/2010 LETTER FROM W.R. ENGLAND, III

LAW OFFICES
BRYDON, SWEARENGEN & ENGLAND
PROFESSIONAL CORPORATION

DAVID V.G. BRYDON, Retired
JAMES C. SWEARENGEN
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JAMIE J. COX
L. RUSSELL MITTEN
ERIN L. WISEMAN
JOHN D. BORGMAYER

COUNSEL
GREGORY C. MITCHELL

December 30, 2010

VIA EMAIL & U.S. POSTAL SERVICE

Mr. John Marks
General Counsel
Halo Wireless
3437 W. 7th Street, Suite 127
Forth Worth, TX 76107

Re: Request for Interconnection & Compensation Arrangements

Dear Mr. Marks:

Our firm represents Citizens Telephone Company of Higginsville, Missouri, Inc. (Citizens), Green Hills Telecommunications Services and Green Hills Telephone Company (collectively Green Hills), which are Local Exchange Companies serving rural areas in the state of Missouri. Citizens and Green Hills have recently received billing records from their tandem provider, AT&T Missouri, indicating that Halo Wireless (Halo) is sending traffic through the AT&T tandem in Kansas City, Missouri, over the LEC-to-LEC (or Feature Group C) network for ultimate termination to customers served by Citizens and Green Hills. Currently, Halo has no agreement with either Citizens and Green Hills to terminate this traffic, and an attempt by Green Hills to bill Halo for this traffic was refused on the grounds that this traffic was wireless and therefore not subject to access charges. (See your correspondence dated December 22, 2010, a copy of which is attached). While AT&T's billing records indicate that this traffic is wireless, a review of Citizens' and Green Hills' switch records for a sample of this traffic indicates that a significant portion of this traffic appears to be wireline interexchange and 800 originating traffic (despite your representation to the contrary).

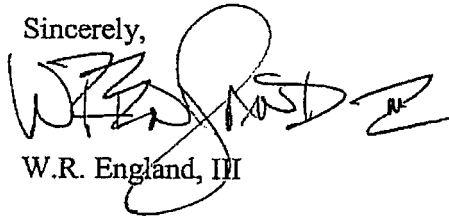
While Citizens and Green Hills acknowledge that wireless carriers are not subject to access charges for intraMTA wireless traffic, they are nevertheless subject to access charges for interMTA wireless traffic as well as interexchange wireline traffic. Moreover, the Missouri Public Service Commission (PSC) has promulgated rules which prohibit carriers, including wireless companies, from terminating InterLATA wireline traffic over the LEC-to-LEC Network. (See MoPSC Rules 4 CSR 240-29.010 et seq.) Accordingly, Citizens and Green Hills request that Halo immediately cease terminating any interLATA wireline traffic over the LEC-

to-LEC (or Feature Group C) network. If Halo Wireless is not willing or unable to do so, Citizens and Green Hills will request AT&T to block its traffic pursuant to MoPSC Rule 4 CSR 240-29.130.

Also, Citizens and Green Hills request that Halo Wireless begin negotiations, pursuant to Section 251 of the Telecommunications Act, to establish appropriate interconnection arrangements (including reciprocal compensation) for the intraMTA wireless traffic that Halo Wireless is terminating to Citizens and Green Hills. Citizens and Green Hills currently have a number of Traffic Termination or Interconnection Agreements with wireless carriers for the indirect interconnection and exchange of intraMTA wireless traffic and they would propose using one of those agreements as a starting point for purposes of these negotiations.

In the meantime, Citizens and Green Hills request that Halo: 1) acknowledge receipt of this letter and indicate its willingness to begin negotiations towards an interconnection agreement for the exchange of, and compensation for, intraMTA wireless traffic; and 2) cease sending any InterLATA wireline traffic over the FGC network for termination to Citizens and Green Hills. Please contact me if you have any questions regarding this matter. I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "W.R. England, III", with a stylized flourish at the end.

W.R. England, III

WRE/da
Enclosure



3437 W. 7th Street, Suite 127, Fort Worth, TX 76107

December 22, 2010

Green Hills Telephone Company
Attention: Gina Hart
7926 NE State Route M
P.O. Box 227
Breckenridge, MO 64625

Dear Ms. Hart:

This will acknowledge the invoice from you under your assigned invoice number 1110429F dated 11/30/2010.

Please be advised that Halo Wireless Communications is a Commercial Mobile Radio Service (CMRS) provider. The charges reflected in your statement appear to relate to Intrastate access charges. Please be advised that Halo has not ordered or received any Interstate or Intrastate access services from your company that could possibly be chargeable to Halo, so we have no obligation to pay them.

While there are no charges related to transport and termination of IntraMTA or InterMTA traffic contained in your statement, since Halo is a CMRS provider, it would have no obligation to pay such charges absent a contract in any event.

Sincerely,

A handwritten signature in black ink, appearing to read "John Marks".

John Marks
General Counsel
jmarks@halowireless.com

EXHIBIT 3
1/18/2011 LETTER FROM W.R. ENGLAND, III

LAW OFFICES
BRYDON, SWEARENGEN & ENGLAND
PROFESSIONAL CORPORATION

DAVID V.G. BRYDON, Retired
JAMES C. SWEARENGEN
WILLIAM R. ENGLAND, III
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GARY W. DUFFY
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ERIN L. WISEMAN
JOHN D. BORGMAYER

COUNSEL
GREGORY C. MITCHELL

January 18, 2011

VIA EMAIL & US MAIL

Mr. Leo Bub
AT&T Missouri
One Bell Center, Room 3520
St. Louis, MO 63101

Re: Blocking of Terminating Traffic to Halo Wireless, Inc.

Dear Leo:

I am writing on behalf of Citizens Telephone Company of Higginsville, Missouri (Citizens) and Green Hills Telephone Corporation and Green Hills Telecommunications Services (collectively Green Hills) to request the assistance of AT&T Missouri (AT&T) in blocking traffic from Halo Wireless, Inc. (Halo) OCN 429F, as it has failed to respond to a request to establish appropriate compensation arrangements for traffic terminated by it to Citizens and Green Hills.

As you are aware, terminating carriers, such as Citizens and Green Hills, may request the originating tandem carrier to block traffic over the LEC-to-LEC network where the originating carrier has failed to fully compensate the terminating carrier for terminating compensable traffic. See 4 CSR 240-29.130. Beginning in approximately November 2010, Citizens and Green Hills began receiving terminating traffic from Halo over the LEC-to-LEC network, as indicated in the "wireless" billing records they received from AT&T. When Green Hills attempted to bill Halo for this traffic, Halo responded (1) that the charges appeared to be access in nature, (2) that Halo had not ordered any access services, and therefore, (3) that Halo has no obligation to pay access charges and, in any event, (4) that Halo had no obligation to pay any compensation absent a contract. A copy of Halo's correspondence dated December 22, 2010, is attached hereto as Attachment A. Thereafter, our firm, on behalf of Citizens and Green Hills, sent a letter to Halo's counsel informing him, among other things, of Citizens' and Green Hills' desire to begin negotiations toward an interconnection agreement to include provisions for reciprocal compensation. A copy of my December 30, 2010, correspondence is attached hereto as Attachment B. As of today, however, no response has been received from Halo and uncompensated traffic continues to be terminated by Halo to Citizens and Green Hills.

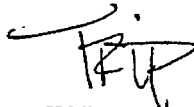
Therefore, Citizens and Green Hills request that AT&T take the necessary steps to block Halo's traffic from terminating over the LEC-to-LEC network to the following Citizens' and Green Hills' exchanges:

Company Name	Exchange(s)	NPA NXX	THOUSANDS BLOCK
Citizens Telephone Company	Higginsville	660-584	
	Corder	660-394	
	Mayview	660-237	
Green Hills Telephone Company	Avalon	660-636	
	Bogard	660-731	
	Breckenridge	660-644	
	Cowgill	660-255	
	Dawn	660-745	
	Knoxville	660-352	
	Lock Springs	660-772	
	Ludlow	660-738	
	Mooreville	660-755	
	Polo	660-354	
	Stet	660-484	
	Tina	660-622	
	Wheeling	660-659	
Green Hills Telecommunications Services	Norborne	660-593	

Citizens and Green Hills request that AT&T effectuate blocking of Halo traffic on or after March 1, 2011. Please let me know whether AT&T will be able to block traffic on the date requested. If you have any questions regarding this request or require additional information, please contact me at your earliest convenience.

Thank you in advance for your attention to and cooperation in this matter.

Sincerely,



W.R. England, III

WRE/da

cc: Mr. John Marks (via email)
Mr. John VanEschen (via email)

EXHIBIT 4
1/19/2011 LETTER FROM W.R. ENGLAND, III

LAW OFFICES
BRYDON, SWEARENGEN & ENGLAND

PROFESSIONAL CORPORATION

DAVID V.G. BRYDON, Retired
JAMES C. SWEARENGEN
WILLIAM R. ENGLAND, III
JOHNNY K. RICHARDSON
GARY W. DUFFY
PAUL A. BOUDREAU
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JAMIE J. COX
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ERIN L. WISEMAN
JOHN D. BORGMAYER

COUNSEL
GREGORY C. MITCHELL

January 19, 2011

VIA EMAIL AND CERTIFIED MAIL

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

JAN 24 2011

Re: **Blocking of Terminating Traffic from Halo Wireless
Effective March 1, 2011**

Dear Mr. Marks:

This notice to commence blocking the telecommunications traffic that Halo Wireless, Inc. (Halo) is terminating to Citizens Telephone Company of Higginsville, Inc. (Citizens) and Green Hills Telephone Company and Green Hills Telecommunications Services (collectively Green Hills) is made pursuant to the Missouri Public Service Commission (MoPSC) Enhanced Record Exchange (ERE) Rule, 4 CSR 240, Chapter 29. Under the ERE Rule, a terminating carrier may request that the originating tandem carrier (in this case, AT&T Missouri) block the traffic of an originating carrier and/or traffic aggregator that has failed to fully compensate the terminating carrier for terminating compensable traffic.

Reasons for Blocking: Halo Wireless has failed to acknowledge or respond to our December 30, 2011 correspondence requesting that Halo Wireless: (1) begin negotiations for an interconnection agreement to establish arrangements (including reciprocal compensation) for wireless traffic; and (2) immediately cease terminating any interLATA wireline traffic over the LEC-to-LEC network.

Date for Blocking to Begin. March 1, 2011.

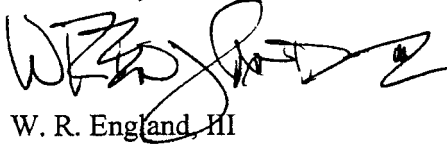
Actions Necessary to Prevent Blocking. In order for Halo Wireless to avoid having its traffic blocked on the LEC-to-LEC Network beginning on March 1, 2011, Halo must: (1) agree to enter into good faith negotiations to establish a reciprocal compensation agreement consistent with the Telecommunications Act for the exchange of and compensation for local traffic; and (2) comply with the requirements of the MoPSC ERE Rule, in particular, to immediately cease and desist from sending any interLATA wireline traffic to Citizens and Green Hills for termination. These actions must be taken on or before February 18, 2011.

Contact Person for Further Information. Citizens and Green Hills have designated W.R. England, III and Brian McCartney as contact persons for any negotiations or requests for further information regarding this matter.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND, P.C.

By:

A handwritten signature in black ink, appearing to read 'W. R. England, III', written over a horizontal line.

W. R. England, III

WRE/da

Enclosure

cc: Mr. John Van Eschen, Missouri Public Service Commission (via email)
Mr. Leo Bub, AT&T Missouri (via email)

EXHIBIT 5
1/24/2011 LETTER FROM HALO WIRELESS



3437 W. 7th Street, Suite 127, Fort Worth, TX 76107

January 24, 2011

W.R. England II
Brydon, Swearngen & England
312 East Capitol Ave
P.O. Box 456
Jefferson City, Missouri 65102-0456

RE: Citizens Telephone Company and Green Hills Telephone Company / Halo Wireless, Inc.

Dear Mr. England:

This letter responds to your letter of December 30, 2010 to Halo Wireless, Inc. ("Halo") and addressed to me concerning Citizens Telephone Company ("Citizens") and Green Hills Telephone Company ("Green Hills"). I am sorry for the 25-day delay. The correspondence came in the middle of the holidays and did not receive immediate attention as a result. I was heavily engaged in other matters and have simply fallen behind on some matters, including this one.

Your letter asserts many things, and I will not address all of them. If I fail to expressly respond to an assertion of fact or law then please do not conclude I am concurring with your position; indeed, the converse is more likely to be the case. I will, however, address the four major issues that are raised by your December 30 letter: (1) whether Halo's traffic is "interMTA"; (2) the assertion Halo's traffic is "wireline" and "interLATA"; (3) the applicability of Missouri PSC rules; and, (4) the "request that Halo Wireless begin negotiations, pursuant to Section 251 of the Telecommunications Act, to establish appropriate interconnection arrangements (including reciprocal compensation) for the intraMTA wireless traffic that Halo is terminating¹ to Citizens and Green Hills."

Halo's CMRS traffic is 100% intraMTA. You for some reason take issue with the statement in the letter I sent you on December 22, 2010 that all of our outbound traffic is intraMTA. I obviously do not know what your switch records may say, but I will reiterate that 100% of our traffic is intraMTA. If your clients are basing their contention based on a comparison of calling and called numbers that is not how CMRS calls are rated. Our network is designed so that every call is associated with a customer unit that communicates with a transmitter site that is in the same MTA as the called party. That is the test for whether a call is intraMTA. All of the Halo traffic your clients have transported and terminated, and all of the traffic your users may have addressed to a Halo number, is intraMTA.

Halo's traffic is CMRS and thus is not "wireline." Your clients are not RBOCs. "LATA" rules do not apply. I do not know the basis for any assertion that the call is "wireline" or even

¹ I am somewhat confused by the characterization of Halo "terminating" traffic to your clients. Halo is not "terminating" traffic "to" your clients. Halo is originating traffic that is delivered to your clients through AT&T's tandem, and then your clients are "transporting and terminating" the calls. When a user of one of your clients dials a Halo number then your clients are originating traffic that is transited by AT&T and handed off to Halo for transport and termination. If your clients' user is required to dial 1+ to make a call addressed to Halo's user then the call may be handled by the user's IXC, but the call will still be intraMTA and thus subject to reciprocal compensation. This letter will use the correct terminology.