

**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 ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIM
AND MOTION FOR EXPEDITED TREATMENT**

AT&T Missouri¹ respectfully files its answer and affirmative defenses² to the first amended formal complaint filed by Halo³ on April 9, 2012; and AT&T Missouri's counterclaim⁴ against Halo. AT&T also moves for expedited treatment of its counterclaim against Halo.

In responding to Halo's claims, AT&T Missouri has attempted to follow the organizational structure of Halo's first amended complaint, including its roman numeral and lettered headings.

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

² AT&T Missouri files its answer and affirmative defenses pursuant to the Commission's Order Giving Notice of Contested Case, Directing Expedited Response on Bankruptcy Stay, Directing Answers and Directing Staff Investigation, File No. TC-2012-0331, issued April 3, 2012; and 4 CSR 240-2.070(4) and (9).

³ Halo Wireless, Inc. will be referred to in this pleading as "Halo."

⁴ AT&T Missouri files its counterclaim pursuant to 4 CSR 240-2.070(4) .

To the extent that AT&T Missouri has not specifically admitted any allegation contained in Halo's first amended complaint, AT&T Missouri denies that allegation.

AT&T'S ANSWER

I. Summary

Paragraphs 1 – 9: AT&T Missouri admits that it has an interconnection agreement in Missouri with Halo and that Halo has terminated to Respondents high volumes of traffic that is delivered to Halo by its affiliate, Transcom Enhanced Services, Inc. (“Transcom”). AT&T Missouri admits that it has demanded that Halo pay applicable switched access rates on this traffic, that Halo has refused, that AT&T Missouri has engaged Halo in discussions regarding this dispute, and that the dispute remains unresolved. AT&T Missouri admits that it and numerous other local exchange companies are engaged with Halo in similar disputes before state regulatory commissions across the country, that Halo filed for bankruptcy in Texas, and that the bankruptcy and other federal courts have refused to stay state regulatory commission cases (like this case) from proceeding.

AT&T Missouri further admits that Respondents sent notices to Halo pursuant to the Missouri Enhanced Records Exchange (“ERE”) Rule⁵ that Halo's traffic would be blocked as a result of its refusal to pay applicable intercompany compensation on post bankruptcy petition traffic and continued transmission post bankruptcy of non-local landline traffic in violation of the ERE Rule and the ICA. These notices and the bankruptcy and other federal court orders Halo references speak for themselves and no response is necessary. Halo's averments regarding state and federal law are legal assertions and conclusions and, as such, no admission or denial is required. AT&T Missouri denies all remaining allegations in paragraphs 1 – 9.

⁵ 4 CSR 240-29.010, *et seq.*

II. Parties

Paragraphs 10 - 28: AT&T Missouri admits the allegations in paragraphs 10 - 28.

III. Background

A. Regulatory Framework

Paragraphs 29 - 35: Halo's averments regarding state and federal law are legal assertions and conclusions and, as such, no admission or denial is required. The provisions of the federal Telecommunications Act, FCC rules and orders, and decisions of state and federal courts Halo references speak for themselves and no response is necessary. AT&T Missouri denies all remaining allegations in paragraphs 29 - 35.

B. Halo's Business

Paragraphs 36 - 47: AT&T Missouri admits that it has an interconnection agreement in Missouri with Halo and that Halo has terminated to Respondents high volumes of traffic from its affiliate, Transcom. AT&T Missouri admits that Halo has claimed its traffic has been "re-originated" over wireless facilities operated by Halo or its affiliate Transcom in the middle of the call path to somehow convert landline-originated calls into CMRS-originated calls, and that AT&T Missouri has disputed this contention. The FCC, however, has specifically rejected this Halo contention,⁶ as has the Tennessee Regulatory Authority.⁷

AT&T Missouri denies Halo's claims that "not one minute of the relevant traffic is subject to access charges," that it is all "reciprocal compensation" traffic subject to "local" charges in the ICA, and that Halo has in all cases paid AT&T Missouri the appropriate rate for terminating this

⁶ *Connect America Fund et al.*, WC Docket No. 10-90 et al., *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161, para. 1006 (rel. Nov. 18, 2011) ("*USF/ICC Transformation Order*"), *Pets. for review pending*, *Direct Commc'ns Cedar Valley, LLC vs. FCC*, No. 11-9581 (10th Cir. filed Dec. 18, 2011) (and consolidated cases).

⁷ See, Order, *BellSouth Telecommunications, LLC d/b/a AT&T Tennessee vs. Halo Wireless, Inc.*, Tennessee Regulatory Authority Docket No. 11-00119 (Issued January 26, 2012) at pp. 15-17. A copy of the TRA's ruling was attached as Exhibit 3 to Alma, et al.'s response to Halo Request for Stay, Pending Bankruptcy Determination filed April 5, 2012, in this case.

traffic. AT&T Missouri denies that Transcom is an ESP. AT&T Missouri further denies that Halo's activities and access rate avoidance scheme are "in the public interest." Halo's averments regarding state and federal law are legal assertions and conclusions and, as such, no admission or denial is required. The provisions of the federal Telecommunications Act, and FCC rules and orders Halo references speak for themselves and no response is necessary. AT&T Missouri is without sufficient knowledge or information to admit or deny the remaining allegations in paragraphs 36 - 47 and therefore denies them.

C. Dispute with Respondents

Paragraphs 48 - 55: AT&T Missouri admits that it and numerous other local exchange companies are engaged with Halo in similar disputes before the Missouri Commission and various state regulatory commissions across the country, that Halo filed for bankruptcy in Texas, and that the bankruptcy and other federal courts have refused to stay state regulatory commission cases (like this case) from proceeding. AT&T Missouri further admits that Respondents sent blocking notices to Halo pursuant to the Missouri ERE rule. These notices, the filings made with the Missouri Commission, and the bankruptcy and other federal court orders Halo references speak for themselves and no response is necessary. Halo's averments regarding state and federal law are legal assertions and conclusions and, as such, no admission or denial is required. AT&T Missouri is without sufficient knowledge or information to admit or deny the remaining allegations in paragraphs 48 - 55 and therefore denies them.

IV. Claims

A. Halo's Claim that Blocking under MoPSC ERE Rules violate the automatic stay and the Bankruptcy Court's orders.

Paragraphs 56 - 66: AT&T Missouri admits that Halo filed for bankruptcy in Texas, and that the bankruptcy and other federal courts have refused to stay state regulatory commission cases (like this case) from proceeding. AT&T Missouri denies that the blocking notices Respondents

sent Halo pursuant to the Missouri ERE Rule violated the automatic stay of the bankruptcy court. AT&T Missouri admits that Halo sent the letter attached to its First Amended Complaint as Exhibit G and that Halo filed its formal complaint in this proceeding on April 2, 2012. AT&T Missouri agrees that the Commission should expedite this case. Halo's filings made in this case, and the bankruptcy and other federal court orders and laws Halo references speak for themselves and no response is necessary. Halo's averments regarding the application of Commission rules and orders, and state and federal law are legal assertions and conclusions and, as such, no admission or denial is required. AT&T Missouri denies all remaining allegations in paragraphs 56 - 66.

B. Halo's Claim that the MoPSC ERE Rules cannot apply to any dispute between Halo and AT&T Missouri.

Paragraphs 67 - 70: AT&T Missouri admits that it has an interconnection agreement in Missouri with Halo. The ERE Rule, AT&T Missouri's blocking notice, and the state and federal court decisions Halo references speak for themselves and no response is necessary. Halo's averments regarding the application of Commission rules and orders, and state and federal law are legal assertions and conclusions and, as such, no admission or denial is required. AT&T Missouri denies all remaining allegations in paragraphs 67 - 70.

C. Halo's Claim that the MoPSC ERE Rules are facially inapplicable to Halo.

Paragraphs 71 - 82: AT&T Missouri admits that Respondents contend that much of the traffic they receive from Halo is subject to switched access charges. The ERE Rule, the Commission's order of rulemaking adopting the ERE Rule, the Missouri statutes, the provisions of the federal Telecommunications Act, and the FCC orders Halo references speak for themselves and no response is necessary. Halo's averments regarding the application of Commission rules and orders, and state and federal law are legal assertions and conclusions and, as such, no

admission or denial is required. AT&T Missouri denies all remaining allegations in paragraphs 71 - 82.

- D. Halo's Claim that the MoPSC has no authority to order or allow blocking and that blocking would violate federal law.

Paragraphs 83 - 89: AT&T Missouri admits that some of the traffic Respondents receive from Halo is interstate in nature and subject to Respondents' respective interstate switched access rates. AT&T Missouri denies that the Commission's ERE Rule is preempted by federal law. The ERE Rule, the provisions of the federal Telecommunications Act, and the FCC orders and rules Halo references speak for themselves and no response is necessary. Halo's averments regarding the application of Commission rules and orders, and state and federal law are legal assertions and conclusions and, as such, no admission or denial is required. AT&T Missouri denies all remaining allegations in paragraphs 83 - 89.

- E. Halo's Claim that the "LEC-to-LEC network" as defined in the ERE Rules no longer exists.

Paragraph 90: AT&T Missouri denies Halo's claims that the "LEC-to-LEC network" no longer exists and is not used by Respondents. AT&T Missouri is without sufficient knowledge or information to admit or deny the allegations in paragraph 90 and therefore denies them.

- F. Halo's Claim that blocking would be inconsistent with the federal "bill and keep" regulatory structure.

Paragraphs 91 - 93: AT&T Missouri admits that Respondents contend that they have been undercompensated by Halo. The provisions of the federal Telecommunications Act, and the FCC orders and rules Halo references speak for themselves and no response is necessary. Halo's averments regarding the application of Commission rules and orders, and state and federal law are legal assertions and conclusions and, as such, no admission or denial is required. AT&T Missouri denies all remaining allegations in paragraphs 91 - 93.

- G. Halo's Claim that the MoPSC lacks jurisdiction to determine that Halo does not provide "wireless" service or is not a "CMRS" provider.

Paragraphs 94 - 100: AT&T Missouri admits that much of the traffic it receives from Halo is "non-wireless originated." The ERE Rule, the provisions of the federal Telecommunications Act, the FCC orders and rules, and the federal court decisions Halo references speak for themselves and no response is necessary. Halo's averments regarding the application of Commission rules and orders, and state and federal law are legal assertions and conclusions and, as such, no admission or denial is required. AT&T Missouri denies all remaining allegations in paragraphs 94 - 100.

- H. Halo's Claim that if the MoPSC could address the blocking notices on the merits, blocking must be denied.

Paragraphs 101 - 123: AT&T Missouri admits that Halo's refusal to pay applicable intercompany compensation on post bankruptcy petition traffic is one of the reasons identified on Respondents' blocking notices sent to Halo pursuant to the ERE Rule. AT&T Missouri admits it contends that much of the traffic it receives from Halo is "landline-originated traffic," that Halo's sending this traffic to AT&T Missouri for termination violates the ICA, and that other Respondents have made similar allegations. AT&T Missouri further admits that Halo has not provided correct charge numbers on its traffic, although Halo may have recently corrected this failure.

AT&T Missouri denies that Transcom is an ESP. AT&T Missouri further denies Halo's contention that all of its traffic is not subject to switched access charges. AT&T Missouri states that foreign, unpublished and vacated district court opinions on a different subject matter are entitled to no authority before the Missouri Commission. The ERE Rule, the provisions of the federal Telecommunications Act, the FCC orders and rules, and the federal court decisions Halo references speak for themselves and no response is necessary. Halo's averments regarding the

application of Commission rules and orders, and state and federal law are legal assertions and conclusions and, as such, no admission or denial is required. AT&T Missouri is without sufficient knowledge or information to admit or deny the remaining allegations in paragraphs 101 - 123 and therefore denies them.

V. Prayer for Relief

AT&T Missouri respectfully requests the Commission to deny or dismiss Halo's prayers for relief in subparagraphs A through I and issue an order finding that the blocking of Halo's traffic, described in Respondents' blocking notices to Halo, is appropriate under the ERE Rule and may proceed.

AT&T'S AFFIRMATIVE DEFENSES

1. Halo's complaint fails to state a claim upon which relief can be granted.
2. State and federal law permits telecommunications carriers to block or disconnect service for failure to pay for service.
3. Respondents acted pursuant to and consistent with lawful rules of the Commission, set out at 4 CSR 240-29.010, *et seq.* (the ERE Rule).
4. The Commission has previously considered and rejected Halo's jurisdictional challenge to the ERE Rule in its *Order of Rulemaking*:

The ERE Rules "do not regulate wireless carriers, as the Joint Wireless Carriers and Sprint suppose. Rather, what the rules would regulate is the use of the LEC-to-LEC network – not the wireless carriers. . . . We reject Joint Wireless Carriers' apparent contention that nonregulated carriers may use the Missouri LEC-to-LEC network without regard to service quality, billing standards, and in some instances, with an apparent disregard for adequate compensation."⁸

⁸ *Order of Rulemaking*, 30 Mo. Reg. 1373, 1377, June 15, 2005 (emphasis added).

AT&T'S COUNTERCLAIMS AGAINST HALO

1. This is a Formal Complaint and Request for Declaratory Ruling brought by Southwestern Bell Telephone Company d/b/a AT&T Missouri (“AT&T Missouri”) against Halo Wireless, Inc. (“Halo”). AT&T Missouri seeks an order excusing it from further performance under its wireless interconnection agreement (“ICA”) with Halo, based on Halo’s material breaches of the ICA. The ICA does not authorize Halo to send AT&T Missouri traffic that does not originate on a wireless network. Halo, however, is breaching the ICA by sending large volumes of traffic to AT&T Missouri that does not originate on a wireless network, in furtherance of what appears to be an access charge avoidance scheme. As a result of this and other breaches of the ICA, Halo owes AT&T Missouri significant amounts of money – amounts that grow rapidly each month and that Halo refuses to pay.

2. AT&T Missouri brings this Complaint in order to be able to discontinue its provision of interconnection and traffic transit and termination of service to Halo. AT&T Missouri also seeks an Order finding that Halo owes AT&T Missouri the applicable charges for services rendered by AT&T Missouri, without determining any specific amounts due, and AT&T Missouri requests the Commission to give expedited consideration to its Complaint.

3. On August 8, 2011, following the commencement of various state commission proceedings similar to this one, Halo filed a chapter 11 bankruptcy proceeding in the United States Bankruptcy Court for the Eastern District of Texas (the “Bankruptcy Court”), and maintained that the state regulatory proceedings were subject to the statutory automatic stay in bankruptcy, 11 U.S.C. § 362. On October 26, 2011, however, the Bankruptcy Court entered an Order ruling that the automatic stay is not applicable to the state regulatory proceedings (except as otherwise set forth therein). Consistent with that Order, AT&T Missouri does not ask the Commission to quantify any amount that Halo owes AT&T Missouri, or to order Halo to pay AT&T Missouri. If

the Commission determines, as the Tennessee Regulatory Authority (“TRA”) recently did in a parallel case,⁹ that Halo is liable for access charges, AT&T Missouri will pursue any further remedy in the bankruptcy court.

4. In support of its Complaint, AT&T Missouri states as follows:

The Parties

5. AT&T Missouri is an incumbent local exchange carrier (“ILEC”) as defined in 47 U.S.C. § 251(h) with offices at 909 Chestnut Street, St. Louis, Missouri, 63101. The signature, telephone number, facsimile number, and email address of AT&T Missouri’s counsel is set out in the signature block below.

6. AT&T Missouri is authorized to provide telecommunications services in the state of Missouri.

7. Halo Wireless, Inc. is a Texas corporation with its principal place of business at 2351 West Northwest Highway, Suite 1204, Dallas, Texas 75220. Halo purports to be a CMRS provider.

8. AT&T Missouri directly contacted Halo writing about the claims AT&T Missouri is making in this complaint. A copy of AT&T Missouri’s letter to Halo is attached as Exhibit 1. AT&T Missouri and Halo have been unable to resolve this dispute.

The Interconnection Agreement

9. On June 17, 2010, and June 21, 2010, respectively, Halo and AT&T Missouri executed (1) an MFN interconnection agreement (filed with the Commission under VT-2010-0029) under which Halo adopted the agreement between AT&T Missouri and T-Mobile USA, Inc. (formerly known as Voicestream Wireless Corp.), which was previously approved by the

⁹ See, Order, *BellSouth Telecommunications, LLC d/b/a AT&T Tennessee vs. Halo Wireless, Inc.*, Tennessee Regulatory Authority Docket No. 11-00119 (Issued January 26, 2012). A copy of the TRA’s ruling was attached as Exhibit 3 to Alma, et al.’s response to Halo Request for Stay, Pending Bankruptcy Determination filed April 5, 2012, in this case.

Commission in Case No. TO-2001-489; and (2) an amendment to that MFN agreement, which was approved by the Commission under File No. IK-2010-0384 on August 19, 2010. A copy of the ICA as amended is attached as Exhibit 2.

Jurisdiction

10. The Commission has jurisdiction over this Complaint because it involves violations of an interconnection agreement entered into under 47 U.S.C. §§ 251 and 252 and approved by the Commission, and violations of AT&T Missouri's state tariffs. The Commission also has jurisdiction pursuant to Sections 386.250, 386.300, and 386.390 of the Missouri Revised Statutes; and 4 CSR Section 240-2.070(4).

COUNT I BREACH OF ICA: SENDING LANDLINE-ORIGINATED TRAFFIC TO AT&T MISSOURI

11. AT&T Missouri repeats and realleges paragraphs 1-10 above.

12. The parties' ICA authorizes Halo to send only wireless-originated Commercial Mobile Radio Service ("CMRS") traffic to AT&T Missouri. For example, a recital that the parties added through an amendment to the ICA when Halo adopted the ICA, states:

Whereas, the Parties have agreed that this Agreement will apply *only* to (1) traffic that originates on AT&T's network or is transited through AT&T's network and is routed to Carrier's wireless network for wireless termination by Carrier; and (2) traffic that *originates through wireless transmitting and receiving facilities* before [Halo] delivers traffic to AT&T for termination by AT&T or for transit to another network. (Emphasis added).¹⁰

13. Despite that requirement, Halo sends traffic to AT&T Missouri that is not wireless-originated traffic, but rather is landline-originated interstate, interLATA or intraLATA toll traffic. The purpose and effect of this breach of the parties' ICA is to avoid payment of the access charges that by law apply to the non-local landline-originated traffic that Halo is delivering to AT&T Missouri.

¹⁰ Exhibit 2, p. 81 of 82.

14. By sending landline-originated traffic to AT&T Missouri, Halo is materially breaching the parties' ICA. In light of this breach, AT&T Missouri respectfully requests that the Commission find that AT&T Missouri is excused from further performance under the ICA, may discontinue its provision of traffic transit and termination service to Halo, and grant all other necessary relief.

COUNT II
BREACH OF ICA: FAILURE TO PROVIDE PROPER CALL INFORMATION

15. AT&T Missouri repeats and realleges paragraphs 1-14 above.

16. The ICA requires Halo to send AT&T Missouri proper call information to allow AT&T Missouri to bill Halo for the termination of Halo's traffic.

17. Halo, however, has provided AT&T Missouri with improper call information by inserting Charge Number ("CN") information that falsely indicates that the calling party is in the same MTA as the called party to AT&T's billing systems when the original signaling information either (a) contains no CN or (b) contains CN that indicates that the calling party and the called party are in different MTAs. This has prevented AT&T Missouri (and likely other, downstream carriers) from being able to properly bill Halo based on where the traffic originated.

18. Halo's provision of improper call information on traffic it sends to AT&T Missouri materially breached the ICA. In light of this breach, AT&T Missouri respectfully requests the Commission find that AT&T Missouri is excused from further performance under the ICA, may discontinue its provision of traffic transit and termination service to Halo, and grant all other necessary relief.

COUNT III
OBLIGATION TO PAY ACCESS CHARGES FOR
TERMINATION OF LANDLINE-ORIGINATED TRAFFIC

19. AT&T Missouri repeats and realleges paragraphs 1-18 above.

20. As explained above, Halo's delivery of landline-originated traffic to AT&T Missouri is not allowed by the ICA. Accordingly, all such traffic previously sent to AT&T Missouri by Halo and terminated by AT&T Missouri to AT&T Missouri's end users is not governed by the ICA, but is instead subject to tariffed switched access charges. AT&T Missouri has demanded that Halo pay such charges, but Halo, without lawful justification or excuse, has refused to do so. AT&T Missouri therefore requests that the Commission declare that any landline-originated traffic that Halo has sent to AT&T Missouri is subject to AT&T Missouri's tariffed access charges, and that Halo should be required to pay those charges.¹¹

RELIEF REQUESTED

21. Based on the foregoing, AT&T Missouri respectfully requests that the Commission make the following findings and grant the following relief:

- (a) Expedite the processing of this case;
- (b) Find that Halo has materially breached the ICA by sending landline-originated traffic to AT&T Missouri and by providing AT&T Missouri with improper call information;
- (c) Find that as a result of these breaches (or either one of them), AT&T Missouri is excused from further performance under the ICA and may stop accepting traffic from Halo;

¹¹ In light of the pending Halo bankruptcy proceeding, and more specifically the bankruptcy court order noted above, AT&T Missouri requests that the Commission make this declaration without determining any specific amounts due.

(d) Find, without determining any specific amounts due, that Halo is liable to AT&T Missouri for access charges on the non-local landline traffic it has sent to AT&T Missouri; and

(e) Grant all other relief as is just and appropriate.

AT&T'S MOTION FOR EXPEDITED TREATMENT

AT&T Missouri respectfully moves the Commission for expedited treatment¹² of its counterclaim against Halo. In support of its Motion, AT&T Missouri states:

(A) The date by which the party desires the Commission to act: AT&T requests the Commission to process, hear and decide AT&T Missouri's counterclaim concurrently with the Commission's handling of Halo's claim against AT&T Missouri and the other Respondents in this proceeding.

(B) The harm that will be avoided: Handling AT&T Missouri's counterclaim against Halo concurrently with Halo's claim against AT&T Missouri and the other Respondents will avoid the needless expenditure of resources by the Commission and the parties in conducting duplicate proceedings on closely related claims. Halo's and AT&T Missouri's claims arise out of the same facts and involve overlapping questions of law and fact. Trying these two claims together would yield significant procedural efficiencies for the Commission and the parties. Expediting AT&T Missouri's counterclaim will also help mitigate the harm to AT&T Missouri, which increases with each passing day, from Halo's breach of the ICA. There should be no negative effect on any customers or the general public. Indeed, Halo itself has requested that this proceeding be expedited.

(C) AT&T Missouri did not file its counterclaim sooner because counterclaims are appropriately filed with the answer. Under the Commission's Order Giving Notice of Contested

¹² AT&T files its Motion for Expedited Treatment pursuant to 4 CSR 240-2.080(14).

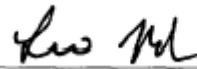
Case, Directing Expedited Response on Bankruptcy Stay, Directing Answers and Directing Staff Investigation, issued April 3, 2012, the Commission ordered Respondents to file answers to Halo's Complaint no later than May 3, 2012. AT&T Missouri's filing of its counterclaim on May 2, 2012, is consistent with the Commission's Order.

WHEREFORE, AT&T Missouri respectfully requests the Commission to process, hear and decide AT&T Missouri's counterclaim against Halo concurrently with the Commission's handling of Halo's claim against AT&T Missouri and the other Respondents.

Respectfully submitted,

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

BY

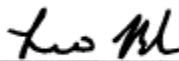


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CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by e-mail on May 2, 2012.



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