

BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION

Complaint of TDS TELECOM on )  
behalf of its subsidiaries )  
BLUE RIDGE TELEPHONE COMPANY; ) Docket No. 34219  
CAMDEN TELEPHONE & TELEGRAPH, )  
INC.; NELSON BALL GROUND )  
TELEPHONE COMPANY; and QUINCY )  
TELEPHONE COMPANY against )  
HALO WIRELESS, INC.; TRANSCOM )  
ENHANCED SERVICES, INC. and )  
OTHER AFFILIATES for failure to )  
pay terminating intrastate )  
access charges for traffic and )  
for expedited declaratory )  
relief and authority to cease )  
termination of traffic )

Hearing Room  
244 Washington Street  
Atlanta, Georgia

Wednesday, April 25, 2012

The above-entitled matter came on for hearing  
pursuant to notice at 10:01 a.m.

BEFORE:

TIM G. ECHOLS, Chairman  
CHUCK EATON, Vice Chairman  
H. DOUG EVERETT, Commissioner

Brandenburg & Hasty  
435 Cheek Road  
Monroe, Georgia 30655

1 CHAIRMAN ECHOLS: Thank you.

2 All right, let's get a couple of housekeeping  
3 matters behind us.

4 The parties have consented to making an opening  
5 statement. I'm going to allow each party -- you think five  
6 minutes would be enough for an opening statement?

7 (No response.)

8 CHAIRMAN ECHOLS: You all okay with that?

9 (No response.)

10 CHAIRMAN ECHOLS: If there's no objection, we're  
11 going to proceed how we've traditionally done it here in  
12 telecom cases, we're going to have each witness present  
13 their direct and their rebuttal testimony simultaneously, if  
14 there's no objection.

15 MS. DAVIS: No.

16 CHAIRMAN ECHOLS: So please have your witnesses  
17 prepared to present their direct and rebuttal testimony when  
18 they take the stand and be prepared to cross each witness on  
19 their direct and rebuttal testimony. Great.

20 Are there any public witnesses today?

21 (No response.)

22 CHAIRMAN ECHOLS: Okay. There are also a number  
23 of motions to strike testimony that were filed by Halo and  
24 Transcom and we're going to address those motions at this  
25 time.

1           Mr. Mew.

2           MR. MEW: Mr. Chairman, with the panel's  
3 indulgence, Troy Majoue will address those.

4           CHAIRMAN ECHOLS: Mr. Majoue.

5           MR. MAJOUE: We'll be brief on the motions, and as  
6 you can see, the motions themselves are fairly brief.

7           As a preliminary matter, we just note that in  
8 every one of the pieces of testimony that's been offered,  
9 there are multiple areas that constitute legal conclusions  
10 which these witnesses are not entitled to make. And that in  
11 addition to that, they purport to make factual assertions  
12 about the way Halo and Transcom work, including internal  
13 workings and things of that nature, which they have no  
14 personal knowledge. It's something that in other  
15 proceedings where they've offered comparable testimony,  
16 they've acknowledged they don't actually have personal  
17 knowledge, it's based on third hand sources; in other words,  
18 hearsay type evidence.

19           And so as a preliminary matter, we ask that to the  
20 extent any of these items constitute testimony for which  
21 they have no personal knowledge or which constitutes legal  
22 conclusions which they're not qualified to make, that that  
23 be stricken or at the very least that the Commission give it  
24 the weight it's accorded, which is they're not legal experts  
25 and they're not entitled to give testimony that approaches

1 those issues.

2 And similarly, to the extent that there are some  
3 expert witnesses, we assert that those expert witnesses have  
4 not followed all of the standards for maintaining any  
5 appearance of reliability in their expert opinion. In  
6 particular, they have not asserted any methodology which is  
7 reliable or even really explained why their assumptions are  
8 valid or what methodology provides any basis for their  
9 opinion. And based on that, the expert testimony, we  
10 submit, should also be stricken on those grounds.

11 Thank you.

12 CHAIRMAN ECHOLS: Thank you.

13 AT&T.

14 MS. DAVIS: Mr. Covey will argue our motion.

15 CHAIRMAN ECHOLS: Mr. Covey.

16 MR. COVEY: Good morning.

17 Halo made similar motions to strike and similar  
18 arguments in prior proceedings, and Tennessee, Wisconsin,  
19 South Carolina, all three of those commissions denied those  
20 motions with good reason for doing so.

21 The argument on legal conclusions, first of all,  
22 is very disingenuous if you read Halo's testimony which is,  
23 in effect, a legal brief. But in any event, the AT&T  
24 testimony talks about legal principles every once in awhile,  
25 as is common in Commission proceedings to give a context for

1 what they're talking about, so people will have some idea  
2 what the issues are and what will ultimately have to be  
3 decided.

4 As far as the foundation objections, the AT&T  
5 witnesses present testimony based on their personal  
6 familiarity with the facts as they explain in their  
7 testimony, based on their experience in the industry which  
8 they also explain in their testimony. This too is very  
9 common type of testimony in regulatory proceedings and  
10 there's no basis to strike it.

11 That's all I have.

12 CHAIRMAN ECHOLS: Mr. Walsh, I'd like to hear from  
13 you -- oh, I'm sorry, Mr. Galloway -- sorry about that.

14 MR. GALLOWAY: Mr. Chairman, on behalf of TDS, let  
15 me say this is the first time I've ever defended a motion to  
16 strike testimony in its entirety, and while that might be a  
17 real good way to shorten the hearing, the motion needs to be  
18 denied. I suspect the purpose of the motion is really to  
19 set up an issue potentially on appeal.

20 Halo and Transcom object to the entirety of Mr.  
21 Drause's testimony -- I'm going to use him as an example, it  
22 applies every place for the other witnesses -- stating that  
23 instead of giving fact testimony, he's giving conclusions of  
24 law. Mr. Drause, as do the other witnesses, testifies about  
25 the technology configuration that Halo uses. He testifies

1 that Halo developed essentially a technological gizmo to be  
2 able to call these calls wireless. And you can look through  
3 his testimony and look through his descriptions of the  
4 technology involved, and you can see that that is in fact  
5 going to the technology, not to a legal argument.

6 The allegation is that Mr Drause fails to lay a  
7 foundation on his personal testimony -- personal knowledge.

8 All the witnesses in this case are people who have had  
9 multiple years of experience in telecom, these are highly  
10 technical issues and these people all have experience on  
11 those issues. And you may determine that each witness is  
12 credible or one witness is credible and another is not, but  
13 that goes to how you weigh the testimony, not its  
14 admissibility.

15 And I would note and reiterate what Mr. Covey  
16 said, throughout, for example, Mr. Wiseman's testimony, it  
17 is replete with legal argument about what -- and statements  
18 about what this case means or that case means or what they  
19 were advised by counsel. So I agree with him that it is  
20 disingenuous to criticize this testimony on behalf of TDS  
21 when theirs has the same infirmity.

22 Y'all have always had cases up here where people  
23 sit on the stand and say "I'm not a lawyer, but my  
24 interpretation is," you've always allowed that and then you  
25 have assessed its credibility in your capacity as the fact-

1 finder and the adjudicator of the case.

2 So we would ask that the motion to strike be  
3 denied. Thank you.

4 CHAIRMAN ECHOLS: Mr. Walsh.

5 MR. WALSH: Mr. Chairman, the staff would  
6 recommend that the Commission deny the motions to strike. I  
7 think the reasons for denying have been set out pretty much  
8 by TDS and AT&T counsel. The motions to strike say, on  
9 pretty much all of them I think except for one, it mentions  
10 specifically that Halo and Transcom object to the expert  
11 testimony as to the rating and billing of traffic, which  
12 testimony purports to be based on the premise that telephone  
13 numbers are appropriate and reliable determinants for call  
14 rating and billing and it says that such testimony is not  
15 based on reliable principles and methods.

16 Transcom and Halo will have a full opportunity to  
17 cross examine the witnesses on how reliable a method that is  
18 and the Commission can take that under its advisement as  
19 well as the credibility of the rest of the testimony. We do  
20 believe that the experience of the witnesses in this  
21 proceeding allow them to testify as experts on the subject  
22 matter in their testimony.

23 CHAIRMAN ECHOLS: Okay. Commissioners, if there's  
24 no objection, I'm going to deny the motions.

25 (No response.)