BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint and petition for relief against Halo Wireless, Inc. for breaching the terms of the wireless interconnection agreement, by BellSouth Telecommunications, LLC d/b/a AT&T Florida.	DOCKET NO. 110234-TP ORDER NO. PSC-12-0323-PHO-TP ISSUED: June 22, 2012

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on June 20, 2012, in Tallahassee, Florida, before Commissioner Eduardo E. Balbis, as Prehearing Officer.

APPEARANCES:

Tracy W. Hatch and Suzanne L. Montgomery, Esquires, 150 South Monroe, Suite 400, Tallahassee FL 32301;
Dennis G. Friedman, Esquire, Mayer Brown LLP, 71 South Wacker Drive, Chicago, Illinois 60606
On behalf of BellSouth Telecommunications, LLC d/b/a AT&T Florida (AT&T Florida).

Gary V. Perko, Esquire, Hopping Green and Sams, P.A., 119 S. Monroe Street, Suite 300 Tallahassee, FL 32314;
Steven H. Thomas, Troy P. Majoue, and Jennifer M. Larson, Esquires, McGuire, Craddock & Strother, P.C., 2501 N. Harwood, Suite 1800, Dallas TX 75201;
W. Scott McCollough and Matthew A. Henry, Esquires, Mccollough Henry PC, 1250 S. Capital of Texas Hwy., Bldg. 2-235, West Lake Hills, TX 78746
On behalf of Halo Wireless, Inc.

Larry D. Harris, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission (Staff).

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Advisor to the Florida Public Service Commission.

PREHEARING ORDER

I. CASE BACKGROUND

On July 25, 2011, BellSouth Telecommunications, LLC d/b/a AT&T Florida ("AT&T") filed a Complaint and Petition for Relief ("Complaint") against Halo Wireless, Inc. ("Halo"). In the Complaint, AT&T alleges that Halo has violated the terms of the parties' interconnection

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agreement ("ICA") by terminating traffic to AT&T which was not originated on a wireless network, in order to avoid the payment of access charges. On August 8, 2011, Halo filed for Chapter 11 Bankruptcy Protection in the United States Bankruptcy Court for the Eastern District of Texas. On September 14, 2011, Halo filed a Notice of Removal with the District Court in Tallahassee, in which Halo sought to remove the pending (but stayed) Commission proceeding to the United States District Court for the Northern District of Florida. On December 9, 2011, the District Court issued its Order of Remand, whereby the District Court remanded this matter back to the Commission for further proceedings. In its Order, the District Court noted that the Bankruptcy Court had specifically ruled "that the pending proceedings against Halo in state public utility commissions – but not any attempts to collect any amount determined to be due – are exempt from the automatic stay."

Following the District Court's Order, on December 16, 2011, the Commission issued Order No. PSC-11-0506-PCO-TP, Order Resuming Docket. On January 5, 2012, Halo filed a Partial Motion to Dismiss and Answer to AT&T's Complaint. On March 20, 2012, the Commission issued Order PSC-12-0129-FOF-TP denying Halo's partial motion to dismiss AT&T's complaint as to Counts I and II and directing this matter to be set for evidentiary hearing. On April 13, 2012, Order PSC-12-0202-PCO-TP, the Order Establishing Procedure, was issued. This matter is scheduled for hearing on July 12-13, 2012.

II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 364, Florida Statutes (F.S.). This hearing will be governed by said Chapter and Chapters 25-6, 25-22, and 28-106, F.A.C., as well as any other applicable provisions of law.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 364.183(3), F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 364.183(4), F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183(3), F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183(3), F.S., at the hearing shall adhere to the following:

(1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

(2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

VI. ORDER OF WITNESSES

Witness	Proffered By	Issues #
Direct		
Name	Company	
J. Scott McPhee*	AT&T Florida	Issues 2-7
Mark Neinast*	AT&T Florida	Issues 2-4
Russ Wiseman	Halo Wireless	2-7
Robert Johnson	Halo Wireless	2, 3
Rebuttal		
Name	Company	
J. Scott McPhee*	AT&T Florida	Issues 2-7
Mark Neinast*	AT&T Florida	Issues 2-4
Raymond Drause*	AT&T Florida	Issues 2, 4

* Halo has objected to the qualifications of AT&T witnesses J. Scott McPhee, Mark Neinast, and Raymond W. Drause, to the extent that they are being offered as experts regarding the interpretation of statutes, rules and/or orders on grounds that the testimony offered by AT&T in this proceeding fails to provide any expertise for the witnesses in these areas and the witnesses otherwise do not appear to have any specialized knowledge, experience, training or education that would qualify them as experts in such areas.

VII. BASIC POSITIONS

AT&T FLORIDA: AT&T Florida contends that Halo has breached the parties' ICA in three ways.

A. Halo Breached the ICA By Sending Landline-Originated Traffic

As specified in the ICA between Halo and AT&T Florida, the only kind of traffic that Halo is allowed to send to AT&T Florida is traffic that originates on wireless equipment or facilities. AT&T Florida's call analyses, however, show that a significant portion of the traffic that Halo has been sending to AT&T Florida originates on landline networks, not wireless networks. Halo's delivery of non-wireless originated traffic is a breach of the ICA. Moreover, much of this traffic is non-local, and therefore subject to AT&T Florida's tariffed terminating network switched access charges. Halo does not deny sending landline traffic to AT&T Florida, but claims that all the traffic should be deemed to originate with Transcom – rather than the actual calling party – because all the calls pass through Transcom immediately before being handed to Halo (and then to AT&T Florida). Halo rests this theory on the idea that Transcom in an ESP, and therefore an end-user, and consequently must be deemed to originate every call it touches. Transcom is not and ESP (or an end-user) but even if it were, that does not mean that it originates every call that it touches. In this situation, the calls originate with the actual calling party, not Transcom. The FCC, the Tennessee Regulatory Authority, the Office of Regulatory Staff in South Carolina, and the Staff of the Illinois Commerce Commission all agree with AT&T Florida on this point.

B. Halo Breached the ICA By Inserting Improper Charge Numbers

The ICA requires the parties to send accurate call information to each other. Until the end of 2011, however, Halo inserted a Transcom "Charge Number" on every call it sent to AT&T Florida. This fact is undisputed. There was no basis for doing this, for Transcom has no relationship of any kind with the people who make or receive these calls, and inserting the Transcom Charge Number was contrary to established industry practice. Moreover, by inserting a Transcom Charge Number on calls, Halo made it appear to AT&T Florida's billing and recording systems that every call was a local call. As AT&T Florida's call studies show, however,

most of the calls coming from Halo are non-local calls, which are subject to higher rates for transport and termination.

C. Halo Breached the ICA by Failing to Pay for Interconnection Facilities

Under the ICA, the costs for interconnection facilities are shared based on each carrier's respective use of the facilities. Here, 100% (or close to 100%) of the traffic flowing over interconnection facilities comes from Halo (which makes sense because Halo has few if any customers for AT&T Florida end users to call). Accordingly, Halo owes AT&T Florida for 100% of those interconnection facilities it has obtained from AT&T Florida. Halo, however, has disputed and refused to pay the charges for such facilities. AT&T Florida asks the Commission declare that Halo is liable for those unpaid charges.

HALO WIRELESS: Halo is not in breach of the interconnection agreement ("ICA"). Halo provides commercial mobile radio service ("CMRS") and it sells telephone exchange service to Transcom Enhanced Services, Inc. ("Transcom") – Halo's high volume customer. On several occasions, courts of competent jurisdiction have ruled that Transcom is an end user and an enhanced service provider ("ESP") *even for phone-to-phone calls* because Transcom changes the content of every call that passes through its system and also offers enhanced capabilities. The courts ruled that Transcom is an end user, not a carrier. Accordingly, as a CMRS, Halo is selling telephone exchange service to an ESP end user. All such calls received from Transcom within any particular MTA are terminated in that same MTA. The bottom line is that not one minute of the relevant traffic is subject to access charges.

Further, prior to December 29, 2011, Halo inserted the billing telephone number of its high volume customer into the Charge Number information. Halo provided this information in order to identify the party financially responsible for the calls passing over its egress trunks going to/from AT&T. The call detail information provided by Halo did not prevent AT&T from being able to properly bill Halo. To the contrary, billing for Halo traffic is based, according to the ICAs, on traffic factors negotiated between the parties, not "call-by-call" rating. Additionally, the calling parameters AT&T would like to use for call rating were provided unaltered, enabling them to derive traffic factors they could have used to change the factors already in place. And finally, consistent

with the court decisions ruling that Halo's high volume customer is an end user and an ESP, the call detail information that was provided accurately portrayed the traffic as intraMTA, and subject to the "local" charges in the ICA.

AT&T's argument that Halo is in breach of the ICA because Halo has not paid AT&T for facilities is without any foundation in the ICA and must be denied. Per the terms of the ICA, AT&T cannot shift cost responsibility to Halo for facilities charges on AT&T's side of the point of interconnection ("POI").

In sum, there is no valid basis for the Complaint. The relevant traffic is not subject to access charges, Halo has not signaled incorrect call detail information, Halo does not owe AT&T for facilities charges, and therefore, AT&T is not entitled to the relief it requests.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions stated herein.

VIII. ISSUES AND POSITIONS

ISSUE 1: Does the Commission have jurisdiction to address AT&T Florida's Complaint?

POSITIONS

AT&T FLORIDA: Yes. The Commission has jurisdiction to address disputes arising under the provisions of ICAs, including AT&T Florida's claims for breach of the ICA. Like every other Commission to address the issue, the Commission already denied Halo's partial motion to dismiss, which alleged lack of jurisdiction.

HALO WIRELESS: The underlying dispute is controlled by federal law, which therefore preempts any state disposition of these issues. The FCC has made it clear that decisions affecting federal telecom licensees like Halo, and their services, are not entrusted to the state commissions because doing so is impractical and would make deployment of nationwide wireless systems like Halo's "virtually impossible." The courts have agreed that state commissions cannot attempt to impose rate or entry regulation on wireless providers, and in particular, state commissions cannot issue "cease and desist" orders on wireless

providers. Further, Halo has a *federally*-granted right to interconnect and the FCC has asserted "plenary" jurisdiction over CMRS interconnection and expressly pre-empted any state authority to deny interconnection.

The regulatory classifications for Halo and Transcom are defined and governed exclusively by *federal* law. For example, the ESP rulings hold that Transcom is *not* a carrier, is *not* an interexchange carrier ("IXC"), and its traffic is *not* subject to access charges. These rulings hold, instead, that Transcom is an ESP and therefore an "end user" and is entitled to obtain "telephone exchange service" as an end user rather than "exchange access" as an IXC. CMRS carriers – like Halo here – predominately provide "telephone exchange service" to end users. States are pre-empted from imposing rate or entry regulation on CMRS. Nor can states or local governmental authorities take action that will "prohibit or have the effect of prohibiting the provision of personal wireless services." The FCC has *exclusive* jurisdiction over wireless licensing, market entry by private and commercial wireless service providers and the rates charged for wireless services.

The Supreme Court and several courts of appeals have consistently held that state commissions cannot undertake to interpret or enforce federal licenses. The FCC is the exclusive "first decider" and must be the one to interpret, in the first instance, whether a particular activity falls within the certificates it has issued. If a state commission or AT&T believe that the federally-licensed entity is engaging in some "scheme" or "subterfuge" through its practices, the proper forum is the FCC. Similarly, if any state commission has a concern, its remedy is to petition the federal licensing body for relief. A state commission cannot take any action that would "amount to a suspension or revocation" of a federal license.

STAFF: Staff has no position at this time.

ISSUE 2: Has Halo delivered traffic to AT&T Florida that was not "originated through wireless transmitting and receiving facilities" as provided by the parties' ICA?

POSITIONS

AT&T FLORIDA: Yes. Under the ICA, the only kind of traffic that Halo is allowed to send to AT&T Florida is traffic that originates on wireless equipment or facilities. AT&T Florida's call analyses, however, show that a significant portion of the traffic that Halo has been

sending to AT&T Florida originates on landline networks – ranging from 45% to 67%. Delivery of non-wireless originated traffic is a breach the ICA. Moreover, a large portion of the landline-originated traffic Halo sends is non-local traffic that is subject to AT&T Florida's tariffed terminating switched network access charges (which Halo has not paid).

Halo's only defense is a claim that Transcom is an Enhanced Service Provider, or "ESP," and therefore must be treated as an end-user, and consequently must be deemed to "originate" every call that passes through its equipment – even though Transcom is not the calling party and has no relationship with the calling party. Halo then claims that because Transcom has a short wireless transport connection to Halo that is always located in the same MTA where the calls it passes to Halo are terminated, all the calls at issue here are actually wireless, local calls, and are not subject to switched access charges.

Transcom is not an ESP, but even if it were an ESP (or an end-user) that would not mean it is deemed to originate every call it touches. The FCC, the Tennessee Regulatory Authority, the Office of Regulatory Staff in South Carolina, and the Staff of the Illinois Commerce Commission all have rejected that theory, and so should this Commission.

HALO WIRELESS: The traffic in issue *does* originate "through wireless transmitting and receiving facilities before [Halo] delivers traffic to AT&T." The network arrangement in every state and every MTA is the same. Halo has established a 3650 MHz base station in each MTA. Halo's customer has 3650 MHz wireless stations – which constitute CPE as defined in the Act – that are sufficiently proximate to the base station to establish a wireless link with the base station. When the customer wants to initiate a session, the customer originates a call using the wireless station that is handled by the base station, processed through Halo's network, and ultimately handed off to AT&T for termination or transit over the interconnection arrangements that are in place as a result of the various ICAs.

The traffic here goes to Transcom where there is a "termination." Transcom then "originates" a "further communication" in the MTA. Enhanced services were defined long before there was a public Internet. ESPs do far more than just hook up "modems" and receive calls. They provide a wide set of services and many of them involve calls to the PSTN. The FCC observed in the first decision that created what is now known as the "ESP Exemption" that ESP use of

the PSTN resembles that of the "leaky PBXs" that existed then and continue to exist today, albeit using much different technology. Even though the call started somewhere else, as a matter of law a Leaky PBX is still deemed to "originate" the call that then terminates on the PSTN. As noted, the FCC has expressly recognized the bidirectional nature of ESP traffic, when it observed that ESPs "may use incumbent LEC facilities to originate and terminate interstate calls." Halo's and Transcom's position is simply the direct product of Congress' choice to codify the ESP Exemption, and neither the FCC nor state commissions may overrule the statute.

Halo is selling CMRS-based telephone exchange service to an ESP end user. All of the communications at issue originate from end user wireless customer premises equipment ("CPE") (as defined in the Act, 47 U.S.C. § 153(14)). The FCC's holding in ¶ 1006 of the *Connect America* order relates only to whether the traffic is subject to the "intraMTA rule" and does not constitute a holding that there is not an origination for other purposes. Regardless, the same paragraphs finds that Halo is providing "transit" and ¶ 1331 goes on to characterize transit as "non-access"; therefore, AT&T cannot impose exchange access charges because that would violate FCC rule 20.11(d). The ICA uses a factoring approach that allocates as between "local" and "non-local." Halo has paid AT&T for termination applying the contract rate and using the contract factor. AT&T cannot complain.

Russ Wiseman and Robert Johnson have provided pre-filed testimony on this issue and likely will provide live testimony on this issue at the hearing on the merits, as well.

STAFF: Staff has no position at this time.

ISSUE 3: Has Halo complied with the signaling requirements in the parties' ICA?

POSITIONS

AT&T FLORIDA: No. Until the end of 2011, Halo inserted a Transcom Charge Number on every call it sent to AT&T Florida. Charge Numbers are used to denote the entity that is financially responsible for a call, when that entity is different from the calling party. However, Transcom is not the financially responsible party on any of the calls Halo has been sending to AT&T. The improper insertion of the

Transcom Charge Number misled AT&T Florida about the nature of the calls coming from Halo, and constitutes a breach of the ICA.

HALO WIRELESS: Prior to December 29, 2011, Halo inserted the billing telephone number of its high volume customer, Transcom, into the Charge Number information. Halo provided this information in order to identify the party financially responsible for the calls passing over its egress trunks going to/from AT&T. The call detail information provided by Halo did not prevent AT&T from being able to properly bill Halo. To the contrary, billing for Halo traffic is based, according to the ICAs, on traffic factors negotiated between the parties, not "call-by-call" rating. Additionally, the calling parameters AT&T would like to use for call rating were provided unaltered, enabling them to derive traffic factors they could have used to change the factors already in place. And finally, consistent with the court decisions ruling that Halo's high volume customer is an end user and an ESP, the call detail information that was provided accurately portrayed the traffic as intraMTA, and subject to the "local" charges in the ICA.

Russ Wiseman and Robert Johnson have provided pre-filed testimony on this issue and likely will provide live testimony on this issue at the hearing on the merits, as well.

STAFF: Staff has no position at this time.

ISSUE 4: Has Halo paid the appropriate compensation to AT&T Florida as prescribed by the parties' ICA? If not, what compensation, if any, would apply?

POSITIONS

AT&T FLORIDA: No. Halo has not paid the appropriate compensation to AT&T Florida. The landline-originated traffic that Halo has been sending to AT&T Florida is not authorized by the ICA, and much of that traffic is non-local and therefore subject to terminating access charges under AT&T Florida's state and federal tariffs. Because it has used terminating switched network access service (by sending long-distance landline calls to AT&T Florida for termination), Halo is responsible to pay those access charges. AT&T Florida therefore asks the Commission to declare that Halo is liable for terminating switched network access charges on the non-local traffic it has sent to AT&T Florida, though the bankruptcy court handling Halo's bankruptcy proceeding will determine the actual amount due.

HALO WIRELESS: Yes. Halo has paid the appropriate compensation to AT&T Florida. Halo is selling CMRS-based telephone exchange service to an ESP end user. All of the communications at issue originate from end user wireless CPE. The ICA uses a factoring approach that allocates as between "local" and "non-local." Halo has paid AT&T for termination applying the contract rate and using the contract factor.

STAFF: Staff has no position at this time.

ISSUE 5: Has Halo failed to pay AT&T Florida for facilities that AT&T Florida provided pursuant to the parties' ICA and that the ICA obliges Halo to pay for?

POSITIONS

AT&T FLORIDA: Yes. Under the ICA, the costs for interconnection facilities are shared based on each carrier's respective use of the facilities. Here, 100% (or close to 100%) of the traffic flowing over interconnection facilities is terminating traffic coming from Halo. Accordingly, Halo owes AT&T Florida for 100% of those interconnection facilities it has obtained from AT&T Florida. Halo, however, has disputed and refused to pay the charges for such facilities. AT&T Florida asks the Commission declare that Halo is liable for those unpaid charges.

HALO WIRELESS: Under the ICA, AT&T may only charge for interconnection "facilities" when AT&T-provided "facilities" are used by Halo to reach the mutually-agreed POI.

The architecture in place is as follows: Halo obtains transmission from its network to AT&T tandem buildings from third party service providers. In the vast majority of locations, the third party service provider has transport facilities and equipment in the tandem building, either in a "meet me room" area or via collocation facilities purchased from AT&T. In all Florida markets, except in Miami, Halo has secured third party transport all the way up to the mutually-agreed POI. The third party transport provider will have a collocation arrangement in the AT&T Florida tandem.

As part of its third party provided transport arrangements, Halo secures a Letter of Agency/Channel Facility Assignment ("LOA/CFA") from its third party transport service provider. The CFA portion of the LOA/CFA document consists of an Access Customer Terminal Location ("ACTL"), the third party provider's circuit ID, and a specific channel facility assignment (at the DS-3 or

DS-1 level depending on the arrangements) on the third party's existing transport facilities. This CFA defines the specific rack, panel and jack locations at Halo's third party transport providers' digital signal cross-connect ("DSX") where Halo and AT&T meet to exchange traffic. In other words, the mutually-agreed POI between AT&T and Halo is located where AT&T "plugs in" its network on the DSX panel where the CFA is given to Halo by the third party transport provider. This is memorialized by the fact that each POI will have a POI Common Language Location Identifier ("CLLI") code, and the CLLI code corresponds exactly to the CFA location.

In order to implement interconnection, AT&T has to install *cross-connects* that go to the POI at the third party transport providers DSX that is inside the tandem building so that the parties can exchange traffic. AT&T has wrongly chosen to call these cross-connects "channel terminations" and is attempting to bill Halo out of the access tariff for these cross-connects even though they are on AT&T's side of the POI. AT&T is also charging Halo for certain multiplexing (DS3/DS1, and DS1/DS0).

The DS-3 to DS-1 muxing/demuxing is done purely for AT&T's convenience; Halo was and is at all times prepared to support DS3 physical layer capability all the way into the tandem switch. Nonetheless, even though Halo could deny cost responsibility in these cases, Halo is paying AT&T for the multiplexing. In other words, these charges are not in dispute. Other than for this DS-3 to DS-1 muxing, AT&T is not providing any transport or multiplexing on Halo's side of the POI. If and to the extent AT&T insists on moving forward with this part of the Complaint, Halo reserves the right to seek a refund for the payments it has made for DS3/DS1 multiplexing.

AT&T appears to be attempting to recover charges for DS1/DS0 multiplexing that AT&T performs to knock out 24 DS0s from each cross-connect and then connect to a port on AT&T's tandem switch. This multiplexing is clearly on AT&T's side of the POI. Further, it may well be not even necessary. Most Class 4 tandem switches today have DS3 trunk port interfaces and DS1 interfaces are almost universal. Halo cannot understand why AT&T believes it should, and Halo must pay for, demultiplexing down to the DS0 level to get to the termination on the tandem trunk port. Regardless, the fact is that the DS1/DS0 multiplexing is occurring on AT&T's side of the POI.

IV.C of the ICA establishes the "POI" concept, which serves as the location where traffic exchange occurs and where a carrier's financial responsibility for providing facilities ends and reciprocal compensation for completing the other carrier's traffic begins. Under the ICA, both parties are responsible for bringing facilities to the POI at their own cost, and do not recover "facility" charges from the other for facility costs unless party A buys a "facility" from party B to get from party A's network to the POI. Facility costs on the other side of the POI are not recoverable as such; instead, the providing party's cost recovery occurs through reciprocal compensation.

AT&T is attempting to shift cost responsibility to Halo when the ICA assigns responsibility to AT&T. AT&T's billings for the cross-connects and any DS1/DS0 multiplexing that Halo has disputed are incorrect and not supported by the ICA. Count IV of the Complaint, AT&T's argument that Halo is in breach of the ICA because Halo has not paid AT&T for facilities, is without any foundation in the ICA and must be denied.

Russ Wiseman has provided pre-filed testimony on this issue and likely will provide live testimony on this issue at the hearing on the merits, as well.

STAFF: Staff has no position at this time.

ISSUE 6A: Has Halo committed a material breach of its ICA with AT&T Florida?

POSITIONS

AT&T FLORIDA: Yes to all subparts. Halo has committed material breaches of the ICA by sending non-wireless originated traffic to AT&T Florida, disguising the traffic by inserting a Transcom Charge Number to make calls look local and by failing to pay appropriate facilities charges. Based on Halo's material breaches of the ICA, AT&T Florida is entitled as a matter of law to discontinue service under the ICA and stop accepting any traffic from Halo; and, if authorized by the bankruptcy court, to terminate the ICA.

HALO WIRELESS: No. Halo has not committed breaches of the ICA by sending non-wireless originated traffic to AT&T because all of the communications at issue originate from end user wireless CPE. Halo also did not commit a breach of the ICA when, prior to December 29, 2011, Halo inserted the billing telephone number of

its high volume customer, Transcom, into the Charge Number information. Halo provided this information in order to identify the party financially responsible for the calls passing over its egress trunks going to/from AT&T. The call detail information provided by Halo did not prevent AT&T from being able to properly bill Halo. To the contrary, billing for Halo traffic is based, according to the ICAs, on traffic factors negotiated between the parties, not "call-by-call" rating. Additionally, the calling parameters AT&T would like to use for call rating were provided unaltered, enabling them to derive traffic factors they could have used to change the factors already in place. And finally, consistent with the court decisions ruling that Halo's high volume customer is an end user and an ESP, the call detail information that was provided accurately portrayed the traffic as intraMTA, and subject to the "local" charges in the ICA.

STAFF: Staff has no position at this time.

ISSUE 6B: If Halo has committed a material breach of its ICA with AT&T Florida, is AT&T Florida entitled to terminate the ICA?

POSITIONS

AT&T FLORIDA: Yes to all subparts. Halo has committed material breaches of the ICA by sending non-wireless originated traffic to AT&T Florida, disguising the traffic by inserting a Transcom Charge Number to make calls look local and by failing to pay appropriate facilities charges. Based on Halo's material breaches of the ICA, AT&T Florida is entitled as a matter of law to discontinue service under the ICA and stop accepting any traffic from Halo; and, if authorized by the bankruptcy court, to terminate the ICA.

HALO WIRELESS: No. If the Commission finds that Halo has committed a material breach of the ICA, based on the change of law provision in the ICA, Halo stands ready to renegotiate terms so that it is in compliance with an agreement that both parties can accept. Rather than ending Halo's business in Florida, the Commission should consider the utility of the change of law provision in the ICA. Halo should be given the opportunity to utilize the change of law provision to renegotiate the terms of the ICA that are affected by the new FCC Order.

STAFF: Staff has no position at this time.

ISSUE 6C: If Halo has committed a material breach of its ICA with AT&T Florida, is AT&T Florida entitled to discontinue performance under the ICA?

POSITIONS

AT&T FLORIDA: Yes to all subparts. Halo has committed material breaches of the ICA by sending non-wireless originated traffic to AT&T Florida, disguising the traffic by inserting a Transcom Charge Number to make calls look local and by failing to pay appropriate facilities charges. Based on Halo's material breaches of the ICA, AT&T Florida is entitled as a matter of law to discontinue service under the ICA and stop accepting any traffic from Halo; and, if authorized by the bankruptcy court, to terminate the ICA.

HALO WIRELESS: No. If the Commission finds that Halo has committed a material breach of the ICA, based on the change of law provision in the ICA, Halo stands ready to renegotiate terms so that it is in compliance with an agreement that both parties can accept. Rather than ending Halo's business in Florida, the Commission should consider the utility of the change of law provision in the ICA. Halo should be given the opportunity to utilize the change of law provision to renegotiate the terms of the ICA that are affected by the new FCC Order.

STAFF: Staff has no position at this time.

ISSUE 7: What action should the Commission take based on its findings in Issues 1-6?

POSITIONS

AT&T FLORIDA: The Commission should grant the following relief:

(a) Find that Halo has materially breached the ICA by (1) sending landline-originated traffic to AT&T Florida, and (2) inserting incorrect Charge Number information on calls;
(b) Find that as a result of these breaches (or either of them), AT&T Florida is excused from further performance under the ICA and may stop accepting traffic from Halo;
(c) Find, without quantifying any specific amount due, that Halo is liable to AT&T Florida for access charges on the non-local landline traffic it has sent to AT&T Florida;

(d) Find, without quantifying any specific amount due, that Halo is liable to AT&T Florida for the cost of interconnection facilities it has obtained from AT&T Florida; and
(e) Grant all other relief as is just and appropriate.

HALO WIRELESS: The Commission should deny all relief requested by AT&T in its Complaint.

STAFF: Staff has no position at this time.

IX. EXHIBIT LIST

Witness	Proffered By		Description
Direct			
J. Scott McPhee	AT&T Florida	JSM-1	Halo and Transcom Answers to Issues 1-8, with Exhibits 1-5 (Wisconsin Public Service Commission Docket No. 9594-TI-100)
J. Scott McPhee	AT&T Florida	JSM-2	Excerpts from 9-19-11 Halo Bankruptcy Proceeding Transcript (U.S. Bankruptcy Court, E.D. Texas, Case No. 11-42464)
J. Scott McPhee	AT&T Florida	JSM-3	Transcom WebPages
J. Scott McPhee	AT&T Florida	JSM-4	AT&T Wholesale Agreement with Halo Wireless, Inc.
J. Scott McPhee	AT&T Florida	JSM-5	Amendment to AT&T Wholesale Agreement with Halo Wireless, Inc.
J. Scott McPhee	AT&T Florida	JSM-6	8-12-11 Halo Letter and Presentation to FCC re: 8-10-11 Meeting
J. Scott McPhee	AT&T Florida	JSM-7	10-17-11 Halo *Ex Parte* Letter to FCC

Witness	Proffered By		Description
J. Scott McPhee	AT&T Florida	JSM-8	Excerpts from 2-28-12 Proceeding Transcript (Wisconsin Public Service Commission Docket No. 9594-TI-100)
J. Scott McPhee	AT&T Florida	JSM-9	1-26-12 Order (Tennessee Regulatory Authority Docket No. 11-00119)
Mark Neinast	AT&T Florida	MN-1	1-26-12 Order (Tennessee Regulatory Authority Docket No. 11-00119)
Mark Neinast	AT&T Florida	MN-2	3-9-12 Direct Testimony of Christopher J. Rozycki (South Carolina Office of Regulatory Staff Docket No. 2011-304-C)
Mark Neinast	AT&T Florida	MN-3	Diagram of How Halo Sends Traffic to AT&T
Mark Neinast	AT&T Florida	MN-4	Analysis of Landline-Originated vs. Wireless-Originated Calls sent by Halo
Mark Neinast	AT&T Florida	MN-5	Example of Halo Calls Terminating to BellSouth Telecomm Inc. (AT&T FL) with 50 State LNP and Split Number Range Look Up
Mark Neinast	AT&T Florida	MN-6	Florida Traffic Analysis Comparison
Mark Neinast	AT&T Florida	MN-7	Simplified Call Flow Diagram
Mark Neinast	AT&T Florida	MN-8	Sample SS7 Call Records
Russ Wiseman	Halo Wireless	RW-1	Correspondence with FCC re *Connect America Fund*
Russ Wiseman	Halo Wireless	RW-2	Correspondence with AT&T's Randy Ham

Witness	Proffered By		Description
Robert Johnson	Halo Wireless	RJ-1	*In re Transcom Enhanced Services, LLC*, Bankr. N.D. Tex., Memorandum Opinion re Transcom's Status as an Enhanced Service Provider, April 29, 2005
Robert Johnson	Halo Wireless	RJ-2	*In re Transcom Enhanced Services, LLC*, Bankr. N.D. Tex., Order Confirming Debtor's and First Capital's Original Joint Plan of Reorganization, May 16, 2006
Robert Johnson	Halo Wireless	RJ-3	*In re Transcom Enhanced Services, LLC*, Bankr. N.D. Tex., Order Granting Transcom's Motion for Partial Summary Judgment Based on the Affirmative Defense that Transcom Qualifies as an Enhanced Service Provider, September 20, 2007
Robert Johnson	Halo Wireless	RJ-4	*In re Transcom Enhanced Services, LLC*, Bankr. N.D. Tex., Order Granting Motion for Entry of Orders (i) Authorizing and Approving Sale of Substantially All Assets Free and Clear of Liens, Claims, Encumbrances, Interests and Exempt from Any Stamp, Transfer, Recording or Similar Tax, etc., May 28, 2003
Rebuttal			
Raymond W. Drause	AT&T Florida	RD-1	Drause Resume
Raymond W. Drause	AT&T Florida	RD-2	Typical Halo Tower Site
Raymond W. Drause	AT&T Florida	RD-3	Call Path for Typical Transcom/Halo Call

Witness	Proffered By		Description
Mark Neinast	AT&T Florida	MN-9	Excerpts of Pre-Filed Rebuttal Testimony of Russ Wiseman on behalf of Halo Wireless, Inc. filed on February 8, 2012 (Wisconsin Public Service Commission Docket No. 9594-TI-100)
Mark Neinast	AT&T Florida	MN-10	Excerpts of Pre-filed Direct Testimony of Russ Wiseman on behalf of Halo Wireless, Inc. filed on March 19, 2012 (Georgia Public Service Commission Docket No. 34219)

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

AT&T FLORIDA: The parties have not stipulated to any issues in this proceeding.

HALO WIRELESS: Halo is not a party to any stipulation.

STAFF: Staff is not aware of any stipulated issues.

XI. PENDING MOTIONS

AT&T FLORIDA: AT&T has no pending motions.

HALO WIRELESS: (1) Halo's Objections to and motion to strike direct and rebuttal testimony of J. Scott McPhee, filed June 19, 2012.

(2) Halo's Objections to and motion to strike direct and rebuttal testimony of Mark Neinast, filed June 19, 2012.

(3) Halo's Objections to and motion to strike rebuttal testimony of Raymond W. Drause, filed June 19, 2012.

(4) Halo's Motion to compel discovery responses to 1st set of interrogatories, requests for admissions and PODs to AT&T Florida, filed June 19, 2012.

STAFF: Staff has no pending motions.

XII. PENDING CONFIDENTIALITY MATTERS

AT&T FLORIDA: None

HALO WIRELESS: Halo states that it intends to file requests for confidentiality as to (1) documents produced by Halo in response to AT&T's First Set of Interrogatories and Request for Production of Documents to Halo and (2) documents produced by AT&T Florida in response to Halo's First Set of Interrogatories, Request for Admissions, and Request for Production to AT&T Florida.

STAFF: None

XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

XIV. RULINGS

Halo's Proposed Additional Issues are subsumed within the previously identified tentative issues, and will not be added as additional issues.

Opening statements, if any, shall not exceed ten minutes per party.

Witnesses shall be allowed five minutes to summarize their testimony.

It is therefore,

ORDERED by Commissioner Eduardo E. Balbis, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Eduardo E. Balbis, as Prehearing Officer, this 22nd day of June, 2012.

EDUARDO E. BALBIS
Commissioner and Prehearing Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

LDH

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case

of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.