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March 15, 2012

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RE: File No. TO-2012-0035 - Alma Communications Company d/b/a Alma Telephone Company, Chariton Valley Telephone Corporation, Chariton Valley Telecom Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, a corporate division of Otelco, Inc., and MoKAN DIAL, Inc. v. Halo Wireless, Inc. and Southwestern Bell Telephone Company d/b/a AT&T Missouri;

Improper Blocking Requests from Alma Communications Company d/b/a Alma Telephone Company, Choctaw Telephone Company, and MoKan Dial, Inc. (the "Johnson Clients"); and

Improper Blocking Requests from 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 Company, Ozark Telephone Company, Rock Port Telephone Company, and Seneca Telephone Company (the "England Clients").

Dear Mssrs. Bub, Johnson and England:

By order dated February 22, 2012 (the "Abeyance Order"), the Missouri Public Service Commission ("MOPSC") granted the complainants' motion to hold the above-referenced proceeding in abeyance pending the completion of any proceedings under Missouri's enhanced record exchange rules (the "ERE Rules"). Immediately after issuance of the Abeyance Order, Halo received copies of the three letters dated February 22, 2012, sent by the Johnson Clients to AT&T Missouri requesting blocking of Halo's traffic under the ERE Rules (the "Johnson Blocking Requests"), and AT&T Missouri's letter dated February 23, 2012, acknowledging receipt of the Johnson Blocking Requests and scheduling blocking to begin April 3, 2012. Later, Halo received copies of nine letters dated March 9, 2012, from the England Clients to AT&T Missouri also requesting blocking of Halo's traffic under the ERE Rules (the "England Blocking Requests") and AT&T Missouri's letter dated March 13, 2012, acknowledging receipt of the England Blocking Requests and scheduling blocking to begin April 12, 2012. The Johnson Blocking Requests and the England Blocking Requests are collectively referred to herein as the "Blocking Requests." The Johnson Clients and the England Clients are collectively referred to herein as the "Missouri LECs."

The Abeyance Order did not authorize any blocking of traffic. We respectfully disagree with the MOPSC's assertion that it is "procedurally premature" for Halo to point out that it is a CMRS provider and therefore not a "telecommunications company" and not an "originating carrier" under the ERE Rules. Under the MOPSC's logic, the ERE Rules would apply to any and all traffic of any kind and to all carriers in the country until proven otherwise, and would permit AT&T to block interstate traffic in direct violation of law unless the victim of the threatened blocking undertakes the burden and expense of initiating a case at the MOPSC under 4 CSE 240-29.120(5). You are on notice that significant portions of Halo's traffic are jurisdictionally interstate, IP-originated, or both, and therefore any wholesale blocking would be unlawful even if the ERE Rules applied (which they do not). The Johnson Clients and England Clients are the entities seeking relief, and the ERE Rules cannot lawfully or reasonably shift the burden of proving the rules do not apply and/or blocking should not occur to Halo.

The Blocking Requests rely on 4 CSR 240-29.130(2), which provides:

(2) A terminating carrier may request the originating tandem carrier to block, and upon such request the originating tandem carrier shall block, the originating carrier's Local Exchange Carrier-to-Local Exchange (LEC-to-LEC) traffic, if the originating carrier has failed to fully compensate the terminating carrier for terminating compensable traffic, or if the originating carrier has failed to deliver originating caller identification.

While the Missouri LECs may be a "terminating carrier" under the rules, Halo is not an "originating carrier" as the rules define that phrase. 4 CSR 240-29.020(29) defines an "originating carrier" as:

(29) Originating carrier means **the telecommunications company** that is responsible for originating telecommunications traffic that traverses the LEC-to-LEC network. A telecommunications company whose retail telecommunications services are resold by another telecommunications company shall be considered the originating carrier with respect to such telecommunications for the purposes of this rule. **A telecommunications company performing a transiting traffic function is not an originating carrier.** (Emphasis added)

The Blocking Requests sent by the Johnson Clients rely heavily on the FCC's November 18, 2011, order (the "FCC Order") for the proposition that the traffic sent by Halo does not "originate" in the MTA. Paragraph 1006 of the FCC Order—one of the two paragraphs specifically relied upon by the Johnson Clients—held that Halo is providing "transit." If the FCC Order applies and is correct, Halo clearly is not an "Originating Carrier" and the Missouri ERE rules do not apply. We also note that the FCC defined "transit" traffic as "non-access" traffic, which means that under the FCC Order the traffic is not "intraMTA" but it is also "non-access." The Missouri LECs cannot claim an entitlement to payment of any amount by Halo for the traffic in issue.¹

Setting aside the FCC Order, Halo is not a "telecommunications company" under the state statute and thus it cannot be an "originating carrier" under the ERE Rules. 4 CSR 240-29.020(34) has a specific definition of "telecommunications company": "those companies as set forth by section 386.020(51),² RSMo Supp. 2004." Under the cited Missouri statutory provision:

(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; (emphasis added)

This definition clearly provides that an entity is a "Telecommunications company" only if it provides a "telecommunications service." The statute defines that term in subpart (54):

(54) "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:

¹ Halo asserts that the FCC Order is incorrect. Halo's appeal of the FCC Order is pending before the Tenth Circuit. Nonetheless, the FCC's Order and the associated prospective rule changes are presently in effect.

² The rule cites to subsection (51) but the correct reference is obviously subsection (52).

...
(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.

Halo is providing its services pursuant to an FCC CMRS license (Radio Station Authorization). Therefore, under the plain terms of the ERE rules Halo is not a Telecommunications company and therefore is not an "Originating carrier." The ERE Rules simply do not apply to this traffic.

The Blocking Requests have failed to identify any factual or legal basis under which the ERE Rules could apply to Halo or its traffic. Any action taken by AT&T Missouri or the Missouri LECs to block Halo's traffic would therefore be a direct violation of law without justification or excuse.

We will remind you that much of the traffic in issue is jurisdictionally interstate. Even if the ERE Rules did apply (which they do not) they could only apply to jurisdictionally intrastate traffic. The Missouri PSC completely lacks any jurisdiction or power to authorize, order or approve blocking of interstate traffic. The FCC Order mentioned the ERE Rules in ¶ 734 and note 1277 with disfavor, even though the FCC was under the impression that the ERE Rules only "allow for blocking of intrastate traffic in certain circumstances." Any blocking of interstate traffic will violate § 201 of the Communications Act.

The England Clients assert that Halo is not delivering "correct originating caller identification." This is flatly untrue and AT&T fully knows this is the case. If and to the extent that the England Clients are receiving incorrect originating caller identification it is because AT&T is changing the information it receives from Halo. Each and every one of the Missouri LECs is on notice that if and to the extent any blocking occurs based on that false allegation, Halo reserves all rights to seek appropriate relief for this flagrant and knowing misrepresentation of facts.

Halo hereby demands that the Missouri LECs either articulate a basis for application of the ERE Rules or withdraw their Blocking Requests by March 30, 2012. Halo further demands that AT&T Missouri withdraw its threat of blocking under the ERE Rules by March 30, 2012. In the event any blocking occurs, Halo reserves all rights and remedies available under applicable law, including, but not limited to, remedies for violations of § 201 of the Communications Act. We look forward to your prompt response.

Leo J. Bub
Craig S. Johnson
W. R. England, III
March 15, 2012
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Sincerely yours,

McGUIRE, CRADDOCK & STROTHER, P.C.

By: _____

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SHT/vwk

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