

**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, Miller Telephone	)	Case No. TC-2012-0331
Company, Ozark Telephone Company, Rock	)	
Port Telephone Company, Seneca Telephone	)	
Company, Alma Communications Company	)	
d/b/a Alma Telephone Company, Choctaw	)	
Telephone Company, Mokane Dial, Inc., Peace	)	
Valley Telephone Company, Inc., and	)	
Southwestern Bell Telephone Company, d/b/a	)	
AT&T Missouri,	)	
	)	
Respondents.	)	

**AT&T MISSOURI'S POSITION STATEMENTS**

AT&T Missouri<sup>1</sup> respectfully submits the following statements of positions on the issues identified in Staff's *Issues List*, *Witness List*, *Order of Witnesses*, *Order of Cross-Examination* and *Order of Opening Statements* filed June 21, 2012.

**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?**

**AT&T Missouri Position:** Yes. Halo presented itself to AT&T Missouri as a wireless carrier and requested interconnection with AT&T Missouri through a wireless interconnection agreement. In doing so, Halo sought and received interconnection as a local carrier (*e.g.*, a

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<sup>1</sup> Southwestern Bell Telephone Company, d/b/a AT&T Missouri will be referred to in this pleading as "AT&T Missouri."

CLEC) would interconnect. The collection of these connections between local network providers is known as the LEC-to-LEC network. (Neinast Rebuttal, p. 27)

The Commission, in its *Order of Rulemaking* adopting the ERE Rule, explained:

[T]he Enhanced Record Exchange Rules do not regulate wireless carriers . . . Rather, what the rules would regulate is the use of the LEC-to-LEC network . . . We find that Section 386.320.1, in particular places an obligation upon the commission to assure that all calls, including calls generated by nonregulated entities are adequately recorded, billed and paid for. (Missouri Register, Vol. 30, No. 12, *Order of Rulemaking*, June 15, 2005, p. 1377)

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

**AT&T Missouri Position:** Yes. The traffic studies AT&T Missouri performed on Halo's traffic demonstrate that Halo placed interLATA wireline telecommunications traffic on the LEC-to-LEC network. (*See, e.g.*, Direct Testimony of Tommie Loges of Alma Telephone, p. 9, Attachment C-1)

**(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?**

**AT&T Missouri Position:** No. Because Halo claims that all of the traffic it sends to AT&T Missouri is wireless and local (*i.e.*, intraMTA), Halo has only been paying AT&T Missouri the reciprocal compensation rate (\$.0007 per minute) on all of the Halo-delivered traffic that AT&T terminates. But since most of the Halo-delivered traffic is actually interexchange landline traffic, Halo should have been paying AT&T Missouri's tariffed switched access charges (about \$.03 per minute for intrastate traffic). (McPhee Direct, pp.14-16, Schedule JSM 4, p. 73 of 79; P.S.C. Mo.–No. 36 Access Services Tariff, Sections 3.8 and 6.11)

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

**AT&T Missouri Position:** Until December 29, 2011, Halo had improperly inserted an unauthorized "Charge Number" ("CN") it assigned to Transcom into the call data it sent AT&T Missouri in the SS7 message for each call. This had the effect of disguising the true nature of Halo's traffic from AT&T's billing systems. While the ICA employs factors to identify and bill interMTA traffic, billing system data is used to verify factor accuracy for periodic adjustment. By inserting the Transcom CN into the call detail, Halo caused the billing records to give the inaccurate impression that all of Halo's traffic was intraMTA. (Neinast Direct, pp. 28-30; Neinast Rebuttal, pp. 24-26) AT&T Missouri acknowledges that Halo has ceased this improper practice.

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

**AT&T Missouri Position:** Yes. 4 CSR 240-29.120(2) of the ERE Rule provides:

A transiting carrier may block any or all Local Exchange Carrier-to-Local Exchange Carrier (LEC-to-LEC) traffic it receives from an originating carrier and/or traffic aggregator who fails to fully compensate the transiting carrier or who fails to deliver originating caller identification to the transiting carrier. . . .

Section 4 CSR 240-29.101(1) of the ERE Rule provides:

. . . interLATA wireline telecommunications traffic shall not be transmitted over the LEC-to-LEC network but must originate and terminate with the use of interexchange carrier point of presence. . . .

In an explanatory note to 4 CSR 240-29.120(2) the rules, the Commission explained the purpose: "this rule establishes parameters and procedures enabling transiting carriers to block traffic of originating carriers and/or traffic aggregators who fail to comply with rules pertaining to LEC-to-LEC traffic."

Discontinuance of service to Halo under the ERE Rules is appropriate because Halo has materially breached the ICA by using the LEC-to-LEC network to send landline traffic to (including interLATA wireline traffic) AT&T Missouri for termination, and by failing to pay the appropriate access charges associated with that traffic, despite AT&T Missouri's demands that Halo do so. Disconnection for non-payment is the traditional remedy telephone companies generally have for addressing non-payment by any customer whether by a single line end user or by a carrier like Halo. (McPhee Direct p. 24, Schedule JSM-9, McPhee Rebuttal p. 18)

Although Halo has ceased the insertion of inaccurate Charge Numbers into the call data in the SS7 messaging for its traffic, Halo's provision of that inaccurate information constituted a violation of the ERE Rules during the period Halo was providing that information. (McPhee Direct p. 25)

**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?**

**AT&T Missouri Position:** Yes. Halo has breached and is breaching the ICA by sending AT&T Missouri significant amounts of traffic that is originated when a retail end user places a call using a landline telephone. The most recent study of Halo’s traffic (2/26/12 – 3/24/12) shows that 66% of Halos’s traffic is landline originated. (Neinast Direct, Sch. MN-4).

Halo has acknowledged that it delivers traffic that starts out on landline equipment (Wiseman Direct, p. 61), but it claims that these calls somehow “originate” again as wireless (and local) calls when they pass through its affiliate, Transcom, before reaching Halo. This claim is based on the proposition that Transcom is an Enhanced Service Provider (“ESP”) and should be deemed to originate (or re-originate) calls that pass through it.

The FCC and the Tennessee Regulatory Authority (the only state commission to have considered the issues) have both specifically rejected Halo's position. *Connect America Fund*, FCC 11-161, 2011 WL 5844975 (rel. Nov. 18, 2011) at paras. 1003-1006 (quoted at McPhee Direct, pp. 17-18); and *In re: BellSouth Telecommunications LLC d/b/a AT&T Tennessee v. Halo Wireless, Inc.*, Docket No. 11-00119, Order, (issued January 26, 2012) at pp. 15-16 and 20-22 (Neinast Direct, Sch. MN-1) (The Pennsylvania PUC has also determined that Transcom is not an ESP. *Palmerton Tel. Co. v. Global NAPs South*, Docket No. C-2009-2093336, 2010 Pa. PUC LEXIS 245 at \*59 (issued March 16, 2010).)

The evidence in this case demonstrates that Transcom's radio equipment does not originate communications, but merely transports its traffic about 150 feet from one point to another. (Drause Rebuttal, pp. 7-9) Halo has also failed to substantiate its claim that Transcom is an ESP, as the claimed "enhancements" are nothing more than conventional call conditioning and do not, from the customer's perspective, alter the fundamental character of the communication. (Drause Rebuttal, pp. 10-14)

**(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?**

**AT&T Missouri Position:** No. Because Halo claims that all of the traffic it sends to AT&T Missouri is wireless and local (intraMTA), Halo has only been paying AT&T Missouri the reciprocal compensation rate (\$.01 per minute) on all of the Halo-delivered traffic that AT&T terminates. But since most of the Halo-delivered traffic is actually interexchange landline traffic, Halo should have been paying AT&T Missouri's tariffed access charges (about \$.03 per minute). (McPhee Direct, pp.14-16; P.S.C. Mo. – No. 36 Access Services Tariff, Sections 3.8 and 6.11)

**(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?**

**AT&T Missouri Position:** Yes. The ICA required Halo to send AT&T Missouri wireless-originated traffic only. This requirement goes to the heart of the parties' agreement, as the ICA was specifically amended to include and make the requirement clear when Halo entered into the ICA. No provision allowed Halo to send landline traffic. Halo has been breaching the ICA by sending non-local wireline traffic to AT&T Missouri but then claiming the traffic was actually wireless and local, in order to pay a lower intercarrier compensation rate. (McPhee Direct, pp. 14-15, Sch. JSM-5, para. 1)

Under Missouri law, a party to a contract is excused from performing its obligations under the contract if the other party materially breaches the contract. *Barnett v. Davis*, 335 S.W. 3d 110, 112 (Mo. App. W.D. 2011) (noting Missouri's "first to breach" rule, stated in *R.J.S. Security v. Command Security Services, Inc.*, 101 S.W. 3d 1, 18 (Mo. App. W.D. 2003), which states that "a party to a contract cannot claim its benefit where he is the first to violate it." A breach by one party will excuse the other party's performance, however, only if the breach is material. *Id.*)

WHEREFORE, AT&T Missouri respectfully requests the Commission to issue an order finding that:

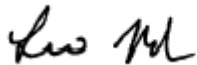
(a) Halo has materially breached the ICA by sending landline-originated traffic to AT&T Missouri;

(b) As a result of that breach and Halo's violation of the Missouri ERE Rule, AT&T Missouri is excused from further performance of the ICA and may stop accepting traffic from Halo; and

(c) Without quantifying any specific amount due, Halo is liable to AT&T Missouri for access charges on the non-local landline traffic Halo has sent to AT&T Missouri.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY,  
D/B/A AT&T MISSOURI

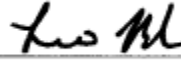
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**CERTIFICATE OF SERVICE**

Copies of this document were served on the following parties by e-mail on June 22, 2012.



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