

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

The Staff of the Missouri Public Service Commission	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	
	)	<b><u>File No: TC-2013-</u></b>
Halo Wireless, Inc.,	)	
Transcom Enhanced Services, Inc.	)	
	)	
Respondents.	)	

**STAFF COMPLAINT**

**COMES NOW** the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Complaint*, states as follows:

**INTRODUCTION**

1. This matter arises from issues raised in another case, in which Halo Wireless, Inc. (“Halo”) brought a complaint against numerous Missouri Telecommunications carriers to stop their efforts to block Halo’s traffic pursuant to Missouri’s Enhanced Records Exchange rule. In the course of that other case, TC-2012-0331, the Commission found certain facts that give rise to this complaint, in which the Staff “asserts” the facts sufficient to establish that Halo and Transcom Enhanced Services, Inc. (“Transcom”) engaged in activities that meet the definition of providing “telecommunications service” in Missouri, for which certification is required. The Staff asserts that the Commission’s records reflect that neither Halo nor Transcom (collectively, “the Respondents”) are or have been, at any point relevant to this matter, certificated to provide telecommunications service in Missouri. Moreover, the Staff

asserts that the Respondents deliberately engaged in an “access avoidance scheme” intended to defraud Missouri telecommunications companies of millions of dollars.

## **THE PARTIES**

### **Complainant**

2. Complainant is the Staff of the Missouri Public Service Commission (the Staff), acting through the Chief Staff Counsel, as authorized by 4 CSR 240-2.070(1) and 4 CSR 30.570 (5)(D) and §§ 386.240 and 386.390 RSMo.

### **Respondents**

3. Halo Wireless, Inc., is a Texas corporation with its principal place of business at 2351 West Northwest Highway, Suite 1204, Dallas Texas 75220. Halo holds a Radio Station Authorization granted by the FCC on January 27, 2009 providing a nationwide, non-exclusive license qualifying Halo “to register individual fixed and base stations for wireless operations in the 3650-3700 MHz band.” Halo was originally granted a certificate of authority to transact business as a foreign corporation in the State of Missouri by the Missouri Secretary of State on January 29, 2010. Halo’s certificate of authority was administratively dissolved by the Secretary of State on August 25, 2010, for failure to file an annual report. Halo filed an Application for Reinstatement with the Secretary of State with the required Certificate of Tax Clearance from the Missouri Department of Revenue, Halo’s Annual Registration reports for 2010, 2011, and 2012, and the required rescission fee. The Secretary of State issued a Certificate rescinding the administrative dissolution on June 1, 2012.<sup>1</sup>

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<sup>1</sup> *Report and Order*; Halo Wireless, Inc. v. Craw-Kan Telephone Company; Issued August 1, 2012, Effective August 13, 2012, pp18 and 19.

4. Transcom Enhanced Services, Inc. is a Texas corporation, with headquarters in Fort Worth, Texas. Transcom and Halo have “overlapping” ownership, with Scott Birdwell, the CEO, chairman and largest single individual owner of Transcom owning 50% of Halo. Russell Wiseman, the president of Halo, reports to a management committee of investor owners consisting of Scott Birdwell, Jeff Miller and Carolyn Malone. Mr. Miller and Ms. Malone serve as CFO and Secretary/Treasurer, respectively, of both Transcom and Halo. Transcom is Halo’s only paying customer and the source of 100% of Halo’s revenues nationwide.<sup>2</sup> Transcom does not appear to have ever been registered to do business in Missouri with the Secretary of State.

On January 10, 2003, Transcom Communications, Inc. applied for certification as an interexchange telecommunications company in Missouri. It proposed to provide interexchange telecommunications services within Missouri to business and residential customers throughout Missouri. It was registered with the Missouri Secretary of State on January 3, 2003. As part of the application, Transcom Communications stated, “Applicant, pursuant to Section 386.570, Cum. Supp. 1992, will comply with all applicable Commission rules except those which are specifically waived by the Commission pursuant to a request filed by the Applicant.”<sup>3</sup> The officers listed in the application included Mr. Scott Birdwell, CEO and Director, and his brother Mr. Britt Birdwell, vice-president, Director and Director of International Operations. As Mr. Scott Birdwell was the CEO of both Transcom Enhanced Services, Inc and

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<sup>2</sup> *Id.* At 19.

<sup>3</sup> See EFIS file Number XA\_2003-0234, item 1, paragraph 8.

Transcom Communications, Inc., it is reasonable to assume that he knew or should have known about the Commission's certification processes, the requirement to pay access charges and other intercarrier compensation, as well as the Enhanced Records Exchange Rule, which was in effect during the entirety of Transcom Communications' certification, which ended on April 9, 2012 in case XD-2009-0333. Its registration with the Secretary of State was dissolved on February 19, 2004.

### **JURISDICTION**

5. This matter concerns the Commission exerting jurisdiction over an entity that provided telecommunications service in Missouri, but was not certificated by the Commission to do so, so that the Commission may find such entity subject to penalties for failing to comply with Missouri law and the Commission's rules. Further, The Commission has the authority to determine that an entity failed to pay lawfully owed access or other intercarrier compensation, and that it did so through a scheme devised for the purpose of defrauding telecommunications companies in Missouri by altering records to make it appear that less or no money was due to those telecommunications companies.

6. Section 386.250 provides:

The jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter:

\* \* \*

(2) To all telecommunications facilities, telecommunications services and to all telecommunications companies so far as such telecommunications facilities are operated or utilized by a telecommunications company to offer or provide telecommunications service between one point and another within this state or so far as such telecommunications services are offered or provided by a telecommunications company between one point and another within this state, except that nothing contained in this section shall be construed as conferring jurisdiction upon the commission over the rates charged by a telephone cooperative for providing telecommunications service within an exchange or within a local calling

scope as determined by the commission, except for exchange access service;

\* \* \*

(6) To the adoption of rules as are supported by evidence as to reasonableness and which prescribe the conditions of rendering public utility service, disconnecting or refusing to reconnect public utility service and billing for public utility service. All such proposed rules shall be filed with the secretary of state and published in the Missouri Register as provided in chapter 536, and a hearing shall be held at which affected parties may present evidence as to the reasonableness of any proposed rule; and

(7) To such other and further extent, and to all such other and additional matters and things, and in such further respects as may herein appear, either expressly or impliedly.

7. The definition of telecommunications service set forth in §386.020((54)

provides that:

"Telecommunications service", the transmission of information by wire, radio, optical cable, electronic impulses, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. Telecommunications service does not include:

(a) The rent, sale, lease, or exchange for other value received of customer premises equipment except for customer premises equipment owned by a telephone company certificated or otherwise authorized to provide telephone service prior to September 28, 1987, and provided under tariff or in inventory on January 1, 1983, which must be detariffed no later than December 31, 1987, and thereafter the provision of which shall not be a telecommunications service, and except for customer premises equipment owned or provided by a telecommunications company and used for answering 911 or emergency calls;

(b) Answering services and paging services;

(c) The offering of radio communication services and facilities when such services and facilities are provided under a license granted by the Federal Communications Commission under the commercial mobile radio services rules and regulations;

(d) Services provided by a hospital, hotel, motel, or other similar business whose principal service is the provision of temporary lodging through the owning or operating of message switching or billing equipment solely for the purpose of providing at a charge telecommunications services to its temporary patients or guests;

(e) Services provided by a private telecommunications system;

(f) Cable television service;

- (g) The installation and maintenance of inside wire within a customer's premises;
- (h) Electronic publishing services;
- (i) Services provided pursuant to a broadcast radio or television license issued by the Federal Communications Commission; or
- (j) Interconnected voice over Internet protocol service;

8. The definition of telecommunications company set forth in §386.020((52)

provides that:

(52) "Telecommunications company" includes telephone corporations as that term is used in the statutes of this state and every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling or managing any facilities used to provide telecommunications service for hire, sale or resale within this state;

9. Section 392.410 RSMo requires that a telecommunications company must have a certificate from the Commission before it may lawfully transact the business of offering or providing telecommunications service in Missouri:

- 1. [...] No telecommunications company not exempt from this subsection shall transact any business in this state until it shall have obtained a certificate of service authority from the commission pursuant to the provisions of this chapter, [...].
- 2. No telecommunications company offering or providing, or seeking to offer or provide, any interexchange telecommunications service shall do so until it has applied for and received a certificate of interexchange service authority pursuant to the provisions of subsection 1 of this section. No telecommunications company offering or providing, or seeking to offer or provide, any local exchange telecommunications service shall do so until it has applied for and received a certificate of local exchange service authority pursuant to the provisions of section 392.420.

10. Telecommunications companies are required by law to forward the transmission to a transiting or terminating carrier with the appropriate compensation (tariffed access rate or other contractually required intercarrier compensation rate):

392.140. Where the person sending the dispatch desires to have it forwarded over the lines of other telephone ... companies, whose termini are respectively within the limits of the usual delivery of such companies, to the place of final destination, and shall tender to the first company the amount of the usual charges for the dispatch to the place of final delivery, it shall be the duty of the company to receive the same, and, without delaying the dispatch, to pay to the succeeding line the necessary charges for the remaining distance; and it shall be the duty of the succeeding line or lines to accept the same...

11. The Commission has the authority to entertain a Complaint brought by the

Staff pursuant to §386.330 RSMo, which provides:

1. The commission may, of its own motion, investigate or make inquiry, in a manner to be determined by it, as to any act or thing done or omitted to be done by any telecommunications company subject to its supervision, and the commission shall make such inquiry in regard to any act or thing done or omitted to be done by any such public utility, person or corporation in violation of any provision of law or in violation of any order or decision of the commission.
2. Complaints may be made to the commission by the public counsel or any person or corporation aggrieved, by petition or complaint, in writing, setting forth any thing or act done or omitted to be done by any telecommunications company in violation, or claimed to be in violation, of any provision of law or of the terms and conditions of its franchise or charter or of any order or decision of the commission. [...] If, however, the charges contained in such petition be not thus satisfied, and it shall appear to the commission that there are reasonable grounds therefor, it shall investigate such charges in such manner and by such means as it shall deem proper, and take such action within its powers as the facts justify.
3. Whenever the commission shall investigate any matter complained of by the public counsel or by any person or corporation aggrieved by any act or omission of a telecommunications company under this section, it shall be its duty, within sixty days after final submission, to make and file an order either dismissing the petition or complaint or directing the public utility, person or corporation complained of to satisfy the cause of complaint in whole or to the extent which the commission may specify and require.
4. Notwithstanding the power of the commission over telecommunications companies, the commission shall not have jurisdiction over complaints concerning yellow page listings and advertisements [or] the rates charged by a telephone cooperative for providing telecommunications service

within an exchange or within a local calling scope as determined by the commission, except the rates for providing exchange access service.

12. In addition, §386.390 provides additional jurisdiction for the Commission to hear the Staff's Complaint:

1. Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission; [except rate cases, which have a different standard].
2. All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of causes of action or grievances or misjoinder or nonjoinder of parties; and in any review by the courts of orders or decisions of the commission the same rule shall apply with regard to the joinder of causes and parties as herein provided.
3. The commission shall not be required to dismiss any complaint because of the absence of direct damage to the complainant. [...]

13. The Commission has jurisdiction to determine whether a person or entity that violates or fails to comply with a lawful Commission requirement is subject to penalties under §386.570:

1. Any corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission in a case in which a penalty has not herein been provided for such corporation, person or public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.
2. Every violation of the provisions of this or any other law or of any order, decision, decree, rule, direction, demand or requirement of the commission, or any part or portion thereof, by any corporation or person or public utility is a separate and distinct offense, and in case of a



continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

3. In construing and enforcing the provisions of this chapter relating to penalties, the act, omission or failure of any officer, agent or employee of any corporation, person or public utility, acting within the scope of his official duties of employment, shall in every case be and be deemed to be the act, omission or failure of such corporation, person or public utility.

#### **FACTS COMMON TO BOTH COUNTS**

14. Halo had an interconnection agreement with AT&T Missouri that allowed it to deliver wireless-originated traffic to AT&T, to be either terminated by AT&T or to be transited through AT&T to another telecommunications company for termination (final delivery to an end-user customer).<sup>4</sup>

15. The only entity for whom Halo carried traffic was Transcom.<sup>5</sup>

16. At some point in the transmission path, Halo transmitted the traffic wirelessly for a short distance and inserted background noise.<sup>6</sup> Halo asserted that the wireless component made the traffic “wireless-originated” and that the insertion of noise “enhanced” the call in such a way as to create enhanced services traffic rather than telecommunications traffic.

17. Halo altered a portion of its records to make it appear that the traffic it delivered to AT&T was local wireless traffic or enhanced services traffic rather than telecommunications traffic.<sup>7</sup>

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<sup>4</sup> *Id.*, pp.21-22, paragraphs 2 and 3; Finding of Fact B.2.

<sup>5</sup> *Id.*, p.19, paragraph 2; Finding of Fact A.2.

<sup>6</sup> *Id.*, pp.24-25; Finding of Fact C.1.

<sup>7</sup> *Id.*, p.31; Finding of Fact F.

18. When Halo paid intercarrier compensation for traffic, it paid only the rate for local wireless traffic, rather than any tariffed access rate.<sup>8</sup>

19. Neither Halo nor Transcom has fully compensated the telecommunications companies to which they delivered traffic, for transmission or termination.

**COUNT I – FAILURE TO OBTAIN CERTIFICATES OF AUTHORITY**

20. The Staff hereby realleges the allegations set out in Paragraphs 1 through 19, above.

21. As both Transcom and Halo acted as telecommunications companies in Missouri by transmitting information by wire, radio, optical cable, electronic impulses, or other similar means, they were required to be certificated by the Commission under §392.410 RSMo.

22. As the Principals of Halo and Transcom were aware of the requirement to obtain a certificate of authority as discussed above, they acted in knowing disregard of Missouri law.

23. Having violated §392.410 RSMo, Halo and Transcom are subject to such penalties as the Commission may impose. Having done so knowingly, the Commission should find that they are subject to the maximum amount of penalties allowed by law.

**COUNT II – FAILURE TO PAY LAWFULLY REQUIRED ACCESS CHARGES**

24. The Staff hereby realleges the allegations set out in Paragraphs 1 through 23, above.

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<sup>8</sup> *Id.*, pp. 28-31; Findings of Fact D. and E.

25. Transcom and Halo acted together to transmit telecommunications traffic without paying the requisite, tariffed access charges, in violation of tariffs, Halo's interconnection agreement with AT&T, in violation §392.140 RSMo.

26. As the Principals of Halo and Transcom were aware of the requirement to pay such charges, they acted in concert to deceive the companies to which Halo and Transcom delivered traffic by altering the call records and falsely claiming that the calls were local wireless calls to circumvent Missouri law.

27. Having violated §392.140 RSMo, Halo and Transcom are subject to such penalties as the Commission may impose. Having done so knowingly, the Commission should find that they are subject to the maximum amount of penalties allowed by law.

**WHEREFORE**, on account of all the foregoing, the Staff prays that the Commission will find that Transcom, Halo and the Principals thereof have knowingly violated Missouri law by intentionally failing to become certificated telecommunications companies and by acting in concert to deceive the recipient telecommunications companies that tariffed access charges did not apply, when those charges were due and owing to the recipient carriers. The Staff prays that the Commission:

- 1) Find that Halo, Transcom and the principals thereof are subject to the maximum penalties permitted by law; and
- 2) Refer this matter to both the Missouri Attorney General and the United States Attorney for prosecution of Halo, Transcom and the principals thereof for theft by deceit and for acting in concert to criminally defraud the recipient carriers of the millions

of dollars of access charges that Halo and Transcom knew that they owed, did not pay, and attempted to conceal by the alteration of call records, in violation of state<sup>9</sup> and federal law.<sup>10</sup>

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by First Class United States Mail, postage prepaid, on this 16<sup>th</sup> day of October, 2012, to Halo Wireless, Inc., principal place of business at 2351 West Northwest Highway, Suite 1204, Dallas Texas 75220, C T Corporation System, 120 South Central Avenue, Clayton, Missouri 63105, Transcom, 307 W. 7<sup>th</sup> Street, Suite 1600, Fort Worth, Texas 76102, CT Corporation System, 350 North St. Paul Street, Suite 2900, Dallas, Texas 75201, and by electronic mail to Office of the Public Counsel at [opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov), Daniel R. Young at [dyoung@schleehuber.com](mailto:dyoung@schleehuber.com), Louis A. Huber at [lhuber@schleehuber.com](mailto:lhuber@schleehuber.com), Jennifer Larson at [jl Larson@mcslaw.com](mailto:jl Larson@mcslaw.com), Troy P. Majoue at [tmajoue@mcslaw.com](mailto:tmajoue@mcslaw.com), and William S. McCullough at [wsmc@smccollough.com](mailto:wsmc@smccollough.com), and Steven H. Thomas at [sthenas@mcslaw.com](mailto:sthenas@mcslaw.com),



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<sup>9</sup> Section 570.0390 RSMo provides that the crime of stealing is committed when any person appropriates the property or services of another person by means of deceit.

<sup>10</sup> The activities described herein appear to fall within the purview of 18 USC§1343 (Wire Fraud) and 18 USC Chapter 96 (RICO).