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Witness: Mark Neinast
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Sponsoring Party: Southwestern Bell Telephone Company, d/b/a AT&T Missouri
Case Nos.: TC-2012-0331 and TO-2012-0035

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Case Nos. TC-2012-0331 and TO-2012-0035

REBUTTAL TESTIMONY OF MARK NEINAST ON BEHALF OF AT&T MISSOURI

June 19, 2012

AFFIDAVIT OF MARK NEINAST

STATE OF TEXAS)
) SS
COUNTY OF COLLIN)

I, Mark Neinast, of lawful age, being duly sworn, depose and state:

1. My name is Mark Neinast. I am Associate Director-Network Regulatory in AT&T's Network Planning and Engineering Department.

2. Attached hereto and made a part hereof for all purposes is my Rebuttal Testimony.

3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

Mark Neinast

Subscribed and sworn to before me this 15 day of June, 2012.

NOTARY PUBLIC STATE OF TEXAS
WASSNA SENGSUWANE
My Commission Expires
September 28, 2015

Notary Public

My Commission Expires: September 28, 2015

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I. INTRODUCTION

Q. PLEASE STATE YOUR NAME.

A. My name is Mark Neinast.

Q. ARE YOU THE SAME MARK NEINAST WHO SUBMITTED DIRECT TESTIMONY IN THIS MATTER ON JUNE 4, 2012?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. I will respond to some assertions in the pre-filed direct testimony of Halo witnesses Russ Wiseman and Robert Johnson that relate to the issues I discussed in my direct testimony. I will be selective, however, because I believe that much of what Halo's witnesses say warrants no response.

Q. WHY DO YOU SAY THAT MUCH OF WHAT HALO'S WITNESSES SAY WARRANTS NO RESPONSE?

A. The AT&T Missouri claims I discussed in my direct testimony are straightforward: Halo is breaching the parties' ICA by sending AT&T Missouri landline-originated traffic, which the ICA does not permit, and by providing inaccurate call detail (at least until December 29, 2011). To decide those claims, the Commission must answer only a few questions.

The first question is whether Halo is sending AT&T Missouri calls that are made by calling parties using landline equipment, and the answer to that question is "yes." Given that, the only defense Halo has asserted is that all of those landline-originated calls are converted into wireless-originated calls when they pass through Transcom, because Transcom, according to Halo, is an Enhanced Service Provider ("ESP") that terminates

every call that comes its way and then originates a further communication to AT&T Missouri.

In considering Halo's defense, the Commission must answer two additional questions: (i) whether Transcom is an ESP, as Halo contends, and (ii) if Transcom is an ESP, does that mean it originates every call that passes through its equipment, as Halo also contends? If the answer to either of those questions is "no" (and AT&T Missouri maintains that the answer to *both* questions is "no") the Commission must conclude that Halo has breached its contract with AT&T Missouri.

Mr. Wiseman and Mr. Johnson discuss many things that it seems to me have no bearing on any of those questions. I suspect this may be because Halo has decided to throw as many things at the wall as it can think of to see if anything sticks. In any event, I will devote little space to assertions of Halo's witnesses that are not pertinent to the issues the Commission must decide.

Q. WHAT ARE THE ANSWERS TO THE THREE QUESTIONS YOU IDENTIFIED ABOVE?

A. There is no disagreement about the answer to the first question: Our call studies conclusively demonstrate that Halo is sending AT&T Missouri substantial volumes of landline-originated traffic. I indicated in my direct testimony that Halo would quibble about our numbers, and Halo does so in Mr. Wiseman's testimony. I respond briefly to those quibbles. At the end of the day, however, they make no difference, because Halo does not deny it is delivering significant amounts of traffic that originates on landline equipment, and for purposes of this case, it does not matter exactly what percentage of Halo's traffic is landline-originated.

The question then becomes whether Transcom is an ESP and, if it is, whether that means that every call that passes through Transcom on its way to AT&T Missouri is re-originated by Transcom. As I stated in my direct testimony, those are ultimately legal questions. Halo has chosen to set forth its legal arguments in its testimony. As a result, much of Mr. Wiseman's testimony is really a legal brief that Mr. Wiseman recites "on the advice of counsel."[1] AT&T Missouri will not adopt this approach, but instead will present its legal arguments in its legal briefs. To give the Commission some sense of AT&T Missouri's position on the legal issues, however, I will make a few general points "on the advice of counsel."

Q. ARE THERE OTHER REASONS THAT YOUR REBUTTAL TESTIMONY IS LIMITED?

A. Yes. My direct testimony anticipated many of the points that Halo's witnesses make in their testimony. In some instances, I will respond to Halo's testimony by referring the Commission to my direct testimony.

Q. HOW IS YOUR REBUTTAL TESTIMONY ORGANIZED?

A. This introductory discussion is followed by six more sections. Section II responds to two over-arching assertions made by Mr. Wiseman. Section III further demonstrates that much of the traffic Halo is delivering to AT&T Missouri originates on landline equipment. Sections IV and V address Halo's defense that Transcom is an ESP that re-originates all the calls that pass through it on the way to AT&T Missouri. Section VI

[1] There are at least 49 instances in which Mr. Wiseman explicitly states that he is expressing a view of the law on the advice of counsel. Pre-Filed Direct Testimony of Russ Wiseman on Behalf of Halo Wireless, Inc. ("Wiseman Testimony") at 26: 9, 16, 22; 28: 17; 31 n.9; 32: 18; 33: 7; 39: 7, 18; 40: 12; 43: 6, 9; 47: 12, 15; 48: 20; 49: 19, 20; 50: 1, 2, 4, 9, 12, 14; 51: n.30; 52: 2, 5, 6, 18, n.31; 53: 11, n.32; 61: 17, n.38; 62: 1, 15, 17, n.39; 72: 16, 74: n.43, n.44; 82: 9, 12; 83: 3, 5, 19; 84: 1, 17; 85: 4.

addresses Halo's improper alteration of call detail. Finally, Section VII addresses Halo's interconnection with AT&T Missouri.

II. OVERARCHING POINTS

Q. MR. WISEMAN STATES THAT AT&T MISSOURI'S ASSERTIONS ARE "FOUNDED ON TRADITIONAL INTERPRETATIONS AND APPLICATIONS OF THE TERMS 'WIRELESS' AND 'ORIGINATED.'"[2] HOW DO YOU RESPOND?

A. The terms "wireless" and "originated" mean exactly the same thing today as they have "traditionally" meant, and Mr. Wiseman does not say anything that suggests otherwise. To be sure, technology has changed, and the changes include new applications of wireless and landline equipment. But those new applications do not change the meaning or use of the terms "wireless" and "originated." Mr. Wiseman's observation that AT&T Missouri's assertions are founded on traditional views of those two terms, therefore, is an acknowledgment that AT&T Missouri's position in this case is soundly based on well-settled principles.

Q. MR. WISEMAN ALSO ASSERTS THAT AT&T MISSOURI IS "ASKING THE COMMISSION TO ASSUME AWAY HOW THE INDUSTRY ACTUALLY OPERATES TODAY, HOW CURRENT TECHNOLOGY CAN BE USED AND IS USED, AND MOST IMPORTANT, THE WAY THAT USERS ARE ACTUALLY EMPLOYING THIS TECHNOLOGY TO COMMUNICATE."[3] IS THAT CORRECT?

A. No. AT&T Missouri is asking the Commission to apply the principles that have been in effect since Halo started delivering traffic to AT&T, and that are still in effect today, to traffic that is subject to those current rules. Halo's real grievance seems to be that the rules have not kept up with technology, at least in Halo's opinion. For example, Mr.

[2] Wiseman Testimony at 55, lines 22-23.

[3] *Id*. at 61, lines 3-5.

Wiseman has stated in parallel proceedings in other states, "[w]e also do not believe that the industry can continue to rely on the 'calling party number' as some indicator of where and on what network a call started."[4] Perhaps the industry some day will adopt a new means of determining where a call originates, as Mr. Wiseman evidently believes it should. But as Mr. Wiseman's statement acknowledges, the industry today relies on CPN as the most reliable indicator of where and on what network a call originated.[5] As a result, Mr. Wiseman's contention that AT&T Missouri's call studies are faulty because they relied on CPN is simply wrong.

Furthermore, Mr. Wiseman's ruminations on new technology and Halo's lofty aspirations about promoting the "growth of low cost, high value IP communication services for all Americans"[6] relate only to a red herring – namely, Halo's contention that some of what appears to be landline-originated traffic that Halo delivers to AT&T may actually originate on wireless devices using IP-based services like GoogleVoice and Skype. As I discussed in my direct testimony that contention goes nowhere, because it is inconsistent with current industry standards for identifying the origins of traffic *and* even if it were correct, all that would mean is that a bit less of the traffic Halo is sending

[4] *See* Mr. Wiseman's testimony from the parallel Wisconsin proceeding, Schedule MN-9, at 30, lines 5-6, and from the parallel Georgia proceeding, Schedule MN-10, at 7, lines 15-17.

[5] Just as Transcom changed its website when it realized the admissions there were undercutting its litigation position (*see* Rebuttal Testimony of J. Scott McPhee on behalf of AT&T Missouri ("McPhee Rebuttal") at 4, line 1 – 6, Mr. Wiseman dropped his statement that the industry should stop relying on CPN after AT&T pointed out in other states that that statement was an acknowledgement that the industry still does rely on CPN. Mr. Wiseman cannot unsay his admission, however.

[6] *E.g.*, Wiseman Testimony at 4, line 19.

AT&T Missouri is landline-originated than the approximately 22%, 56% and 66% that our initial numbers showed.[7]

III. HALO IS DELIVERING LANDLINE-ORIGINATED TRAFFIC TO AT&T MISSOURI.

Q. YOU SAID IN YOUR INTRODUCTORY COMMENTS THAT EVEN THOUGH THE ICA REQUIRES HALO TO SEND ONLY WIRELESS-ORIGINATED TRAFFIC TO AT&T MISSOURI, HALO DOES NOT DENY THAT IT IS SENDING AT&T TRAFFIC THAT ORIGINATES AS LANDLINE TRAFFIC. WHAT DO YOU BASE THAT ON?

A. It is not just that Halo does not deny that it is sending us landline-originated traffic; Mr. Wiseman actually admits it. He states, "[m]ost of the calls probably did start on other networks before they came to Transcom for processing. It would not surprise me if some of them started on the PSTN."[8] The PSTN is the public switched telephone network – the landline network. So, even though Mr. Wiseman purposefully understated what he was saying, he is still admitting that Halo is sending AT&T traffic that started as landline traffic.[9]

This clearly is landline-originated traffic, and sending landline-originated traffic to AT&T (as Halo admittedly does) violates Halo's contractual commitment to send *only* "wireless-originated" traffic to AT&T.

[7] Direct Testimony of Mark Neinast on Behalf of AT&T Missouri ("Neinast Direct"), at 16, line 21 - 17, line 5.

[8] Wiseman Testimony at 61, lines 10-11.

[9] At a recent hearing, Halo's attorney noted an FCC definition of "PSTN" that included wireless networks as well as landline networks, and thus implied that when Mr. Wiseman acknowledged that Halo sends AT&T calls that originated on the PSTN, he was not acknowledging that Halo sends AT&T calls that originated on a landline network. That struck me as ridiculous. There is no reason to believe that Mr. Wiseman had that FCC definition in mind when he wrote his testimony. Furthermore, the general understanding within the industry is that the PSTN is the traditional Bell operating company network, and the context of Mr. Wiseman's acknowledgment makes clear that that is what he intended.

Q. WHY DO YOU SAY MR. WISEMAN UNDERSTATED WHAT HE WAS SAYING?

A. In the first place, it is not "most" of the calls that started on other networks; it is *all* of them. Transcom has no end user customers.[10] Consequently, 100% of the calls that Transcom hands off to Halo "start on other networks." Second, Mr. Wiseman's statement that it "would not surprise [him] if some of them started on the PSTN" is as much an understatement as "it would not surprise me if the sun rose tomorrow." As Mr. Wiseman admits, "Halo is not in a position to determine where or on what network the call started, and we have not asked our customer."[11] In other words, Halo is doing nothing to try to avoid receiving landline-originated calls and delivering them to AT&T Missouri, and Mr. Wiseman knows, and effectively admits, that of the more than 24 million minutes of traffic Halo is delivering to AT&T Missouri every month,[12] a substantial portion necessarily originates on the PSTN.

Q. WHY IS HALO'S ADMISSION IMPORTANT?

A. Because it confirms that Halo's critiques of our call studies that showed that Halo is sending us landline-originated traffic are a side-show. At the end of the day, all Halo's critiques amount to is nit-picking about whether the percentage of Halo traffic that is landline-originated is as our call studies showed, or is something less than they showed. For purposes of this case, though, the exact percentages are beside the point; all that matters is that Halo is breaching its contract by sending us substantial amounts of traffic that originates on landline equipment. The *only* defense left to Halo is its untenable

[10] *See, e.g.*, Pre-filed Testimony of Robert Johnson on Behalf of Transcom Enhanced Services ("Johnson Testimony"), at 8, lines 1-3.

[11] Wiseman Testimony at 61, lines 14-15.

[12] *See* Direct Testimony of J. Scott McPhee on Behalf of AT&T Missouri ("McPhee Direct"), at 5, lines 5-6.

argument that all the calls it is delivering to AT&T Missouri are actually wireless calls originated by Transcom's equipment in Missouri, including all the calls that start out as regular landline calls in other states.

Q. WITH THAT UNDERSTANDING, WILL YOU NONETHELESS ADDRESS SOME OF MR. WISEMAN'S CRITIQUES OF AT&T MISSOURI'S CALL STUDIES?

A. I will, briefly, but bear in mind that even if some or all of Mr. Wiseman's critiques were well-founded, that would have no effect on the ultimate result in this proceeding. Also bear in mind that Halo has offered no traffic study of its own to dispute the results of AT&T Missouri's traffic analysis – even though Halo has access to all the supporting data for AT&T Missouri's analysis.

Q. MR. WISEMAN ARGUES THAT AT&T MISSOURI'S CALL STUDY IMPROPERLY RELIED ON CALLING PARTY NUMBERS ("CPN") TO DETERMINE THE ORIGINATING CARRIER FOR CALLS. IS THAT A VALID CRITICISM?

A. No.

Q. WHY NOT?

A. Mr. Wiseman relies primarily on advanced services like a T-Mobile service that allows "wireless users to originate calls using wireless base stations connected to wired broadband networks," and like Verizon Wireless' Home Phone Connect service, which "allows VZW customers to port their home numbers to VZW and use traditional landline phones to make calls over their wireless network."[13] His position is that AT&T Missouri's call analysis would have (or might have) miscategorized calls made using such services. And to the extent that AT&T Missouri's analysis counts such calls as

[13] Wiseman Testimony at 57, lines 16 - 22.

landline-originated when they are actually originated with mobile equipment, Mr. Wiseman argues, we have overstated the percentage of landline-originated calls.

My direct testimony addressed these points and explained why Mr. Wiseman is wrong. The simple fact of the matter is that under current industry standards, the determinant of whether a carrier is landline or wireless is the Local Exchange Routing Guide ("LERG"). When our analysis treated a call as landline-originated, that meant that the carrier who holds the originating NPA-NXX for that call identified the NPA-NXX as landline. Thus, our analysis complied with industry standards, and properly treated as landline-originated a call that originated on wireless equipment only when the holder of the NPA-NXX for that call identified the NPA-NXX as landline.[14]

To be sure, the NPA-NXX does not in each and every instance accurately reflect actual geographic location. Nonetheless, NPA-NXX is the most reliable indicator we have in the telecommunications industry; it is accurate for the vast majority of calls; and, as the Tennessee Regulatory Authority specifically found in the parallel case there, it is standard, accepted practice in the industry to use NPA-NXX as a proxy for geographic location for landline calls.[15]

Furthermore, Mr. Wiseman makes no attempt to quantify the traffic that Halo delivers to AT&T Missouri that is originated with such advanced services. At the end of

[14] Neinast Direct at 16, lines 4-12.

[15] See the TRA's decision, Schedule MN-1 to my direct testimony, at 17: "The Authority acknowledges that a certain degree of imprecision can occur when analyzing the origin to individual telephone calls, due to factors such as the advent of number portability and the growth of wireless and IP telephony. However, because of these technical issues, the industry has developed conventions and practices to evaluate calls for the purpose of intercarrier compensation. The Authority finds that the methodology used to collect the data and the interpretation of the data in the AT&T study are based upon common industry practices to classify whether traffic is originated on wireline or wireless networks."

the day, then, his testimony on this point establishes *at most* that AT&T Missouri's numbers may be imprecise to some unascertainable (but not demonstrably significant) extent, which, again, makes no difference here.

Q. MR. WISEMAN CLAIMS THAT THE FCC SAID IN PARAGRAPHS 934, 960 AND 962 OF ITS *CONNECT AMERICA FUND* ORDER THAT CPN IS AN UNRELIABLE INDICATOR OF WHERE CALLS ACTUALLY BEGAN.[16] DOES THIS CAST ANY DOUBT ON YOUR CALL ANALYSIS?

A. No, for several reasons. Let's look first at what the FCC actually said in the three paragraphs of *Connect America Fund* [17] that Mr. Wiseman cites. In that Order, the FCC, among other things, "adopt[ed] a prospective intercarrier compensation framework for VoIP traffic."[18] In its discussion of that new framework, the FCC said:

> [G]iven the recognized concerns with the use of telephone numbers and other call detail information to establish the geographic endpoints of a call, we *decline to mandate*, their use in that regard . . . . We do, however, recognize concerns regarding providers' ability to distinguish VoIP-PSTN traffic from other traffic, and . . . we permit LECs to address this issue through their tariffs, much as they do with jurisdictional issues today.[19]

As it continued its discussion of the prospective intercarrier compensation framework for VoIP-PSTN traffic, the FCC repeated that point two more times, stating, "Because telephone numbers and other call detail information *do not always* reliably establish *the geographic endpoints of a call*, we do not mandate their use,"[20] and, "[W]e *do not require* the use of particular call detail information to dispositively distinguish toll

[16] Wiseman Testimony at 57, lines 8-9.

[17] *Connect America Fund*, FCC 11-161, 2011 WL 5844975 (rel. Nov. 18, 2011).

[18] *Id*. ¶ 933.

[19] *Id*. ¶ 934 (emphasis added).

[20] *Id*. ¶ 960 (emphasis added).

VoIP-PSTN traffic from other VoIP-PSTN traffic, given the recognized limitations of such information."[21]

This is hardly the condemnation of CPN that Mr. Wiseman claims to find in the FCC's Order. All the FCC actually said is that it was not *requiring* the use of CPN, in the context of its new, going-forward intercarrier compensation scheme for VoIP-PSTN traffic, because of concerns that CPN does *not always* reliably establish *the geographical endpoints of a call*. The FCC neither condemned nor prohibited the use of CPN, even for VoIP-PSTN traffic; it did not say anything at all about the reliability of CPN with respect to traffic (like much of Halo's traffic) that is *not* VoIP-PSTN traffic; and, most important, it did not say anything about the use of CPN to identify whether a call originated on a landline or wireless network (as opposed to identifying the geographic endpoints of a call).

Recall that the purpose of my call analysis was to confirm that Halo is sending AT&T Missouri landline-originated traffic in breach of the parties' ICA. As I have explained, CPN is a very reliable tool for identifying the carrier that originated calls and thereby determining whether the call was landline-originated. Moreover, I already accounted for Mr. Wiseman's claim that some IP calls may appear to be landline when they actually are wireless. While I dispute that claim, the re-run of our analysis, discussed above, shows that even if Mr. Wiseman were correct, it would have very little impact on the final result, and certainly would not prove that Halo is not sending significant volumes of landline-originated traffic to AT&T Missouri.

[21] *Id*. ¶ 962 (emphasis added).

Q. IS IT TRUE, AS MR. WISEMAN STATES, THAT "AT&T WITNESSES HAVE ALSO ADMITTED . . . THAT THEY HAVE NO REAL WAY OF ACCURATELY IDENTIFYING WHETHER A PARTICULAR CALL ACTUALLY 'ORIGINATED' FROM A 'WIRELINE' CUSTOMER OF AN LEC USING A TRADITIONAL PHONE"[22]?

A. Absolutely not. All we have "admitted" – and I will quote my direct testimony on this – is that "the NPA-NXX does not in each and every instance accurately reflect actual geographical location."[23] I then went on to say: "Nonetheless, NPA-NXX is the most reliable indicator we have in the telecommunications industry; it is accurate for the vast majority of calls; and it is the standard, accepted practice in the industry to use NPA-NXX as a proxy for geographic location for landline calls."[24] Our study demonstrated beyond any doubt that a substantial portion of the calls Halo is delivering to us originated on landline equipment, in breach of our interconnection agreement.

Q. WHAT IS YOUR CONCLUSION CONCERNING THE QUESTION WHETHER HALO IS SENDING AT&T MISSOURI TRAFFIC THAT ORIGINATES ON LANDLINE EQUIPMENT?

A. As I said at the outset, that is not really a question at all. Halo admits it is sending us traffic that started out on the PSTN. Notwithstanding its contract obligation, Halo is doing nothing to avoid sending us such traffic; Halo admits it "is not in a position to determine where or on what network the call started," and that it has "not asked our customer."[25] Our call studies showed that much of the traffic is landline-originated. Giving Halo every benefit of the doubt, the percentage may be somewhat less than our studies showed, but for purposes of this case, that makes no difference.

[22] Wiseman Testimony at 56, lines 7-8.

[23] Neinast Direct at 17, lines 15-16.

[24] *Id*. at 17, lines 16-19.

[25] Wiseman Testimony at 61, lines 14-15.

IV. TRANSCOM IS NOT AN ESP.

Q. PLEASE RE-STATE HOW THE QUESTION WHETHER TRANSCOM IS OR IS NOT AN ESP FITS INTO THE PARTIES' DISPUTE.

A. As I have explained, Halo is sending AT&T Missouri a substantial amount of traffic that originates on landline networks. That means that Halo is breaching the parties' ICA unless Halo can somehow persuade the Commission that all of that traffic is "re-originated" when it hits Transcom. To establish that that is the case, Halo must first show that Transcom is an ESP, because Halo's whole "re-origination" theory rests on the proposition that Transcom is an ESP.

In my direct testimony, I noted that in *Connect America Fund*, the FCC, while fully aware of Halo's contention that Transcom is an ESP, rejected precisely the argument that Halo is advancing here;[26] Mr. McPhee quoted the FCC's rejection of Halo's argument in full.[27]

I also explained that while the question whether Transcom is an ESP is ultimately a legal question, I had seen no evidence that Transcom provides enhanced services as I understand that term.[28] And I noted that the Tennessee Regulatory Authority ("TRA"), in the parties' identical dispute there, concluded that Transcom is not an Enhanced Service Provider, for reasons that track my own, to which I testified in Tennessee,[29] and that the Pennsylvania Public Utility Commission ("PPUC") likewise ruled that "Transcom's removal of background noise, the insertion of white noise, [and] the insertion of

[26] Neinast Direct at 20, line 16 - 21, line 5.

[27] McPhee Direct at 17, line 14 - 18, line 36.

[28] Neinast Direct at 22, line 6 - 23, line 12.

[29] *Id*. at 23, line 13 - 24, line 17.

computer developed substitutes for missing content"– the same functionalities Halo relies on here – do not constitute "enhancements."[30]

Q. WHAT DOES HALO'S TESTIMONY SAY ABOUT THE TRA AND PPUC RULINGS THAT TRANSCOM IS NOT AN ESP?

A. Halo has no answer for the Tennessee decision or the Pennsylvania decision, so Mr. Wiseman and Mr. Johnson ignore them.[31]

Instead of addressing those adverse rulings, Mr. Johnson discusses at great length what he calls Transcom's "enhanced service platform."[32] When all is said and done, Mr. Johnson spends many pages discussing his "very technical understanding"[33] of a very simple (and decidedly non-enhanced) aspect of Transcom's service.

Q. WHAT IS THAT ASPECT OF TRANSCOM'S SERVICE?

A. Transcom claims it improves the audio quality of voice transmissions.

Q. IS IMPROVING THE AUDIO QUALITY OF VOICE TRANSMISSIONS THE PROVISION OF ENHANCED SERVICES?

A. No. For the reasons I discussed in my direct testimony, and that the TRA, and the PPUC found conclusive, that is not the provision of enhanced services.

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[30] *Id*. at 25, lines 1-12.

[31] Neither Mr. Wiseman nor Mr. Johnson makes any mention of the PPUC decision. Their only mention of the TRA decision is Mr. Johnson's suggestion that the bankruptcy finding Halo relies on deserves at least as much "dignity" as the TRA decision – with no discussion of the merits of the TRA's decision. Johnson Testimony at 6, line 26 – 7, line 2. Mr. McPhee explains why the TRA decision is entitled to greater weight than the bankruptcy court finding. *See* McPhee Rebuttal at 13, line 1 – 14, line 22.

[32] Johnson Testimony at 7, line 13 - 17, line 8.

[33] *Id*. at 17, line 9.

Q. MR. WISEMAN STATES THAT YOUR ASSERTIONS, AND MR. MCPHEE'S, "ARE FOUNDED ON . . . A DISMISSAL OF FEDERAL DECISIONS REGARDING THE NATURE AND RIGHTS OF HALO'S HIGH VOLUME CUSTOMER."[34] DO YOU KNOW WHAT HE IS REFERRING TO?

A. I believe so. Halo likes to refer to Transcom, which is its one and only paying customer and which collaborates with Halo to pass off long distance, landline-originated traffic as local, wireless-originated traffic, as its "high volume customer." The "federal decisions" to which Mr. Wiseman is referring are the bankruptcy court decisions that ruled some years ago that Transcom was an ESP. Mr. Johnson discusses those decisions at some length, and Halo relies on them heavily.

Q. WHAT IS THE SIGNIFICANCE OF THE BANKRUPTCY RULINGS?

A. That is a question for the lawyers, but I will provide my general understanding of AT&T's position: Just as this Commission is not bound by the TRA's recent decision that Transcom is not an ESP, or the PPUC decision to the same effect, it also is not bound by the considerably older bankruptcy court decisions. Instead, the Commission should attach weight to the various decisions to the extent that it finds they are entitled to weight based on the considerations Mr. McPhee identifies and on the persuasiveness of their reasoning. This Commission is better equipped than a bankruptcy court, which seldom sees telecommunications issues or deals with FCC Rules, to decide whether Transcom is an ESP – and so were the TRA and the PPUC when they did not adopt the bankruptcy court conclusion and ruled that Transcom is not an ESP. This point seems evident to me as a layman, and was confirmed for me by the decision of the bankruptcy judge presiding over Halo's own bankruptcy to allow this Commission and other state commissions to determine the merits of these issues in the first instance. AT&T Missouri believes this

[34] Wiseman Testimony at 55, line 22 - 56, line 1.

Commission will find the reasoning of the two state commissions, especially the TRA, persuasive.

Halo has suggested that AT&T is legally bound by the bankruptcy court decisions, under a doctrine called "collateral estoppel." That is a legal issue that I cannot address, but AT&T will show in its legal briefs why that is incorrect, and that if anyone were legally bound here, it would be Halo, by the TRA decision on precisely the issues presented here.

Q. ARE THE ISSUES REGARDING THE ICA AT ISSUE IN THIS CASE THE SAME ISSUES REGARDING THE ICA THAT WAS AT ISSUE IN THE TRA DECISION YOU REFERENCE?

A. Yes. The terms and conditions in the ICA that the TRA ruled Halo breached are the same terms and conditions in the ICA being reviewed in this docket. Thus, AT&T's claim that Halo breached the ICA has already been sustained.

V. EVEN IF TRANSCOM WERE AN ESP, THAT DOES NOT MEAN IT RE-ORIGINATES EVERY CALL IT TOUCHES.

Q. HAS HALO'S TESTIMONY PERSUADED YOU THAT THE LANDLINE-ORIGINATED CALLS THAT HALO DELIVERS TO AT&T MISSOURI ARE RE-ORIGINATED AS WIRELESS CALLS WHEN THEY PASS THROUGH TRANSCOM'S EQUIPMENT?

A. Not in the slightest. As I explained in my direct testimony, a call is originated only once, by the person that actually starts the call – the girl in California in the illustration I gave.[35] Calls are analyzed on an end-to-end basis based on the originating caller's (the girl's) NPA-NXX and the called party's (the girl's grandmother in Jefferson City) NPA-NXX. Just as the FCC found when it rejected Halo's position in *Connect America Fund*,

[35] Neinast Direct at 19.

Transcom's supposed "re-origination" of a call with wireless equipment "in the middle of the call path does not convert a wireline-originated call [*i.e.*, a landline-originated call] into a CMRS-originated call."[36]

Bear in mind that Halo is not claiming that Transcom is originating these calls in the usual sense of the word. Rather, Halo is claiming that because Transcom is an ESP, Transcom (i) is exempt from access charges; (ii) is thus treated as an end user; and (iii) is therefore a call originator. Once one decides, as the Commission should, that Transcom is not an ESP, that is the end of the discussion – there is nothing left of Halo's argument.

Q. MR. WISEMAN OBJECTS TO THE TERM "RE-ORIGINATION." HE STATES THAT HALO IS NOT ARGUING THAT TRANSCOM "RE-ORIGINATES" CALLS, BUT RATHER THAT AS AN ESP, TRANSCOM "INITIATES A FURTHER COMMUNICATION."[37] DO YOU ACCEPT THE DISTINCTION HE IS MAKING?

A. Halo is free to use whatever words it wishes in making its own arguments. I would note, however, that the language in our ICA provides that Halo must send AT&T Missouri only traffic that "***originates*** through wireless transmitting and receiving facilities."[38] So if Halo insists that what Transcom is doing is *not* an origination, that necessarily means that the origination happens at the start of the call – which AT&T of course maintains is the one and only origination. Because that origination is not wireless for most of the calls Halo delivers to AT&T, Halo clearly is breaching the ICA.

As Mr. Wiseman acknowledges, he insists on the phrase "initiates a further communication" because that is the phrase the D.C. Circuit used in the *Bell Atlantic*

[36] *See id.* at 21, lines 1-5, quoting *Connect America Fund*.

[37] Wiseman Testimony at 80, lines 16-21.

[38] I refer to the ICA Amendment quoted in Mr. McPhee's direct testimony, at 14, lines 1-6.

decision when it talked about dial-up internet traffic terminating at the Internet Service Provider ("ISP"), which then initiated a further communication to the World Wide Web.[39] As AT&T Missouri will explain in its legal briefs, the *Bell Atlantic* decision does not help Halo here, because, among other reasons, there is a tremendous difference between the situation that case addressed and the situation presented here. For one thing, when an ISP's customer dials a seven-digit phone number to reach the ISP in order to go onto the internet, the customer knows he is calling the ISP for that purpose. In contrast, when the girl in California calls her grandmother in Jefferson City, the girl is not making a call to Transcom; she does not even know Transcom exists. AT&T will explain the legal significance of this important factual distinction in its briefs.

All that said, I do not believe it makes any difference whether we call it a "re-origination," a "second origination" or the "initiation of a further communication," because whatever we call it, Transcom does not do it.

Q. MR. WISEMAN STATES THAT HE IS ADVISED BY COUNSEL THAT THE "FCC APPARENTLY DISAGREES WITH THE D.C. CIRCUIT'S HOLDING THAT ESPS CONSTITUTE AN END POINT FOR RECIPROCAL COMPENSATION PURPOSES, AND WHEN AN ESP 'ORIGINATES A FURTHER COMMUNICATION' IT IS A SEPARATE COMMUNICATION."[40] DOES AT&T SHARE THAT VIEW?

A. Mr. Wiseman is certainly correct that the FCC has ruled that ESPs do not constitute an end point, and that ESPs do not "originate" further communications, and that is fatal to Halo's position here. AT&T Missouri does *not* agree, however, that that means the FCC disagrees with the D.C. Circuit's holding in *Bell Atlantic*. Having staked out the position

[39] Wiseman Testimony at 80, lines 16-21.

[40] *Id*. at 43, lines 6-8.

that *Bell Atlantic* holds that ESPs are always call originators and call terminators, and having acknowledged that the FCC has concluded that ESPs are not call originators, Mr. Wiseman is forced to say that the FCC disagrees with *Bell Atlantic*. But the FCC certainly did not *say* it was disagreeing with the D.C. Circuit, and AT&T does not believe it was. Rather, Halo was simply wrong when it read *Bell Atlantic* as supporting its position.

Q. WHAT IF THE COMMISSION WERE TO DECIDE THAT TRANSCOM IS AN ESP? WOULD IT FOLLOW THAT TRANSCOM IS ORIGINATING ALL THESE CALLS, AS HALO CLAIMS?

A. Not in my view, as I have explained.[41] That is in large part a legal question, however, which AT&T Missouri will address in its briefs.

Q. YOU SAY THAT THE FCC REJECTED HALO'S THEORY IN *CONNECT AMERICA FUND,* BUT STARTING AT PAGE 78 OF HIS DIRECT TESTIMONY, MR. WISEMAN SEEMS TO SUGGEST THAT MAY NOT BE THE CASE. HOW DO YOU RESPOND?

A. From my perspective, the most important statement in Mr. Wiseman's testimony about the FCC's Order – and perhaps the most straightforward statement – is this: "We acknowledge that . . . apparently [the FCC] now believes ESPs are exchange access customers and *do not originate calls*."[42] With this acknowledgment that the FCC believes ESPs do not originate calls, I do not see how Halo can maintain its position that the calls we are discussing are not landline-originated calls on the theory that Transcom originates them.

[41] Neinast Direct at 27, lines 1-19.

[42] Wiseman Testimony at 54, lines 3-4 (emphasis added).

Q. BUT DOESN'T MR. WISEMAN QUALIFY HIS ACKNOWLEDGEMENT OF THE FCC'S BELIEF?

A. Yes. Mr. Wiseman, in the same sentence I just quoted, says that the FCC's belief that ESPs do not originate calls results from the fact that the FCC has "reversed course from prior precedent." He also states that the fact that the FCC believes ESPs do not originate calls "does not resolve the 'end user' question," and does not mean that ESPs are common carriers or provide telecommunications services.[43] As to the first point, AT&T does not believe the FCC's rejection of Halo's position is a rejection of prior precedent; rather, it is an application of prior precedent, as AT&T Missouri will show in its legal briefs. Scott McPhee discusses this in his rebuttal testimony, at pages 6-7.

As for Mr. Wiseman's second point, this Commission does not need to resolve the "end user" question or decide whether Transcom is a common carrier or provides telecommunications services in order to decide that Halo has breached the parties' ICA by sending AT&T landline-originated traffic. If Transcom is not originating calls, as Halo acknowledges the FCC found, then all those landline-originated calls, like the girl's call to her grandmother, remain landline-originated and were delivered in breach of the ICA.

[43] *Id*. at 54, lines 4-5.

Q. MR. JOHNSON CLAIMS AT&T'S WITNESSES AGREE THAT "UNDER THE FCC'S VIEW, END USERS USE CUSTOMER PREMISE EQUIPMENT (OR CPE) TO 'ORIGINATE' TELECOMMUNICATIONS TO TELECOMMUNICATIONS CARRIERS AND TELECOMMUNICATIONS CARRIERS 'TERMINATE' TELECOMMUNICATIONS TO END USERS' CPE."[44] IS THAT TRUE?

A. No. Neither Mr. McPhee nor I used the words Customer Premises Equipment or the term CPE in our direct testimony, and neither of us made any reference to any such equipment.[45] Furthermore, the FCC defines Customer Premises Equipment as "equipment employed on the premises of a person (other than a carrier) to originate, ***route***, or terminate telecommunications."[46] I take it that Mr. Johnson's point is that if Transcom's equipment is Customer Premises Equipment (and I express no view on whether it is), then Transcom necessarily terminates and originates all the telecommunications that pass through it. According to the FCC's definition, that is not the case. Assuming that Transcom does have Customer Premises Equipment, that equipment can be used to *route* calls.

Q. SINCE NEITHER YOU NOR MR. MCPHEE MADE ANY MENTION OF CPE IN YOUR DIRECT TESTIMONY, I TAKE IT THAT MR. JOHNSON IS ALSO WRONG WHEN HE STATES THAT YOU AGREED IN YOUR DIRECT TESTIMONY THAT "TRANSCOM'S WIRELESS TRANSMITTING AND RECEIVING FACILITIES ARE CPE"?[47]

A. Correct. We agreed to no such thing in our direct testimony. I am expressing no opinion on whether Transcom's equipment is CPE. As I just noted, however, I do not believe that Halo can get where it wants to get by engaging in a logic chain that says (i) Transcom's

[44] Johnson Testimony at 5, lines 7-9.

[45] I know that Mr. Johnson claimed to find these agreements "buried" in our testimony (Johnson Testimony at 4, line 18), but this one isn't even close.

[46] 47 C.F.R. § 6.3(c) (emphasis added).

[47] Johnson Testimony at 5, line 10.

equipment is CPE, (ii) CPE terminates and originates communications, and, therefore, (iii) Transcom originates all the traffic that Halo delivers to AT&T Missouri. The chain falls apart at step (ii) in light of the FCC's definition of CPE.

Q. MR. JOHNSON ALSO STATES THAT AT&T'S WITNESSES AGREE THAT "TRANSCOM'S ENHANCED SERVICES CHANGE THE CONTENT OF THE COMMUNICATIONS IT RECEIVES FROM ITS CUSTOMERS."[48] IS THAT TRUE?

A. No. We have consistently maintained that Transcom does not provide enhanced services, so we certainly haven't agreed (even implicitly or "deeply buried," as Mr. Johnson put it) to anything about any such enhanced services. Nor have we agreed that Transcom changes content. On the contrary, the content of the communication remains unchanged.

Q. WHAT ABOUT THE OTHER TWO THINGS THAT MR. JOHNSON CLAIMS YOU HAVE AGREED TO?[49]

A. We did not agree to either of those propositions, either.

Q. MR. WISEMAN ANALOGIZES THE HALO-TRANSCOM ARRANGEMENT TO A "LEAKY PBX."[50] DOES THE ANALOGY SUPPORT HALO'S POSITION HERE?

A. No. The so-called "leaky PBX" situation arises when someone using a work phone or home phone dials into her company's PBX and then, usually by dialing an access code or another number, has the PBX send the call to another company PBX via a private line connection between the PBXs. The second PBX then "leaks" the call into the local exchange for termination, and the call appears to be local (that is, it looks like it came

[48] *Id.* at 4, lines 20-21.

[49] *Id.* at 5, lines 1-6.

[50] *E.g.* Wiseman Testimony at 53, line 16 - 54, line 2.

from the local PBX), so the LEC does not know to apply access charges.[51] Mr. Wiseman's comparison to a leaky PBX is telling, because the FCC long ago recognized that leaky PBXs – just like Halo's and Transcom's current scheme – constituted a form of "access charge avoidance" that needed correction.[52] The FCC dealt with the Leaky PBX situation by imposing a $25 per month surcharge on all jurisdictionally interstate special access lines that do not fall within specific exceptions.

In any event, the Halo/Transcom arrangement, though similar in purpose to leaky PBX, is different in important ways. Most important, in the leaky PBX situation the person who originates the call knows she is using a company line and the company remains responsible to pay for the line and the call. With Halo and Transcom, by contrast, the party originating the call has no idea that Halo or Transcom will be involved in carrying the call and Halo and Transcom have no contractual or other relationship with that caller.

Q. MR. JOHNSON ARGUES AT LENGTH THAT TRANSCOM IS NOT A "TELECOMMUNICATIONS CARRIER."[53] DO YOU AGREE?

A. Whether Transcom is or is not a "telecommunications carrier" as that term is defined in the statute Mr. Johnson quotes is a legal question. Indeed, Mr. Johnson acknowledges that much of what he says on the subject is "on the advice of counsel." Mr. Johnson's argument that Transcom is not a carrier, however, is merely a round-about way of restating Halo's contention that Transcom is an ESP and, therefore, an end-user that

[51] *In the Matter of Amendment of Part 69 of the Commission's Rules Relating to Private Networks and Private Line Users of the Local Exchange*, 2 FCC Rcd. 7441, ¶ 15 (rel. Dec. 18, 1987); NEWTON'S TELECOM DICTIONARY at 426 (18th ed.) (definition of "Leaky PBX").

[52] *MTS and WATS Market Structure*, 97 FCC Rcd. 682, ¶ 87 (1983).

[53] Johnson Testimony at 20, line 10 - 23, line 7.

originates communications. Assuming the Commission rejects that argument, as it should, the Commission will have no occasion to decide whether Transcom is a carrier. That said, inasmuch as Transcom is not, in my view, an ESP, I continue to believe that Transcom is a carrier.

VI. HALO PROVIDED INACCURATE CALL DETAIL.

Q. IN YOUR DIRECT TESTIMONY, YOU SHOWED THAT HALO HAS INSERTED CHARGE NUMBER ("CN") DATA IN A MANNER THAT MAKES TOLL CALLS APPEAR TO BE LOCAL, APPARENTLY SO HALO COULD AVOID PAYING THE APPLICABLE ACCESS CHARGES. DOES HALO ADMIT DOING THIS?

A. Yes. As I discussed, when used legitimately, a Charge Number ("CN") appears on a very small number of calls and is typically within the same NPA-NXX as the Calling Party's Number. Halo, however, inserted what it alleges is a Transcom CN on *all* of the calls it was sending to AT&T Missouri, even though the calling party had not asked or arranged to have a CN inserted. Mr. Wiseman admits Halo did this, saying that Halo "populated Transcom's Billing Telephone Number ('BTN') in the SS7 Charge Number ('CN') address signal."[54] I am aware of no legitimate reason to insert CN in this manner. Halo has stated that it stopped inserting the Transcom CN as of December 29, 2011, but that does not remove Halo's prior, and significant, breach of the ICA.

[54] Wiseman Testimony at 66, lines 5-7.

Q. MR. WISEMAN, HOWEVER, STATES THAT HALO INSERTED THE TRANSCOM CN INTO THE CALL DETAIL "SO HALO COULD CORRECTLY BILL SERVICES, AND ASSOCIATE ITS CUSTOMER CALLS TO TERMINATING LECS, WHERE DIFFERENT TERMINATING CHARGES ARE IN EFFECT."[55] IS THAT A PERSUASIVE EXPLANATION?

A. I do not believe it is. I cannot imagine why Halo would need to insert a Transcom CN into the call detail in order for Halo to correctly bill Transcom, which is its only customer. And I have no idea what Mr. Wiseman means when he says Halo inserted the CN so Halo could "associate its customer [Transcom] calls to terminating LECs, where different terminating charges are in effect." That makes no sense to me.

Q. YOU SAY THAT HALO WAS DISGUISING THE TRUE NATURE OF ITS TRAFFIC, BUT WASN'T AT&T MISSOURI ABLE TO DISCERN THE TRUE NATURE OF THE TRAFFIC BY LOOKING AT THE ORIGINATING CPN AND USING THE PROCESS YOU AND MR. MENSINGER USED FOR YOUR CALL ANALYSES?

A. Yes, but that isn't the point. As I explained in my direct testimony,[56] Halo was disguising the true nature of its traffic *from our billing systems*. That is where the breach of ICA and conflict with industry practices occurred.

Q. BUT MR. WISEMAN SAYS THAT AT&T'S BILLING SYSTEMS COULD NOT HAVE BEEN DECEIVED, BECAUSE AT&T MISSOURI DOES NOT DO "CALL BY CALL" RATING.[57] HOW DO YOU RESPOND?

A. It is true that AT&T Missouri does not bill Halo by identifying each individual call as local or long distance and billing accordingly; rather, AT&T Missouri bills carriers with CMRS ICAs, such as Halo, according to factors – in this instance, the 100% intraMTA factor that Halo gave AT&T Missouri (*i.e.*, Halo's representation that all of Halo's traffic

[55] *Id*. at 67, lines 19-21.

[56] Neinast Direct at 30, lines 6-13.

[57] Wiseman Testimony at 67, lines 7-8.

is intraMTA wireless traffic). What Mr. Wiseman overlooks, however, is that the ICA allows the factor to be adjusted from time to time to reflect real world traffic flows, and 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 indeed intraMTA traffic. That, under other circumstances, would have deterred AT&T from seeking to adjust the billing factors. It was only because our suspicions were aroused and we checked the SS7 records (as opposed to the billing records) that we were able to confirm that Halo was in fact sending us a great deal of traffic that was not intraMTA.

Q. HAS THE FCC RECOGNIZED THAT INSERTING A CN INTO THE CALL RECORD, AS HALO DID, CAUSES PROBLEMS FOR TERMINATING CARRIERS?

A. Yes. In *Connect America Fund*, the FCC addressed the practice of manipulating CN that is sent to a terminating carrier. The FCC referred to this as "the problem of CN number substitution that disguises the characteristics of traffic to terminating carriers," and found that "CN substitution is a technique that leads to phantom traffic."[58] The FCC therefore stated that "the CN field may only be used to contain a calling party's charge number, and that it may not contain or be populated with a number associated with an intermediate switch, platform, or gateway, or other number that designates anything other than a calling party's charge number."[59] Yet that is precisely what Halo did.

[58] *Connect America Fund*, ¶ 714.

[59] *Id.*

VII. HALO'S INTERCONNECTION WITH AT&T MISSOURI.

Q. MR. WISEMAN CLAIMS THAT "HALO IS NOT 'PLACING' THE TRAFFIC IN ISSUE 'ON' OR 'OVER' THE 'LEC-TO-LEC NETWORK,'" BUT THAT IT WAS AT&T MISSOURI THAT HAD "UNILATERALLY CHOSEN HOW TO ROUTE THE TRAFFIC" AND HALO "CANNOT BE HELD RESPONSIBLE."[60] IS MR. WISEMAN'S PORTRAYAL ACCURATE?

A. No. Halo chose to present 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 consciously sought and received interconnection with AT&T Missouri as a local carrier (e.g., an ILEC or CLEC) would interconnect. In Missouri, the collection of these connections between local network providers is known as the LEC-to-LEC network. It is generally used for the exchange of local traffic and local toll calls. When wireless carriers sought to interconnect to the existing LEC network, they sought interconnection as co-carriers and were allowed to interconnect as additional local carriers.

Q. WHAT ROLE DOES FEATURE GROUP C ("FGC") PLAY IN THE LEC-TO-LEC NETWORK?

A. FGC is the method for the trunking and routing process of making long distance toll calls without the use of an interexchange carrier ("IXC"), that is, on a LEC-to-LEC basis. FGC is a trunk-side access service where a customer dials a one-digit access code plus the called telephone number (1+10 digits). LEC access tandems recognize the called number in the FGC signaling received from the originating end office and route those calls to the tandem or end office serving the called customer. Prior to the AT&T divestiture, most toll calls were completed using this Feature Group. At the time of

[60] Wiseman Testimony at 32, lines 7-13.

divestiture, all Regional Bell Operating Companies were required to implement a new type of access service, Feature Group D ("FGD") for interLATA toll service. FGC, however, was retained as the standard method to route an intraLATA call directly to another LEC without using an IXC.

Q. WHAT IS FGD?

A. FGD was developed as a method of providing equal access to IXC networks. FGD access is provided through the end office serving the originating telephone customer. FGD is a trunk-side access service where a customer dials either a one-digit access code (1) for access to a presubscribed IXC or a seven-digit access code (101-XXXX) for dial-around use to access an IXC other than his or her presubscribed carrier. Originating access tandems route FGD calls to an IXC based on the Carrier Access Code ("CAC") in the FGD signaling received from the originating end office and route the call to the selected IXC as represented by the Carrier Identification Code ("CIC"). The call is routed either directly to the IXC or via an access tandem equipped to handle FGD calls. This Feature Group is designed to allow the serving end office to route a toll call to the IXC chosen by the customer to handle the call.

Q. UNDER CURRENT STANDARDS, ARE CALLS A LEC RECEIVES FROM WIRELESS CARRIERS FOR TERMINATION WITHIN A LATA ROUTED USING A CIC?

A. No. The telephone number is all that is required for routing wireless calls terminating within a LATA. In fact, the CIC is only required to originate a FGD call and is used by the end office or tandem (when an IXC has no end office trunking, or on an overflow condition with end office trunking) to identify which IXC trunk group for routing the call. Once the IXC has been identified in the switch translations, the call is delivered to

the IXC and the IXC transports the call to the terminating carrier. This is exactly the reason there is never any originating access charge avoidance, only terminating access charge avoidance, as we have here with Halo. The origination of a FGD call has to be followed exactly or the call will not complete. For wireless traffic terminating to the landline network, there is no need for either a CAC or a CIC for such calls would be handled without using an IXC through FGC.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.

PSC REF#:159682

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Investigation into Practices of Halo Wireless, Inc. and Transcom Enhanced Services, Inc.	9594-TI-100

PRE-FILED REBUTTAL TESTIMONY OF RUSS WISEMAN ON BEHALF OF HALO WIRELESS, INC.

FEBRUARY 8, 2012

We acknowledge that the FCC has now thrown out all of the prior precedent and apparently the FCC now believes ESPs are exchange access customers and do not originate calls. I note that this still does not resolve the "end user" question: merely because ESPs now use exchange access does not mean they are common carriers or provide telecommunications service. The FCC has chosen to not expressly clarify the law on this interesting issue, but it did not change the definition of "end user" which basically says if an entity is not a carrier then it is an end user for access purposes.

But under the FCC's new rules, "origination" is only relevant to whether a CMRS provider's traffic is "intraMTA" and therefore bill and keep. CMRS can provide and support other traffic types. The task at hand is identify what the Halo traffic is under the new rules and then determining the appropriate compensation result.

Halo and Transcom are related companies. But Halo must still operate under the rules applicable to common carriers. We cannot interfere with or discriminate based on what our end user customer is doing on its side before our end user customer ***originates*** (further or otherwise) an end user call in an MTA.[21] We believe all that matters is whether our traffic comes to us from an end user employing a CMRS-based wireless facility in the same MTA.

Q: Putting aside the question of where calls originate, what is your reaction to AT&T's and TDS's assertions that calling party and called numbers are reliable ways to determine where calls actually began, and are appropriate parameters to determine call jurisdiction for call rating purposes?

A: The FCC order says that numbers are unreliable for this purpose and we agree. My reaction is that while the initial location of a call session initiation may be relevant to jurisdiction

[21] An ILEC that is selling a private line to the end user customer might have reason to inquire whether the user is employing a "leaky PBX" in order to determine if the "leaky PBX surcharge" applies, but we are not a LEC.

based on the "end-to-end" theory, we do not believe it is determinative to call rating for our CMRS traffic, with Transcom as an end user ESP customer. We established our business plan to operate according to the prior rules relating to CMRS carriers, where traffic is originated by end users (including ESPs) using wireless stations capable of movement at towers located in MTAs. We also do not believe that the industry can continue to rely on the "calling party number" as some indicator of where and on what network a call started. Numbers are not a reliable proxy for location, nor can you assume that a call from a station associated with a particular number actually started on the network of the exchange carrier that was allocated the number from NANPA. My examples above conclusively demonstrate the folly of doing so.

In Ms. Robinson testimony, she asserts that using telephone numbers are a reliable way to determine the geographic starting point for a call, the network the call originated on, the location of the caller when making the call or whether a call involves "wireless." This might have been true 30 years ago when there were no IP networks and other advanced communication applications that effectively disassociate telephone numbers from physical telephone lines, switches and even networks. But today, the industry knows full well that advanced communications technologies, both IP and wireless, are rendering it impossible to rely on CPN to determine where a call began or the network owner or type of network that was used to initiate the call. Allow me to provide a few more examples by elaborating on what I said earlier.

Carriers like T-Mobile offer services today that allow their wireless users to originate calls using wireless base stations connected to wired broadband networks. Are calls using these devices wireless or wireline orginated? Is this "non-access" traffic or is it "access reciprocal compensation"? Is it transit?

Verizon Wireless offers Home Phone Connect, a service that allows VZW customers to port their home numbers to VZW and use traditional landline phones to make calls over their wireless network. Is this a mobile wireless service? Fixed wireless? Wireline? Is this non-access" traffic or is it "access reciprocal compensation"? Is it transit? Would calls from a ported landline number be viewed by a terminating LEC as a wireless call or a wireline call? We suspect the latter as the CPN would be a landline telephone number. But these calls would all traverse the VZW wireless network.

A growing trend today with smart phones is that wireless users today can use Skype or GoogleVoice service as an application on a smart phone. Skype and GoogleVoice quite often obtain numbers from CLEC "numbering partners" such as Level 3 or Bandwidth.com. Let's assume the numbering partner is Bandwidth.com. An AT&T Wireless customer can originate a call while traveling in California using Skype on an AT&T-provided wireless smart phone. In this example, as before Skype has sub-assigned a number from Level 3 (603-373-6xxx) in the Milwaukee rate center to the AT&T Wireless user. The Skype user's outbound call, let's say to a PSTN user served by a local exchange carrier such as AT&T, probably will not go out over Level 3's network, even though Level 3's number will be signaled. It will be completed over AT&T Wireless's IP network and then go to Skype's network and then be routed to a Skype vendor to start the termination chain. The call, however, will appear to the AT&T LEC as a wireline originated call, since the Calling Party Number is a "wireline" number. The ILECs would claim this call started "on the PSTN" in Milwaukee, and Level 3 was the "originating LEC." However, those inferences would be incorrect. Since a smart phone was used, it would be "wireless." It started in California, not Wisconsin. Level 3 probably never touched the call at all in any way. Finally it would be an IP-originated call and did not "originate on the PSTN."

If the smart phone toting Skype user in California was calling someone in Wisconsin within MTA 20 and LATA 354 (which includes Madison), our ESP end user Transcom could very well receive it from one of its customers that have contracted with Skype. If so, Transcom would process the call and hand it to Halo via Transcom's wireless CPE that is communicating with our New Glarus, WI base station. Halo would hand the call off to AT&T at its MDSNWI1171T tandem. AT&T would then terminate or transit the call to the terminating carrier.

The ILECs would probably "rate" this as an intraMTA, interLATA call, because they would see it as a Milwaukee number calling a user within the same MTA, albeit different LATAs, but they would probably claim it is "wireline" PSTN originated and therefore Halo is not "authorized" to handle it, as the number is a wireline number. We previously would have argued it is intraMTA because we received it from our end user customer at our base station in MTA 20 and it terminated in MTA 20. We would have then and still do strongly disagree that it was "wireline" PSTN originated. Under the new rules is this "non-access" traffic? Is it "access reciprocal compensation"? Is it "transit"?

In the myopic world of the ILECs, these scenarios are fanciful, unlikely and irrelevant. However, their cellular counterparts know differently. The entire telecommunications industry knows differently. And most importantly, consumers know differently. Voice is now, and will ever more further become, an IP "application, where telephone numbers "move" seamlessly across devices and networks, just like music content in the "cloud" can be accessed on any device, anywhere, at any time. Voice is really no different.

Because of these convergence trends, the FCC has supported, and now requires, traffic factors to allocate between different traffic types precisely because of the fact that numbers have

been disassociated from networks and location and thus are not reliable.[22] I think it is worth noting that in proceedings in other states, notably Tennessee, Ms. Robinson admitted that the approach of determining call jurisdiction for billing purposes from telephone numbers is flawed, and does not result in a precise or accurate result. I think she described it as "the best we can do", or words to that effect. In her latest testimony she seems to "double down" on her commitment to this flawed thinking by asserting that CMRS calls are interMTA based on the rate center of the mobile telephone number of the calling party. Apparently roaming, and determining call jurisdiction for rating purposes based on the location of the base station where the call originated, are both unfamiliar concepts to Ms. Robinson.

Thus, TDS's claim to be able to be able to reliably determine the "jurisdiction" of Halo's traffic for billing purposes, whether it is "wireline" or "wireless," "intrastate" or "interstate," "intraMTA" or "interMTA," and as the sole basis for deriving estimates of access charges due, are unreliable at best, and likely skew the financial costs heavily in their favor. Ms. Robinson's approach is based on antiquated industry practices seasoned with healthy doses of self-serving assumptions. However, this did not stop them from deriving impressively precise damages figures based on these assumptions, or attempting to make adjustments to their figures based on actual statistics on caller locations or the actual network or base station locations where calls

[22] *See, e.g.* FCC Order ¶ 934 ("…In addition, given the recognized concerns with the use of telephone numbers and other call detail information to establish the geographic end-points of a call, we decline to mandate their use in that regard, as proposed by some commenters. …"); ¶ 960 ("…Because telephone numbers and other call detail information do not always reliably establish the geographic end-points of a call, we do not mandate their use. …"); ¶ 962 ("Contrary to some proposals, however, we do not require the use of particular call detail information to dispositively distinguish toll VoIP-PSTN traffic from other VoIP-PSTN traffic, given the recognized limitations of such information.For example, the Commission has recognized that telephone numbers do not always reflect the actual geographic end points of a call. Further, although our phantom traffic rules are designed to ensure the transmission of accurate information that can help enable proper billing of intercarrier compensation, standing alone, those rules do not ensure the transmission of sufficient information to determine the jurisdiction of calls in all instances. Rather, consistent with the tariffing regime for access charges discussed above, carriers today supplement call detail information as appropriate with the use of jurisdictional factors or the like when the jurisdiction of traffic cannot otherwise be determined. We find this approach appropriate here, as well.")

began. I note that many of their characterizations also suffer from the problem that they do not actually take all of the FCC's new rules into account.

From Halo's perspective, we designed our business plan to operate according to the rules of CMRS carriers, where traffic is originated by end users, using wireless stations capable of movement, at towers located in MTAs. We are prepared to operate under the FCC's new regime (for so long as it is in effect pending appellate review) but we must be given a chance to bring our arrangements and operations into compliance, and the full set of FCC rules must be implemented. The ILECs cannot be allowed to cherry pick the rules they like, and ignore or dismiss those they don't. .Ms. Robinson's assertion that "billing for the entire industry is determined on the basis of the originating and terminating end points of the called and calling parties" is not true for the CMRS industry, and it is quickly dissolving in the entire telecom space in the face of converged wireless-wireline and IP-based services. The "practice" is for carriers to traffic factors instead of call-by-call rating, since numbers-based rating is no longer feasible in today's advanced network and service environment where the starting and ending "locations" of calls is hard to consistently, accurately and efficiently determine and the "number" consistently yields an incorrect answer. The FCC's new regime calls for factors and we are willing to develop and supply them.[23]

Ms. Robinson's testimony makes it clear that the LECs are using the calling party number to identify the "originating network" as well, and using this same information to determine call jurisdiction for call rating, and for the amounts they claim they are due for access charges. She apparently does not accept that the presence of a number in the signaling does not mean the call originated on the network of the carrier that has been assigned that number. The

[23] I hope and trust that the PSC is also willing to implement the FCC's new rules because those rules also require the ILECs to negotiate in good faith to establish IP-based interconnection, and Halo is preparing to seek IP-based interconnection from AT&T and many of the ILECs involved in this proceeding.

inter-carrier compensation regime is not and cannot be founded on the assumption that you can definitively determine the starting point of a call, the type of call, or the initial network based on "the number." I would further observe that reliance on the number as the exclusive rating determinant is subject to the very outcomes the LECs want to avoid: gaming and arbitrage. It was not that long ago that state commissions all over the country had to resolve the inter-carrier compensation issues related to "arbitrage" using Virtual NXXs. The states largely adopted the ILEC position in those cases and ruled that the telephone numbers did not control rating. The ILECs insist on using numbers when it means they can claim access, but they have refused to use numbers when it meant they do not get access. The PSC cannot be so arbitrary.

If the LECs are using the calling party number to identify the "originating network" our position is this is not a reliable way to determine the starting location of a call, or the carrier network that the call started on. Consequently, it seems to me that any inter-carrier compensation regime founded on the assumption that you can definitively determine the starting point of a call is fundamentally flawed and subject to the very outcomes the LECs want to avoid: gaming and arbitrage. The fact of the matter is, wireline and wireless networks and services are converging, rapidly, and in ways that blur the traditional, once clear distinctions of wireless and wireline.

For a converged IP service provider such as Halo, the starting network or the type of number used simply does not matter. And even if it did, there is no way for us to definitively determine where a call started, for the same reasons as mentioned above. Trying to maintain this distinction is fighting a losing battle, and swimming against the strong tide of market, technical and regulatory evolution occurring in the telecommunications industry.

Q: If we assume that Judges Hale and Felsenthal were correct, and if all of the traffic that traverses interconnection is originated by an end user in the MTA, what is your

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF GEORGIA

IN RE: COMPLAINT OF TDS TELECOM ON BEHALF OF ITS SUBSIDIARIES BLUE RIDGE TELEPHONE COMPANY, CAMDEN TELEPHONE & TELEGRAPH COMPANY, 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	)	DOCKET NO. 34219

PRE-FILED DIRECT TESTIMONY OF RUSS WISEMAN ON BEHALF OF HALO WIRELESS, INC.

MARCH 19, 2012

The ILECs, however, want to focus on what the High Volume customer does with the mobile service it receives. They contend that merely because the customer does not actually move the stations around, the service is somehow converted from "mobile" to "fixed." This argument inappropriately categorizes Halo's regulatory status based on whether the customer engages in the ILECs' subjective standard for "sufficient" mobility.

Q: What is your reaction to TDS's and AT&T's assertions that calling party and called numbers are reliable ways to determine where calls actually began, and are appropriate parameters to determine call jurisdiction for call rating purposes?

A: The FCC order says in ¶¶ 934, 960, and 962 that the FCC still believes numbers are unreliable for this purpose and we agree. My reaction is that while the initial location of a call session initiation may be relevant to jurisdiction based on the "end-to-end" theory, we do not believe it is determinative to call rating for our CMRS traffic, with Transcom as an end-user ESP customer. We established our business plan to operate according to the prior rules relating to CMRS carriers, where traffic is originated by end-users (including ESPs) using wireless stations capable of movement at towers located in MTAs. We also do not believe that the industry can continue to rely on the "calling party number" as some indicator of where and on what network a call started. Numbers are not a reliable proxy for location, nor can you assume that a call from a station associated with a particular number actually started on the network of the exchange carrier that was allocated the number from NANPA.

Today, the industry knows full well that advanced communications technologies, both IP and wireless, are rendering it impossible to rely on CPN to determine where a call began or the network owner or type of network that was used to initiate the call. Allow me to provide a few more examples by elaborating on what I said earlier.

Carriers like T-Mobile offer services today that allow their wireless users to originate calls using wireless base stations connected to wired broadband networks. Are calls using these devices wireless or wireline originated? Is this "non-access" traffic or is it "access reciprocal compensation"? Is it transit?

Verizon Wireless offers Home Phone Connect, a service that allows VZW customers to port their home numbers to VZW and use traditional landline phones to make calls over their wireless network. Is this a mobile wireless service? Fixed wireless? Wireline? Is this non-access" traffic or is it "access reciprocal compensation"? Is it transit? Would calls from a ported landline number be viewed by a terminating LEC as a wireless call or a wireline call? We suspect the latter as the CPN would be a landline telephone number. But these calls would all traverse the VZW wireless network.

WZW just introduced a wireless broadband product called "Home Fusion" that is "designed for use in rural and remote homes that can't get DSL or cable."[1] "The service requires the installation of a cylindrical antenna, about the size of a 5-gallon bucket, on an outside wall." "Verizon cites the same speeds for HomeFusion as for LTE data sticks: 5 to 12 megabits per second for downloads, and 2 to 5 megabits for uploads." This is similar in capability to Halo's consumer broadband product, except VZW's product is quite a bit more expensive. I am sure that users can connect some form of soft phone client and make interconnected VoIP calls – just like they can with Halo's product. Does AT&T intend to claim that VZW cannot use interconnection to originate or terminate calls to users employing this product? Is this a mobile wireless service? Fixed wireless? Wireline? Is this "non-access" traffic or is it "access reciprocal compensation"?

[1] *See "Verizon launches faster-than-wired wireless broadband for homes; starts at $60/mo,"* Washington Post Online, Taken from Associated Press, March 5, 2012, available at http://www.washingtonpost.com/national/verizon-launches-faster-than-wired-wireless-broadband-for-homes-starts-at-60mo/2012/03/06/gIQADvYvtR_story.html.

A growing trend today with smart phones is that wireless users today can use Skype or GoogleVoice service as an application on a smart phone. Skype and GoogleVoice quite often obtain numbers from CLEC "numbering partners" such as Level 3 or Bandwidth.com. Let's assume the numbering partner is Bandwidth.com. An AT&T Wireless customer can originate a call while traveling in California using Skype on an AT&T-provided wireless smart phone. In this example, Skype will have sub-assigned a number from Level 3 that is associated with some rate center to the AT&T Wireless user. The Skype user's outbound call, let's say to a PSTN user served by a local exchange carrier such as AT&T, probably will not go out over Level 3's network, even though Level 3's number will be signaled. It will be completed over AT&T Wireless's IP network and then go to Skype's network and then be routed to a Skype vendor to start the termination chain. The call, however, will appear to the AT&T LEC as a wireline originated call, since the Calling Party Number is a "wireline" number. The ILECs would claim this call started "on the PSTN" in the rate center to which the Skype user's "wireline" number is associated and that Level 3 was the "originating LEC." However, those inferences would be incorrect. Since a smart phone was used, it would be "wireless." It started wherever the Skype user happens to be at the moment. Level 3 probably never touched the call at all in any way. Finally it would be an IP-originated call and would not "originate on the PSTN."

If the smart phone toting Skype user was calling someone in Atlanta, Georgia within MTA 11, LATA 438, our ESP end-user Transcom could very well receive it from one of its customers that have contracted with Skype. If so, Transcom would process the call and hand it to Halo via Transcom's wireless CPE that is communicating with our Cartersville, GA base station. Halo would hand the call off to AT&T at its NRCRGAMA02T tandem. AT&T would then terminate or transit the call to the terminating carrier.

AT&T would want to "rate" this call based on the calling and called numbers and their associated rate centers and they would claim it is "wireline" PSTN originated and therefore Halo is not "authorized" to handle it, as the number is a wireline number. We previously would have argued it is intraMTA because we received it from our end-user customer at our base station in MTA 11 and it terminated in MTA 11. We would have then and still do strongly disagree that it was "wireline" PSTN originated. Under the new rules is this "non-access" traffic? Is it "access reciprocal compensation"? Is it "transit"?

In the myopic world of the ILECs, these scenarios are fanciful, unlikely and irrelevant. However, their cellular counterparts know differently. The entire telecommunications industry knows differently. And most importantly, consumers know differently. Voice is now, and will further become, an IP "application," where telephone numbers "move" seamlessly across devices and networks, just like music content in the "cloud" can be accessed on any device, anywhere, at any time. Voice is really no different.

Because of these convergence trends, the FCC has supported, and now requires, traffic factors to allocate between different traffic types precisely because of the fact that numbers have been disassociated from networks and location and thus are not reliable.[2]

[2] *See, e.g.* FCC Order ¶ 934 ("...In addition, given the recognized concerns with the use of telephone numbers and other call detail information to establish the geographic end-points of a call, we decline to mandate their use in that regard, as proposed by some commenters. ..."); ¶ 960 ("...Because telephone numbers and other call detail information do not always reliably establish the geographic end-points of a call, we do not mandate their use. ..."); ¶ 962 ("Contrary to some proposals, however, we do not require the use of particular call detail information to dispositively distinguish toll VoIP-PSTN traffic from other VoIP-PSTN traffic, given the recognized limitations of such information. For example, the Commission has recognized that telephone numbers do not always reflect the actual geographic end points of a call. Further, although our phantom traffic rules are designed to ensure the transmission of accurate information that can help enable proper billing of intercarrier compensation, standing alone, those rules do not ensure the transmission of sufficient information to determine the jurisdiction of calls in all instances. Rather, consistent with the tariffing regime for access charges discussed above, carriers today supplement call detail information as appropriate with the use of jurisdictional factors or the like when the jurisdiction of traffic cannot otherwise be determined. We find this approach appropriate here, as well.")

From Halo's perspective, we designed our business plan to operate according to the rules of CMRS carriers, where traffic is originated by end-users, using wireless stations capable of movement, at towers located in MTAs. We are prepared to operate under the FCC's new regime (for so long as it is in effect pending appellate review) but we must be given a chance to bring our arrangements and operations into compliance, and the full set of FCC rules must be implemented. The ILECs cannot be allowed to cherry pick the rules they like, and ignore or dismiss those they don't. The idea that billing for the entire industry is determined on the basis of the originating and terminating end points of the called and calling parties is not true for the CMRS industry, and it is quickly dissolving in the entire telecom space in the face of converged wireless-wireline and IP-based services. The "practice" is for carriers to traffic factors instead of call-by-call rating, since numbers-based rating is no longer feasible in today's advanced network and service environment where the starting and ending "locations" of calls is hard to consistently, accurately and efficiently determine and the "number" consistently yields an incorrect answer. The FCC's new regime calls for factors and we are willing to develop and supply them.[3]

The inter-carrier compensation regime is not and cannot be founded on the assumption that you can definitively determine the starting point of a call, the type of call, or the initial network based on "the number." I would further observe that reliance on the number as the exclusive rating determinant is subject to the very outcomes the LECs want to avoid: gaming and arbitrage. It was not that long ago that state commissions all over the country had to resolve the inter-carrier compensation issues related to "arbitrage" using Virtual NXXs. The states largely adopted the ILEC position in those cases and ruled that the telephone numbers did not control

[3] I hope and trust that the PSC is also willing to implement the FCC's new rules because those rules also require the ILECs to negotiate in good faith to establish IP-based interconnection, and Halo is preparing to seek IP-based interconnection from AT&T and many of the ILECs involved in this proceeding.

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For a converged IP service provider such as Halo, the starting network or the type of number used simply does not matter. And even if it did, there is no way for us to definitively determine where a call started, for the same reasons as mentioned above. Trying to maintain this distinction is fighting a losing battle, and swimming against the strong tide of market, technical and regulatory evolution occurring in the telecommunications industry.

The bottom line is that the ILECs' case rests on a host of completely unsupportable assumptions about the nature, type and jurisdiction of calls that are entirely drawn from merely looking at the calling and called telephone numbers. The assumptions they use to form conclusions on the characterization of the call, the type of call, the jurisdiction, the location of the end points, the networks involved and the actual services that are being provided are simply *wrong*. Yet they are asking this Commission to use their assumptions and conclusions to justify finding that Halo has acted inappropriately, owes access charges and as the basis for the amount of access charges due or "damages" they are incurring.

Q: Let's return to the CPE that Halo's customers use. Can you explain a bit more about the units Halo and its customers employ, and how that is changing?

A: Halo had intended to offer what some might see as a more traditional "mobile" CPE device than the devices in use today, but its wireless equipment vendor failed to deliver this CPE as promised at the time Halo was turning up its High Volume services. If it is somehow determined that the current wireless stations do not meet the FCC's test for "mobility" then Halo can now replace the devices presently in use with devices that conform to the rules, as these devices have become available since Halo's service launch.

Q: How do you respond to AT&T and TDS's claims that Halo is not originating wireless traffic, Transcom is not an ESP, and instead all of Halo's traffic is "originating" landline traffic subject to access charges?

A: Our argument regarding the period before the FCC's new rules rests on the status of Transcom as an Enhanced Service Provider. I am not a lawyer, but my layman's interpretation is that ESP status conveys four important attributes that are at the heart of classifying Halo's traffic: ESP's are "end-users", who purchase telephone exchange services, whose traffic is not access traffic, and are users that originate and terminate traffic. In other words, since ESPs are not carriers or IXCs, their traffic cannot be treated as if an IXC is involved. Further, when a company like Halo provides Telephone Exchange Service to an ESP it is not providing a "transit" service since Halo is not switching calls between two carriers.[4]

The ILECs say that Halo is arguing that Transcom's involvement creates a "re-origination." That is a mischaracterization. Our argument is that Transcom – like all ESPs – is a communications-intensive business end-user, that takes communications from Transcom's

[4] I will explain the impact of the FCC order and new rules below, by accepting the FCC's characterizations and applying them to our context.