

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

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

Halo Wireless, Inc.,	§	Case No. TC-2012-0331
	§	
Complainant,	§	
	§	
v.	§	
	§	
Craw-Kan Telephone Cooperative, Inc., et al.,	§	
	§	
Respondents.	§	

**HALO WIRELESS, INC.’S REPLY TO JOINT MOTION TO CONSOLIDATE**

NOW COMES Halo Wireless, Inc. (“Halo”) and replies to the Joint Motion to Consolidate (“Motion”) filed in both of the above cases by the Complainants in Case No. IC-2012-0035 (collectively, the “Movants”) as follows:

1. Movants’ request to consolidate Case No. IC-2012-0035 with Case No. TC-2012-0331 so they can be heard together should be denied because the Movants themselves requested that this Commission abate Case No. IC-2012-0035 “pending conclusion” of blocking requests and proceedings under the ERE rules. Movants should not now be allowed to circumvent the effect of their own election of remedies. Further,

consolidation is inappropriate because, as a matter of law, Case No. IC-2012-0035 seeks relief which this Commission cannot grant and thus, should not be allowed to proceed on its own or together with this case. TC-2012-0331 is moving on an expedited schedule toward a hearing on June 26, 2012. Adding entirely new issues to that case is prejudicial and unworkable.

2. In Case No. IC-2012-0035 (the “ICA Rejection Case”), Movants sought rejection of the ICA between Halo and Southwestern Bell Telephone Company, d/b/a AT&T Missouri. Apparently dissatisfied with the pace of that proceeding, Movants requested that the case be abated so they could send blocking notices under the ERE rules, which they alleged would allow immediate blocking of Halo traffic before any commission or court of competent jurisdiction could determine the propriety of the requests. However, Halo filed a complaint initiating Case No. TC-2012-0331 (the “Blocking Case”) to respond to the blocking notices, protect its rights, and seek a determination on the propriety of the proposed blocking.

3. It appears that Movants miscalculated. They have not been able to unilaterally block traffic before the merits of any dispute between the parties is decided. That does not permit them to change position. If abatement of the ICA Rejection Case was proper to allow the Blocking Case to proceed to a conclusion under the ERE rules, as the Commission apparently found in its Order granting abatement of the ICA Rejection Case, then Movants’ cannot undo that Order simply because they don’t now like the outcome.

4. In any event, the ICA Rejection Case should not be consolidated with the Blocking Case because the ICA Rejection Case has no valid basis in law and cannot be

considered. As Halo has maintained in its prior and continuing objections to the ICA Rejection Case, the interconnection agreement at issue has already been approved by the Commission and is now in effect. Section 252(e)(2)(A) of the Telecommunications Act (the “Act”), which the Movants (as the Complainants in the ICA Case) cite as the legal basis for their Application, relates only to the 90-day review process of section 252(e)(1), which has long since passed.<sup>1</sup> Section 252(e)(2)(A) is not a vehicle for appealing the approval of an ICA, and it does not authorize the Commission to rescind the approval of an ICA it has already considered. Section 252(e)(6) does authorize aggrieved parties to challenge the approval of an ICA, but section 252(e)(6) vests exclusive jurisdiction with the federal courts, not state commissions. The Movants’ one and only opportunity to seek the rejection of the ICA at the Commission was during the section 252(e)(1) review period, before the ICA was approved, but they failed to do so.

5. In other words, the Act allowed the Movants an opportunity to challenge the ICA during the approval process. The Movants failed to do so. This Commission duly reviewed the ICA, and in approving the ICA, ruled that it is neither discriminatory nor inconsistent with the public interest, convenience, and necessity. Section 252(e)(2)(A) does not allow the Movants to resurrect the review process and request that an existing ICA be rejected. The Commission has not been granted the jurisdiction to hear an appeal of its order or the authority to rescind its approval. Instead, section 252(e)(6) establishes the procedure for challenging the lawfulness of an existing ICA. Section 252(e)(6), however, confers exclusive jurisdiction with the federal courts, not the state commissions. Because the ICA Rejection Case is improper on its face, it is also

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<sup>1</sup> 47 U.S.C. § 252(e)(1)-(2).

improper to consider the relief requested in that case in the Blocking Case.

6. Very obviously, the ICA Rejection Case raises issues which are not present in the Blocking Case. The Commission has granted expedited treatment of the Blocking Case and the parties worked with the Commission to establish an accelerated procedural schedule that allows for a scheduled hearing on the merits of the Blocking Case on June 26. It would be prejudicial and unworkable to meld the ICA Rejection Case' unique issues into that expedited schedule.

WHEREFORE, premises considered, Halo respectfully requests that the Commission deny Movants' Motion to consolidate the Blocking Case and ICA Rejection Case and grant Halo such other relief to which it may be entitled.

Respectfully submitted this 11<sup>th</sup> day of May, 2012.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this document has been filed with the Missouri Public Service Commission electronic filing system and has been e-mailed to the following parties this 11<sup>th</sup> day of May, 2012:

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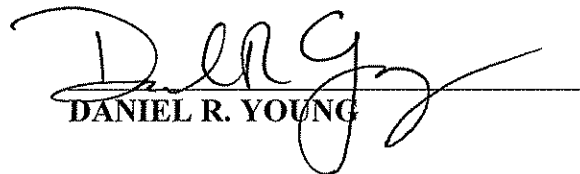
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